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OF

STATE-TRIALS,

AND

PROCEEDINGS

FOR

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE FOURTH.

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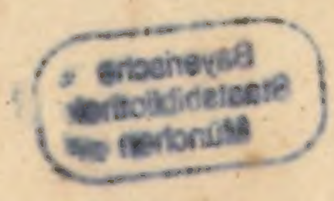

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THE EIGHTEENTH ANNUAL REPORT OF THE BOARD OF KING'S KINSMEN II

CONTAINING WITH

THE PROCEEDINGS

AND

ESSAYS AND ADDRESSES TO THE MEMORY

OF

Abraham Lincoln

AND OTHERS

BY

THE PROCEEDINGS

AND

ESSAYS AND ADDRESSES

OF

Abraham Lincoln

The several TRIALS, &c. contained in the FOURTH VOLUME.

CXXXIV.

1685. THE *Trial of* Titus Oates, *D. D. for* Perjury. Page 1

CXXXV.

The Trial of the Lady Alice Liſle, *for* High-Treaſon. 105

CXXXVI.

The Trials of John Fernley, William Ring, Elizabeth Gaunt, *and* Henry Corniſh, *Eſq. for* High-Treaſon. 130

CXXXVII.

The Trial of Charles Bateman, *for* High-Treaſon. 162
Sir John Hawles's *Remarks on ſeveral Trials*, &c.
--- *On* Fitzharris's *Trial.* 165
--- *On* Colledge's *Trial.* 173
--- *On the Earl of* Shafteſbury's *Grand Jury.* 183
--- *On Mr.* Wilmer's Homine Replegiando. 186
--- *On the Lord* Ruſſel's *Trial.* 187
--- *On Colonel* Sidney's *Trial.* 196
--- *On the Award of Execution againſt Sir* Tho. Armſtrong. 198
--- *On the Trial of Count* Coningſmark. 199
--- *On Mr.* Corniſh's *Trial.* 200
The Trial of Charles Bateman 204

CXXXVIII.

The Trial of John Hampden, *Eſq. for* High-Treaſon. 207

CXXXIX.

The Trial of Henry *Lord* Delamere, *for* High-Treaſon. 210

CXL.

1686. *Proceedings againſt Dr.* Henry Compton, *Lord Biſhop of* London, *for not ſuſpending Dr.* Sharpe. 247

CXLI.

Proceedings againſt Dr. John Peachell, *Vice-Chancellor, and the Univerſity of* Cambridge, *for not admitting* Alban Francis, *a Benedictine Monk, to the Degree of Maſter of Arts.* - - - 254

CXLII.

Proceedings againſt St. Mary Magdalen College *in* Oxford, *for not electing* Anthony Farmer *Preſident of that College.* - - - 262

CXLIII.

1687. *The Trial of* William Stansfield, *in* Scotland, *for the* Murder *of his Father.* - - 283

CXLIV.

1688. *The Trial of the Seven Biſhops for publiſhing a* Libel. 304

CXLV.

1689. *Proceedings in the Houſe of Commons againſt* Roger Palmer, *Earl of* Caſtlemaine, *for* High-Treaſon, *in going Embaſſador to* Rome. - - - 397

CXLVI.

Proceedings againſt John Price, *Eſq*; *and One hundred other Proteſtants in* Ireland, *for* High-Treaſon *againſt King* James. - - - - 401

CXLVII.

The Trial of Maurice Cavenagh, Edmund Poor, *and* William Bowland, *for ſtealing Cows in* Ireland. 408

CXLVIII.

1690. *The Trials of Sir* Richard Grahame, *Bar. Viſcount* Preſton, *and* John Aſhton, *for* High-Treaſon. 410

CXLIX.

1692. *The Trial of* Henry Harriſon, *for the* Murder *of Dr.* Clenche. - - 488

CL.

Trial of John Cole, *for the ſame.* - 506

CLI.

The Trial of Charles *Lord* Mohun, *for the* Murder *of* William Mountford. - - 510

CLII.

Proceedings between the King and Thomas Kendall, *and* Richard Roe, *on an* Habeas Corpus, *upon a Commitment for* High-Treaſon. - - 554

CLIII.

1695. *The Trials of* Robert Charnock, Edward King, *and* Thomas Keyes, *for* High-Treaſon. 562

CLIV.

The Trial of Sir John Freind, *Knt. for* High-Treaſon. 599

CLV.

The Trial of Sir William Parkyns, *Knt. for* High-Treaſon. - - - 627

CLVI.

1696. *The Trial of* Ambroſe Rookwood, *for* High-Treaſon. - - - - - 661

CLVII.

The Trial of Charles Cranburne, *for* High-Treaſon. 698

CLVIII.

The Trial of Robert Lowick, *for* High-Treaſon. 718

CLIX.

The Trial of Peter Cook, *for* High-Treaſon. 738

CLX.

The Trial of Alexander Knightley, *for* High-Treaſon. 777

A Complete

V Combiez

A COMPLETE

COLLECTION OF TRIALS, &c.

CXXXIV.

The Trial of TITUS OATES, *D. D*. at the* King's-Bench, *for* Perjury, May 8. 1685. Paſchæ 1 Jac. II.

THIS Day being appointed for the Trial of one of the Cauſes between our Sovereign Lord the King, and *Titus Oates*, for Perjury; the ſame began between eight and nine in the Morning, and proceeded in the manner following.

Firſt, Proclamation was made for Silence, then the Defendant was called; who appeared in Perſon, being brought up by Rule from the *King's-Bench* Priſon, where he was in cuſtody, and was adviſed to look to his Challenge to the Jury that were impannell'd to try the Cauſe.

Oates. My Lord, I am to manage my own Defence, and have a great many Papers and things which I have brought in order to it; I pray I may have ſome Conveniency for the managing my own Trial.

Sir *George Jefferies.* *L. J. C.* Ay, ay, let him ſit down there within the Bar, and let him have Conveniency for his Papers.

Cl. of Cr. Cryer, ſwear Sir *William Dodſon.*

Oates. My Lord, I except againſt Sir *William Dodſon.*

Sir *Robert Sawyer.* *Mr. Att. Gen.* What is the Cauſe of Exception, Mr. *Oates?*

L. C. J. Why do you challenge him?

Oates. My Lord, I humbly conceive in theſe Caſes of Criminal Matters, the Defendant has liberty of excepting againſt any of the Jurors, without ſhewing Cauſe, provided there be a full Jury beſides.

L. C. J. No, no, that is not ſo, you are miſtaken in that, Mr. *Oates.*

Oates. My Lord, I am adviſed ſo, I do not underſtand the Law myſelf.

L. C. J. But we will tell you then; it cannot be allow'd; if Mr. *Attorney* will conſent to wave him, well and good.

Mr. Att. Gen. No, my Lord, I know no reaſon for it, I cannot conſent to any ſuch thing.

L. C. J. Then, if you will not have him ſworn, you muſt ſhew your Cauſe preſently.

Oates. My Lord, I cannot aſſign any Cauſe.

L. C. J. Then he muſt be ſworn.

Cl. of Cr. Swear him.

Cryer. Sir *William Dodſon*, take the Book: You ſhall well and truly try this Iſſue between our Sovereign Lord the King and *Titus Oates*, and a true Verdict give according to the Evidence; ſo help you God.

Cl. of Cr. Swear Sir *Edmund Wiſeman.* [*Which was done.*

Richard Aley, Eſq; [*Who was ſworn.*

Benjamin Scutt.

Oates. My Lord, I challenge him.

L. C. J. For what Cauſe?

Oates. My Lord, he was one of the Grand Jury that found the Bill.

L. C. J. Was he ſo? That is an Exception indeed; what ſay you, *Mr. Attorney?*

Mr. Att. Gen. My Lord, I believe he was upon one of the Indictments, but I think it was not this.

L. C. J. But if he were in either of them, he cannot be ſo impartial.

Mr. Att. Gen. My Lord, we will not ſtand upon it, we'll wave him.

Cl. of Cr. Thomas Fowlis.

Oates. Pray let me ſee that Gentleman. [*Who was ſhown to him.*

Are you not a *Goldſmith* in *Fleetſtreet*, between the two *Temples?*

Fowlis. Yes, I am.

Oates. Very well, Sir, I do not except againſt you, only I deſir'd to know whether it were you or not?

Cl. of Cr. Swear him. [*Which was done.*

Thomas Blackmore,
Peter Pickering,
Robert Beddingfield,
Thomas Rawlinſon,
Roger Reeves,
} Sworn.

Edward Kempe, (*Sworn*).

Oates. My Lord, I challenge him.

L. C. J. You ſpeak too late, he is ſworn already.

Oates. My Lord, they are ſo quick, I could not ſpeak, but he was one of the Grand Jury too.

L. C. J. We cannot help it now.

Mr. Att. Gen. I did not know that he was ſo; but to ſhew that we mean nothing but fair, we are content to wave him.

L. C. J. You do very well, *Mr. Attorney General*; let him be withdrawn.

Cl. of Cr. Mr. *Kempe*, you may take your eaſe; ſwear *Ambroſe Iſted.* [*Which was done.*

Henry Collier,
Richard Howard,
} Sworn.

Cl. of Cr. Cryer, count theſe.

Cryer. One, &c. Sir *William Dodſon.*

Cl. of Cr. Richard Howard.

Cryer. Twelve good Men and true, hearken to the Record, and ſtand together, and hear the Evidence.

The Names of the Twelve ſworn, were theſe.

Sir *William Dodſon*,		*Robert Beddingfield*,
Sir *Edmund Wiſeman*,		*Thomas Rawlinſon*,
Richard Aley,	Jur'	*Roger Reeves*,
Thomas Fowlis,		*Ambroſe Iſted*,
Thomas Blackmore,		*Henry Collier*, and
Peter Pitkering,		*Richard Howard.*

Oates. Before the Counſel opens the Cauſe, I deſire to move one thing to your Lordſhip.

L. C. J. What is it you would have?

Oates. My Lord, I have three Witneſſes that are very material ones to my Defence, who are now Priſoners in the *King's-Bench*, for whom I moved yeſterday, that I might have a Rule of Court to bring them up today, but it was objected, that they were in Execution, and ſo not to be brought; I humbly move your Lordſhip now, that I may have a *Habeas Corpus* for them, to bring them immediately hither.

L. C. J. We cannot do it.

Oates. Pray, good my Lord, they are very material Witneſſes for me, and I moved yeſterday for them.

L. C. J. You did ſo, but we told your Counſel then, and ſo we tell you now, we cannot do it by Law, it will be an Eſcape.

Oates. My Lord, I ſhall want their Teſtimony.

L. C. J. Truly we cannot help it, the Law will not allow it, and you muſt be ſatisfied.

Cl. of Cr. Gentlemen, you that are ſworn of this Jury, hearken to the Record: By virtue of an Inquiſition taken at *Juſtice-Hall* in the *Old-Bailey*, in the Pariſh of St. *Sepulchre*, in the Ward of *Faringdon* Without, *London*, upon *Wedneſday* the 10th of *December*, in the 36th of the Reign of our late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. before Sir *James Smith*, Knight, Mayor of the City of *London*; Sir *George Jefferies*, Knight and Baronet, Lord Chief Juſtice of this Honourable Court; Sir *Thomas Jones*, Knight, Lord Chief Juſtice of the Court of Common Pleas; *William Montague*, Lord Chief Baron of the Exchequer; Sir *James Edwards*, Knight; Sir *John Moore*, Knight, Aldermen of the ſaid City; Sir *Thomas Jenner*, Knight, one of his Majeſty's Serjeants at Law, and Recorder of the ſame City, and others, their Companions, Juſtices of *Oyer* and *Terminer*, by the Oaths of twelve Jurors, honeſt and lawful Men of the City of *London* aforeſaid, who then and there being ſworn and charged to enquire for our ſaid Lord the King, and the Body of the City aforeſaid, upon their Oaths preſent, That at the Seſſion of our Sovereign Lord the King, holden for the County of *Middleſex*, at *Hicks's-Hall*, in *St. John's-ſtreet*, in the County aforeſaid, on *Monday*, to wit, 16 *December*, in the Year of the Reign of our late Sovereign Lord *Charles* II. of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. the thirtieth, before Sir *Reginald Foſter*, Baronet; Sir *Philip Matthews*, Baronet; Sir *William Bowls*, Kt. Sir *Charles Pitfield*, Knight; *Thomas Robinſon*, *Humphrey Wyrley*, *Thomas Hariot*, and *William Hempſon*, Eſquires, Juſtices of our ſaid Sovereign Lord the King, to enquire by the Oath of Honeſt and Lawful Men of the County of *Middleſex* aforeſaid, and by other ways, manners, means, by which they might better know, as well within Liberties as without, by whom the Truth of the Matter may be better known and enquired, of whatſoever Treaſons, Miſpriſions of Treaſons, Inſurrections, Rebellions, Counterfeitings, Clippings, Waſhings, and falſe Makings of the Money of this Kingdom of *England*, and of other Kingdoms and Dominions whatſoever; and of whatſoever Murders, Felonies, Manſlaughters, Killings, Burglaries, and other Articles and Offences in the Letters-Patents of our ſaid Sovereign Lord the King, to them, or any four or more of them therefore directed, ſpecified; as alſo the Acceſſaries of the ſame within the County aforeſaid, as well within Liberties as without, by whomſoever, howſoever had, made, done or committed; and the ſaid Treaſons, and other the Premiſſes, to hear and determine, according to the Law and Cuſtom of this Kingdom of *England*, being aſſigned by the Oath of *Ralph Wain*, *John Vaughan*, *Richard Foſter*, *Thomas Paget*, *Robert Newington*, *Henry Tompkins*, *Robert Hays*, *John Greenwood*, *Peter Stimpſon*, *Joſias Croſly*, *Richard Richman*, *Auguſtine Bear*, *John King*, *Nathaniel Brett*, *Francis Fiſher*, and *Samuel Lynn*, Honeſt and Lawful Men of the County aforeſaid, ſworn, and charged to enquire for our ſaid Sovereign Lord the King, and the Body of the

* Burnet's *Hiſtory of his Own Times*, Vol. I. p. 637.

County aforeſaid, upon their Oaths: It was preſented, That *Thomas White*, otherwiſe *Whitebread*, late of the Pariſh of St. *Giles* in the Fields, in the County of *Middleſex*, Clerk; *William Ireland*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Fenwick*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *Thomas Pickering*, of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Grove*, of the Pariſh aforeſaid, in the County aforeſaid, Gent. as falſe Traitors againſt the moſt Illuſtrious, Serene, and moſt Excellent Prince, our ſaid late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. their Supreme and Natural Lord, not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and ſeduced by the Inſtigation of the Devil: The Cordial Love, and True and Natural Obedience, which faithful Subjects of our ſaid Sovereign Lord the King towards him, ſhould, and of right ought to bear, utterly withdrawing, and contriving, and with all their Might intending the Peace and Tranquility of this Kingdom of *England* to diſturb, and the true Worſhip of God within this Kingdom of *England* uſed, and by Law eſtabliſh'd, to ſubvert; and Rebellion within this Kingdom of *England* to move, ſtir up, and procure, and the Cordial Love, and true and due Obedience, which faithful Subjects of our ſaid Lord the King, towards him, the ſaid Sovereign Lord the King, ſhould, and of right ought to bear, utterly to withdraw, put out, and extinguiſh; and our ſaid Sovereign Lord the King, to Death and final Deſtruction to bring and put, the four and twentieth Day of *April*, in the Year of the Reign of our late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. the thirtieth, at the Pariſh of St. *Giles*'s in the Fields, in the County aforeſaid, falſely, maliciouſly, ſubtilely, adviſedly, and traitorouſly did purpoſe, compaſs, imagine, and intend, Sedition and Rebellion within this Kingdom of *England* to move, ſtir up and procure; and a miſerable Slaughter among the Subjects of our ſaid Lord the King to procure and cauſe; and our ſaid late Lord the King, from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depoſe, caſt down, and diſinherit; and him our ſaid late Sovereign Lord the King to Death, and final Deſtruction to bring and put, and the Government of the ſaid Kingdom, and the ſincere Religion of God, rightly by the Laws of the ſaid Kingdom eſtabliſhed, at their Will and Pleaſure to change and alter, and the State of this whole Kingdom of *England*, throughout all its Parts well inſtituted and ordained, wholly to ſubvert and deſtroy, and War againſt our ſaid late Sovereign Lord the King, within this Kingdom of *England* to levy: And thoſe their moſt wicked Treaſons, and traitorous Imaginations and Purpoſes aforeſaid to fulfil and perfect, they the aforeſaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, with other falſe Traitors to the Jurors not known, the ſaid four and twentieth Day of *April*, in the Year of the Reign of our ſaid late Sovereign Lord the King, the thirtieth, with Force and Arms, &c. at the Pariſh of St. *Giles* in the Fields, in the County of *Middleſex* aforeſaid, falſely, maliciouſly, ſubtilely, adviſedly, deviliſhly, and traitorouſly did aſſemble themſelves, unite and meet together, and then and there falſely, maliciouſly, ſubtilely, adviſedly, deviliſhly, and traitorouſly, did conſult and agree our ſaid late Sovereign Lord the King to Death, and final Deſtruction to bring and put, and the Religion within this Kingdom of *England*, rightly, and by the Laws of the ſame Kingdom eſtabliſh'd, to the Superſtition of the *Romiſh* Church, to change and alter; and the ſooner to fulfil and perfect their ſaid moſt wicked Treaſons, and traitorous Imaginations and Purpoſes, they, the ſaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other falſe Traitors of our ſaid late Sovereign Lord the King, to the Jurors unknown, afterwards, to wit, the ſame 24th Day of *April*, in the ſaid thirtieth Year of our ſaid late Sovereign Lord the King, at the aforeſaid Pariſh of St. *Giles* in the Fields, in the County aforeſaid, falſely, ſubtilely, adviſedly, deviliſhly, and traitorouſly among themſelves, did conclude and agree, that they the aforeſaid *Thomas Pickering*, *John Grove*, him the ſaid late Sovereign Lord the King ſhould kill and murder: and that they the ſaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors to the Jurors unknown, a certain Number of Maſſes between them, then and there agreed for the Health of the Soul of him the ſaid *Thomas Pickering*, therefore ſhould ſay, celebrate and perform, and therefore ſhould pay unto the ſaid *John Grove* a certain Sum of Money, between them then and there agreed. And the Jurors aforeſaid, upon their Oath aforeſaid, did further preſent, that the ſaid *Thomas Pickering* and *John Grove*, upon the Agreement aforeſaid, then and there falſely, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traitorouſly did take upon them, and did promiſe to the ſaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors of our late ſaid Sovereign Lord the King, to the Jurors aforeſaid unknown, then and there, falſely, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traitorouſly, did promiſe that they the ſaid *Thomas Pickering* and *John Grove* would kill and murder our ſaid late Sovereign Lord the King; and they, the ſaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other falſe Traitors of our ſaid late Sovereign Lord the King, afterwards, to wit, the ſaid four and twentieth Day of *April*, in the thirtieth Year aforeſaid, at the aforeſaid Pariſh of St. *Giles* in the Fields, in the County of *Middleſex* aforeſaid, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traitorouſly, did ſeverally every one of them give their Faith each to the other, and upon the Sacrament then and there traitorouſly did ſwear and promiſe, to conceal, and not to divulge their ſaid moſt wicked Treaſons and traitorous Compaſſings, Conſultations, and Purpoſes ſo between them had, him, our ſaid late Sovereign Lord the King, traitorouſly to kill and murder, and the *Romiſh* Religion in this Kingdom of *land* to be uſed, to introduce, and the true Reformed Religion in this Kingdom of *England* rightly, and by the Laws of the ſame Kingdom eſtabliſhed, to alter and change; and that the aforeſaid *Thomas Pickering* and *John Grove*, in Execution of their traitorous Agreement aforeſaid, afterwards, to wit, the ſame four and twentieth Day of *April*, in the thirtieth Year aforeſaid, and divers other Days and Times after, at the aforeſaid Pariſh of St. *Giles* in the Fields, in the County aforeſaid, Muſkets, Piſtols, Swords, Daggers, and other offenſive and cruel Weapons, him, our ſaid late Sovereign Lord the King, to kill and murder, falſely, ſubtilely, adviſedly, maliciouſly, and traitorouſly did prepare, and obtain for themſelves, and them had and kept; and that they, the aforeſaid *Thomas Pickering* and *John Grove*, afterwards, to wit, the ſaid four and twentieth Day of *April*, in the thirtieth Year aforeſaid, and divers Days and Times afterwards, with Force and Arms, &c. at the Pariſh aforeſaid, in the County aforeſaid, and in other Places within the County of *Middleſex* aforeſaid, falſely, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traitorouſly did lie in wait, and endeavour our ſaid late Sovereign Lord the King to murder: And that the ſaid *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors to the Jurors unknown, afterwards, to wit, the ſame four and twentieth Day of *April*, in the thirtieth Year aforeſaid, at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, falſely, ſubtilely, adviſedly, maliciouſly, deviliſhly, and traitorouſly did prepare, perſuade, excite, abet, comfort and counſel four other Perſons, Men to the Jurors unknown, and Subjects of our ſaid late Sovereign Lord the King, him our ſaid late Sovereign Lord the King traitorouſly to kill and murder, againſt the Duty of their Allegiance, againſt the Peace of our ſaid late Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided; and thereupon it was ſo far proceeded, that afterwards, to wit, at the Court of Goal-Delivery of our Sovereign Lord the King, of *Newgate*, at *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, in the Pariſh of St. *Sepulchre*, in the Ward of *Faringdon* Without, *London* aforeſaid, the ſeventeenth Day of *December*, in the thirtieth Year aforeſaid, before the Juſtices of our ſaid Lord the King, then and there being preſent, held by Adjournment for the County of *Middleſex* aforeſaid, before whom the Indictment aforeſaid was then depending, came the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, under the Cuſtody of Sir *Richard How*, Knt. Sir *John Chapman*, Knt. Sheriffs of the County of *Middleſex* aforeſaid, into whoſe Cuſtody, for the Cauſe aforeſaid before that were committed, being there brought to the Bar in their proper Perſons, and immediately being ſeverally ſpoken unto concerning the Premiſſes above charged upon them, how they would acquit themſelves thereof; the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, did ſay that they were not thereof guilty, and for the ſame, for good and bad, they ſeverally put themſelves upon the Country; and by a certain Jury of the Country on that behalf, in due manner impannell'd, ſworn and charged, then and there, in the ſame Court before the Juſtices of Goal-Delivery aforeſaid were tryed; and that upon that Trial between our ſaid late Sovereign Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, at *London* aforeſaid, to wit, at *Juſtice-Hall*, in the *Old-Bailey* aforeſaid, in the Pariſh and Ward aforeſaid, the Defendant, *Titus Oates*, by the Name of *Titus Oates*, late of the Pariſh of St. *Sepulchre* aforeſaid, in the Ward aforeſaid, *Clerk*, was a Witneſs produced on the behalf of our late Sovereign Lord the King upon the Trial aforeſaid, and before the aforeſaid Juſtices of Goal-Delivery in the Court aforeſaid, then and there held, upon the Holy Evangeliſts of God, to ſpeak and teſtify the Truth, the whole Truth, and nothing but the Truth of, and in the Premiſſes between our ſaid late Sovereign Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, put in Iſſue, was duely ſworn; and that he, the aforeſaid *Titus Oates*, then and there, in the Court of Goal-Delivery aforeſaid, upon his Oath aforeſaid, upon the Indictment aforeſaid, at the Pariſh and Ward aforeſaid, by his own proper Act and Conſent, of his moſt wicked Mind, falſely, voluntarily, and corruptly did ſay, depoſe, ſwear, and to the Jurors of the Jury aforeſaid, then and there ſworn, and impannell'd to try the Iſſue aforeſaid, between our ſaid late Sovereign Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, did give in Evidence, that there was a traitorous Conſult of Jeſuits that were aſſembled at a certain Tavern, called the *White Horſe* Tavern in the *Strand*, (in the *White Horſe* Tavern in the *Strand*, in the County of *Middleſex* aforeſaid, meaning) upon the four and twentieth Day of *April*, in the Year of our Lord 1678; at which Conſult, *Whitebread*, *Fenwick*, *Ireland*, (the aforeſaid *Thomas White* alias *Whitebread*, *John Fenwick*, and *William Ireland*, meaning) and he the ſaid *Titus Oates*, were preſent; and that the Jeſuits aforeſaid did ſeparate themſelves into ſeveral leſſer Companies, and that the Jeſuits aforeſaid came to a Reſolution to murder the ſaid our late Lord the King, and that he the ſaid *Titus Oates* did carry the Reſolution aforeſaid from Chamber to Chamber, and did ſee that Reſolution ſigned by them (the aforeſaid Jeſuits meaning): whereas in truth and in deed, the aforeſaid *Titus Oates* was not preſent at any Conſult of the Jeſuits at the *White Horſe* Tavern aforeſaid in the *Strand*, in the County of *Middleſex* aforeſaid, upon the 24th of *April*, in the Year of our Lord 1678, nor did carry any Reſolution to murder our ſaid late Lord the King from Chamber to Chamber by any Perſons to be ſigned. And ſo he, the aforeſaid *Titus Oates*, on the 17th Day of *December*, in the thirtieth Year aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court aforeſaid, upon the Trial aforeſaid, upon the Indictment aforeſaid, between our ſaid late Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering*, and *John Grove*, ſo as aforeſaid had, by his own proper Act and Conſent, and of his moſt wicked Mind, falſely, voluntarily and corruptly in Manner and Form aforeſaid, did commit voluntary and corrupt Perjury, to the great Diſpleaſure of Almighty God, in manifeſt Contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in like caſe offending, and againſt the Peace of our ſaid late Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon the Country, and his Majeſty's Attorney-General likewiſe; which Country you are. Your Charge is to enquire, Whether the Defendant be guilty of this Perjury and Offence whereof he is now indicted, or whether not guilty? If you find him guilty, you are to ſay ſo; if you find him not guilty, you are to ſay ſo, and no more; and hear your Evidence. *Cryer*, make Proclamation.

Oates. Hold, Sir, I beg one Favour of your Lordſhip, to give me leave to have that part of the Record, wherein I am ſaid to have ſworn ſuch and ſuch Things, read diſtinctly in *Latin*.

L. C. J. Let it be read in *Latin*.

Cl. of Cr. Juravit & jur' jurat' prædict' ad tunc & ibidem jurat' & impanelat' ad triand' exitum prædict' inter dict' D'num noſtrum Regem & præfat' Will'm Ireland, Thomam Pickering, & Johannem Grove *in Evidentiis dedit' quod*

quod fuit proditoria Conſultatio, Anglice, Conſult' Jeſuit' qui Aſſemblat' fuer' apua quandam Tabernam vocat' the White Horſe Tavern *in le Strand, (Le* White Horſe Tavern *in le Strand, in Com' Mid' prædict' innuendo) ſuper viceſimum quartum diem April' Ann. Dom. milleſimo ſexenteſimo ſeptuageſimo octavo, ad quam quidam Conſultationem,* Whitebread, Fenwick, Ireland, *(prædict'* Thomam White *alias* Whitebread, Johannem Fenwick; & Will'm Ireland *innuendo) & præfat'* Titus Oates *fuer' præſent' & quod Jeſuitæ prædict' ſeſe ſeparaver' in ſeparales minores Conventus quodque Jeſuitæ prædict' venerunt ad Reſolutionem ad murdrand' dictum D'num Regem & quod ipſe idem* Titus Oates *portavit Reſolutionem prædict' à Camerâ ad Cameram & videbat Reſolutionem illam ſignat' per ipſos (præfat' Jeſuitas innuendo).* That is the Perjury that you are ſaid to have ſworn.

Oates. Pray go on, Sir, *Ubi revera*——

Cl. of Cr. *Ubi revera & in prædict'* Titus Oates *non præſens fuit ad aliquam Conſultationem Jeſuit', apud le* White Horſe Tavern *prædict', in le Strand, in Com' Mid' prædict', ſuper viceſimum quartum diem Aprilis Anno Domini milleſimo ſexenteſimo ſeptuageſimo octavo, nec portavit aliquam Reſolutionem ad dict' D'num Regem murdrand' à Camerâ ad Cameram per aliquas Perſonas ſignand'.*

Mr. Juſt. *Withins.* Now, you have read it, go on, Sir, to make your Proclamation.

Cl. of Cr. Cryer, make an O-yes.

Cryer. O-yes! If any one can inform our Sovereign Lord the King, the King's Serjeant, the King's Attorney-General, or this Inqueſt now taken, concerning the Perjury and Offence, whereof the Defendant *Titus Oates* ſtands indicted; let them come forth, and they ſhall be heard, for now he ſtands upon his Diſcharge.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Oates. My Lord, I deſire your Lordſhip and the Court would be of Counſel for me in one thing, which I take to be a Fault and Error in my Indictment.

L. C. J. Look you, Mr. *Oates*, whatever you have to ſay of that nature, you muſt not ſpeak to it now, you will have your time as to that hereafter, in caſe you be convicted.

Oates. My Lord, I have but one ſmall Exception to open to you.

L. C. J. We are now upon the Fact only.

Oates. My Lord, I beg you would give me leave only to tell you of a Miſtake in the Indictment, which I hope, when I have opened, will ſatisfy your Lordſhip, that it ought not to be put upon me or the Court to try this Cauſe; or, to be ſure, if there ſhould be a Conviction, I hope I may move an Arreſt of the Judgment.

L. C. J. So I tell you you may, but not now.

Oates. Good my Lord, hear me but a few Words; the Indictment charges me to have given ſuch and ſuch Evidence, that there was ſuch a Conſult of the Jeſuits at the *White Horſe* Tavern in the *Strand*, the 24th of *April* 1678. That the Jeſuits did afterwards divide themſelves into ſeveral leſſer Companies; that they came there to a Reſolution to murder the late King; and that I ſwore that I carried that Reſolution from Chamber to Chamber; and ſaw the Reſolution ſigned by them, ſo the Word is, *Signat'*; now the Perjury aſſigned is, that I was not preſent at that Conſult, nor did carry the Reſolution from Chamber to Chamber to be ſigned, and there the Word is *Signand'*; now I conceive, if *Signat'* be the Word, that is uſed in ſetting forth the Oath that I made, the Aſſignment of the Perjury ought to follow that Form, and the Word there ought to be *Signat'* too; being *Signand'*, I take that to be an Error.

L. C. J. Look, that is not proper at this time, as I told you at firſt; but withal I do not think there is any great Matter in what you ſay.

Mr. Att. Gen. Either I do not underſtand Mr. *Oates* what he means by the Objection, or he will find himſelf much miſtaken in it.

L. C. J. Well, well, we have nothing to do with that now; go on with the Cauſe.

Mr. *Phipps.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment againſt *Titus Oates* for Perjury, which Indictment ſets forth, that *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, the 16th of *December*, in the thirtieth Year of the late King, at the *Old-Bailey*, were indicted of High-Treaſon for conſpiring the Death of the King, and that *Ireland*, *Pickering* and *Grove*, were tryed the 17th of *December* in that Year, and upon that Indictment *Titus Oates* was produced as a Witneſs on the behalf of the King, againſt the ſaid *Ireland*, *Pickering* and *Grove*: Being ſworn to give Evidence to the Jury that were impannelled and ſworn to try that Cauſe; he did ſwear and give in Evidence, that there was a treaſonable Conſult of the Jeſuits at the *White Horſe* Tavern in the *Strand*, (meaning the *White Horſe* Tavern in the *Strand*, in the County of *Middleſex*) the 24th of *April* 1678, at which Conſult, *Whitebread*, *Fenwick*, and *Ireland*, and the ſaid *Titus Oates* were preſent, and that they ſeparated themſelves into ſeveral leſſer Clubs, and came to a Reſolution to murder the King, and that he, the ſaid *Titus Oates*, carried the ſaid Reſolution from Chamber to Chamber, to be ſigned by them, meaning the Jeſuits; whereas in truth and in fact, he, the ſaid *Titus Oates*, was not preſent at any ſuch Conſult, the four and twentieth of *April* 1678, nor carried any ſuch Reſolution from Chamber to Chamber to be ſigned; and he, the ſaid *Titus Oates*, the 17th Day of *December*, in the thirtieth Year aforeſaid, at the *Old-Bailey* aforeſaid, upon the Trial aforeſaid, on the Indictment aboveſaid, between the King, and the ſaid *Ireland*, *Pickering*, and *Grove*, ſo as aforeſaid had, by his own proper Act and Conſent of his moſt wicked Mind, falſely, voluntarily and corruptly in manner and form aforeſaid, did commit wilful and corrupt Perjury; and this is laid to be to the Diſhonour of God, in Contempt of the Law, to the evil Example of others in the like caſe offending againſt the King's Peace, Crown and Dignity. To this he has pleaded Not Guilty, and that is the Iſſue that you are to try; if we prove him Guilty, we queſtion not but you will find him ſo.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, I am of Counſel in this Cauſe for the King, and our Caſe ſtands thus: The Defendant ſtands indicted for corrupt and wilful Perjury, for what he ſwore at the Trial of *Ireland*; and that which he ſwore was this, in order to convict the Priſoners then at the Bar, of the High Treaſon they were accuſed of: *Oates* did ſwear, that upon the 24th of *April*, 1678, there was a Conſult of Jeſuits held at the *White Horſe* Tavern in the *Strand*, where *Ireland* and ſeveral other Jeſuits were preſent, and their Buſineſs was to conſult how they might murder and deſtroy the King, and ſubvert the Government, and there they came to a Reſolution, that *Pickering* and *Grove* ſhould kill the King; and he was preſent at the Debate, and he carried the Reſolution from Chamber to Chamber, where they had ſeparated themſelves in leſſer Numbers, and there he ſaw the Reſolution ſigned: and this is the Matter that he ſwore, upon which this Indictment is founded. And, Gentlemen, we do charge that this was a falſe Oath, and in a Point expreſly to the Matter then in Controverſy before that Court, for we ſhall prove he was beyond Sea at that time, and on that day; and in order to his Conviction we ſhall make out by clear Evidence to you, as full and plain as ever was given, that from *Chriſtmas* before, which was in *December* 1677, till *Midſummer* after, which was the latter end of *June* 1678, *Oates*, that ſwears this Conſult in *April*, was at *St. Omers*, and in all that time was not abſent from the College there above 24 Hours, and that but once only, which was in *January* when he played Truant, and went to *Watton*, which is about two Miles from *St Omers*, but otherwiſe he was all along in the College. And, my Lord, that we may give ſuch a ſatisfactory Evidence as may make it undeniably plain to the Jury, I deſire your Lordſhip, and you Gentlemen of the Jury, would pleaſe to obſerve ſome particular Periods of Time, that I ſhall open for the better clearing our Evidence methodically. And the firſt Period of Time is from Mr. *Hilſley*'s leaving *St. Omers*; now he left *St. Omers* the 14th of *April* Old Stile, which is the 24th of *April* New Stile, and then when he came away, he left *Oates* there at *St. Omers*. Mr. *Hilſley*, when he came into *England*, in *Kent*, in his Journey to *London*, meets one Mr. *Burnaby*; this was, I ſay, in Mr. *Hilſley*'s Return into *England* from *St. Omers*, which he left ten Days before the time aſſigned by *Oates* for this Conſult, at the *White Horſe* Tavern in the *Strand*. And the next Period is, Mr. *Burnaby* was going to *St. Omers*, and there he arrives in Time, the 21ſt of *April* Old Stile, and there he finds Mr. *Oates*, who ſwore he was then in *London*: and by the Evidence you will hear that Mr. *Oates*, according to his uſual Cuſtom, and according to that Virtue he is endowed with, very boldly inſinuates himſelf into this Gentleman's Company, as he uſes to do with all new-comers; and you will hear from Mr. *Burnaby* himſelf, and many others, that from the time of his coming to *St. Omers*, which was the 21ſt of *April*, he convers'd with Mr. *Oates* ſeveral Days, every Day till after the 24th of *April* Old Stile at *St. Omers*. Then, my Lord, another Period of Time that I would deſire you to obſerve, is, from Mr. *Peel*'s coming from *St. Omers*, which was in Time the 25th of *April* Old Stile, the very Day after the Day that this Conſult was ſworn to be on; and when he came from *St. Omers*, you will hear from many Witneſſes that he left *Oates* there, and there he ſtayed. For, my Lord, we ſhall, beſides theſe particular times of theſe Gentlemen's coming over who left him there, prove the very Day when he left *St. Omers*, and that was the end of *Midſummer-day* following, which was the 23d of *June*; then was the time when *Oates* firſt came from *St. Omers* to *England*, and we ſhall prove he took his leave of them then. My Lord, we have many other Circumſtances that will unanſwerably ſtrengthen this Evidence, and ſhew that our Witneſſes teſtify nothing but the Truth; one particularly is this: This Gentleman being a Novice of the Houſe, was Reader in the *Sodality*, as they call it, we ſhall prove that; for every *Sunday* and *Holiday* throughout all *April* and *May*, he did officiate in that place, and did read to the Society, according as the Cuſtom there is: And we ſhall prove another particular thing, that upon this 24th of *April* he was in the College, by a particular Circumſtance, and that by ſeveral Witneſſes: ſo that, Gentlemen, not to detain you with any long Opening of the Matter, if we prove this that I have opened, as we ſhall with a Cloud of Witneſſes, it will make an end of the Queſtion. We ſhall firſt call our Witneſſes to prove that he ſwore at that Trial, that ſuch a Conſult was, and he was at it; and then, if we prove that he was at another Place beyond the Sea, at ſuch Diſtance that it is impoſſible for him to be here; I do not doubt but the Court and the Jury will conclude, he hath willfully and corruptly forſworn himſelf; the ſad Effects of which we are all Witneſſes of; it was to take away the Lives of his Fellow-Subjects wrongfully; and it will appear to the World, he has been one of the greateſt Impoſtors that ever did appear upon the Stage, either in this Kingdom, or in any other Nation.

Mr. Sol. Gen. We will now go on with our Evidence, and prove all the Parts of the Indictment, and firſt produce the Record of the Trial of *Ireland*, and then by Witneſſes, *viva voce*, that were preſent at that Trial, we ſhall prove what he ſwore, and then prove that Oath of his to be falſe. Swear Mr. *Swift*. [*Which was done.* Mr. *Finch.*

Where is the Record of *Ireland*'s Trial?—Mr. *Swift*. Here it is, my Lord.

Mr. Recorder. Is that a true Copy, Sir?

Mr. *Swift*. Yes, I examin'd this from the Record, it is a true Copy.

L. C. J. Read it.

Mr. Att. Gen. If Dr. *Oates* does deſire the whole may be read, let it be ſo; otherwiſe a Word of it may ſerve, it being only an Inducement.

Oates. Yes, I deſire it may be all read.

L. C. J. It muſt be read, if he will have it.

Mr. S. Gen. Well, I ſubmit it, I did only offer it to ſave the time of the Court.

Oates. I would ſave the time of the Court too all that I can; but I think it may be material for me to have the whole read.

L. C. J. In God's Name let it be read, we will not hinder you in any thing that may be for your Defence.

Cl. of Cr. Memorandum quod——

Mr. Att. Gen. Now this long Record in *Latin* is read, I would fain know whether it be to any great purpoſe, but only to ſpend Time?

L. C. J. Nay, I think it has not been very edifying to a great many; do you think, Mr. *Oates*, that the Jury, who are Judges of this Fact, do underſtand it?—*Oates.* I cannot tell, may be they may, my Lord.

Mr. Juſt. *Withins.* Do you underſtand it yourſelf, Mr. *Oates*?

Oates. That's not any Queſtion here; but to oblige the Court and the Jury, I deſire it may be read in *Engliſh* too.

L. C. J. No, the Court underſtands it well enough, and they can tell the Jury what it is; it is only the Copy of a Record, to prove that *Ireland* was tried for High Treaſon at the *Old-Bailey*, the 17th of *December* 1678.

Mr. Sol. Gen. Now, my Lord, we will call our Witneſſes, to ſwear what *Oates* did at that Trial ſwear: Pray ſwear Mr. *Foſter*. [*Which was done*

Mr. Att. Gen. Pray, Mr. *Foſter*, will you acquaint the Court and the Jury, whether Dr. *Oates* was produced as a Witneſs at *Ireland*'s Trial, and what he did there depoſe about a Conſult in *April* 78.

Mr. *Foſter*. My Lord, I was ſo unhappy as to be one of that Jury, by whom Mr. *Ireland*, Mr. *Pickering*, and Mr. *Grove* were try'd.

Jury-men. My Lord, we deſire that Mr. *Foſter* would lift up his Voice, for we cannot hear him.

Mr. *Foſter*. Truly, my Lord, I have been very ſick of late, and am not now very well, and therefore cannot ſpeak louder than I do.

L. C. J. Go nearer the Jury, and ſpeak as loud as you can.

Mr. *Foſter*. My Lord, I ſay, I did ſee Mr. *Oates* produced as an Evidence at the Seſſions in the *Old-Bailey*, where I was ſo unhappy as to be a Jury-man, when Mr. *Pickering*, Mr. *Ireland*, Mr. *Grove*, and Mr. *Whitebread* were try'd.

Mr. Att. Gen. When was that?

Mr. *Foſter*. It was in *December* 78.

Mr. Att. Gen. And what did *Oates* then ſwear?

Mr. *Foſter*. I did ſee Mr. *Oates* ſworn as an Evidence there, in behalf of the King, againſt the Priſoners; and he did then ſwear, that there was a Meeting of ſeveral Jeſuits at the *White-horſe* Tavern, in the *Strand*, upon the 24th of *April* 78, and that Mr. *Whitebread*, Mr. *Ireland*, and Mr. *Fenwick* were preſent at the Meeting, and there they did conſult the Death of the King, and the altering of the Religion; and ſome went away, and others came: at laſt they reduced themſelves into ſeveral ſmaller Companies or Clubs, and they came to a Reſolution, that *Pickering* and *Grove* ſhould go on to aſſaſſinate the King, for which the one was to have 1500 Pound, and the other 30,000 Maſſes, and that this Reſolution was drawn up by one *Mico* (if I am not miſtaken in his Name) I have it in my Notes I then took of the Evidence; and he ſwore further, that he himſelf went with this Reſolution to ſeveral of their Chambers; he went to *Whitebread*'s Chamber, and ſaw *Whitebread* ſign it; he went to *Fenwick*'s Chamber, and ſaw *Fenwick* ſign it; and went to *Ireland*'s Chamber, and ſaw *Ireland* ſign it; and this was upon the 24th of *April* 78. My Lord, I am poſitive in this, for I had the good-hap to take the Notes at the Trial for my own help, being a Jury-man, and I never look'd upon thoſe Notes afterwards, till the printed Trial came out, and then I compared my Notes with the Print, and found them to agree, and I have kept them ever ſince by me, and this is all under my own Hand as I have teſtified.

Oates. My Lord, may I aſk this Gentleman a Queſtion?

L. C. J. Ay, if the King's Counſel have done with him.

Mr. Att. Gen. Yes, my Lord, we have done with him.

Mr. *Foſter*. Pray, my Lord, give me leave to ſit down, for I am not able to ſtand.

Oates. My Lord, I deſire you to aſk that Gentleman, Whether in the Oath that I took, I call'd it a Conſult, or I call'd it a traitorous Conſult?

Mr. *Foſter*. Truly I think you call'd it both, if I am not miſtaken; but if your Lordſhip pleaſe, I will look upon my Notes.

L. C. J. You may look upon your Notes to refreſh your Memory, if you will.

Mr. Juſt. *Withins*. Truly I think if it were a Conſult to murder the King, it muſt be a traitorous one without doubt.

Oates. Sir, that is not to the Purpoſe, my Queſtion is, what I ſwore it was.

L. C. J. He tells you, he believes you did ſwear both ways.

Mr. *Foſter*. At that Conſult he ſaid ſuch a Reſolution was taken, and I think he called it a traitorous Conſult.

Oates. If you pleaſe, I'll tell your Lordſhip the Reaſon why I aſked that Queſtion.

L. C. J. No, you may ſave yourſelf the trouble of that, you beſt know the Reaſon of your own Queſtions; he has given you a ſatisfactory Anſwer.

Oates. Then if your Lordſhip pleaſe, aſk him this Queſtion, Whether I ſwore that all theſe three Jeſuits were preſent at one time, or how many of them?

L. C. J. You hear the Queſtion, what ſay you to it?

Mr. *Foſter*. Sir, you ſwore that *Ireland*, *Fenwick*, and *Whitebread* were at that Conſult, but whether they were all three of them there at one time, I cannot tell, or which of them were together; but this you did ſwear, that they were there, and came to ſuch a Reſolution, and you carried it to all their Chambers, and did ſee them ſign it.

Mr. Juſt. *Withins*. He gives you a plain Account of what you did ſwear, I think, Mr. *Oates*.

Oates. Very well, my Lord, I would aſk him a third Queſtion, if you pleaſe.

L. C. J. Ay, in God's Name, aſk him as many Queſtions as you will.

Oates. Whether did I ſwear that it was reſolved to kill the King at the *White-Horſe* Tavern, or whether that Reſolution was made after they ſeparated themſelves into leſſer Clubs?

L. C. J. Mr. *Foſter*, this is his Queſtion, Whether you did apprehend, by what he ſwore, that he affirmed, the Reſolution to kill the King was made at the *White-Horſe* Tavern, or afterwards when they were divided?

Mr. *Foſter*. They came to a Reſolution, you ſaid, at the *White-Horſe* Tavern, and the Reſolution was there drawn up by one *Mico*, I think, and it was carried by you, for every one to ſign it from Chamber to Chamber; for I remember you were aſked the Queſtion, whether you ſaw them ſign it, and you anſwered that you did carry it, and ſaw them ſign it.

Mr. Juſt. *Withins*. He ſpeaks very plain, Mr. *Oates*.

L. C. J. He anſwers your Queſtions very fully.

Oates. Ay, my Lord, ſo he does, I am glad of it?

L. C. J. Have you any more Queſtions to aſk him?

Oates. I would aſk him another Queſtion; Whether I did ſwear, that I did carry this Reſolution from Chamber to Chamber to be ſigned, or that I carried it from Chamber to Chamber, and ſaw them ſign it.

Mr. *Foſter*. You did ſwear that you carried the Reſolution from Chamber to Chamber, and ſaw them ſign it?

Oates. But did you remember it ſo particularly, as to ſay, which you ſwore, whether I did carry it to be ſigned, or carried it, and ſaw them ſign it?

Mr. *Foſter*. You ſaid, you carried it to be ſigned, and you ſaw it ſigned.

L. C. J. He tells you for Satisfaction in that Point, that he does remember you did ſwear it both ways.

Oates. He does ſay ſo indeed, but whether it was ſo or no, is a doubt.

L. C. J. That will be a Queſtion by and by, it may be; if he be in the wrong, I ſuppoſe you can rectify him.

Oates. We are now, my Lord, upon my Oath, and therefore it concerns me to enquire whether I ſwore as is laid in the Indictment.

L. C. J. You ſay right, it does ſo.

Oates. And I the rather aſk theſe Queſtions, my Lord, becauſe it is ſix Years ago ſince that Trial.

L. C. J. I hope you have not forgot what you ſwore, have you?

Oates. My Lord, I think it is fair for me to aſk the Witneſſes what they remember after ſo long a time.

L. C. J. 'Tis very fair, nobody ſays any thing to the contrary.

Oates. Then, my Lord, I hope I may aſk this Gentleman how he comes to remember all this after ſo long a time?

L. C. J. He has told you already, but tell it him again, Mr. *Foſter*.

Mr. *Foſter*. Truly it is ſo long ago, that had I not taken all theſe Notes at the Trial, I had not been able to have given ſo good an Account.

L. C. J. 'Tis a very good Reaſon.

Oates. 'Tis ſo, my Lord, I have ſubpœna'd others of the Jury, and they will, I ſuppoſe, give you as good an Account.

L. C. J. Have you done with him then?

Oates. I have one Queſtion more to aſk Mr. *Foſter*, and that is, Whether I ſwore they met all in one Room, at the *White-Horſe* Tavern, or in more than one?

Mr. *Foſter*. You ſwore they were in ſeveral Rooms.

Oates. Then I would aſk him this Queſtion, my Lord, Whether he were then ſatisfied that *Ireland* was guilty of the High-Treaſon he was then indicted of?

L. C. J. The meaning of the Queſtion is, I ſuppoſe, Whether you did believe Mr. *Oates* at that time?

Mr. *Foſter*. Yes, my Lord, I had no Reaſon to the contrary.

L. C. J. But I would aſk you a Queſtion then, Mr. *Foſter*. Do you believe him now? Do you think, Mr. *Oates*, he would have found him guilty, if he had not believed the Evidence againſt him?

Oates. We know how Juries have gone a-late.

L. C. J. Ay, very ſtrangely indeed, Mr. *Oates*, and I hope ſo as we ſhall never ſee them go again.

Mr. *Foſter*. My Lord, I have lived ſo long in the City of *London* without any Blemiſh, that I hope it will not be thought I would give corruptly a Verdict againſt my Conſcience.

Oates. My Lord, I ſpeak of later Times than *Ireland*'s Trial.

L. C. J. He is an honeſt Man, I know him.

Oates. Good my Lord, be pleaſed to hear me.

L. C. J. Nay, you ſhall hear me, as well as I ſhall hear you, I'll aſſure you that, Mr. *Oates*, in plain *Engliſh*: aſk as many Queſtions of the Witneſſes as you will, that are proper to be aſked; but I'll have no Deſcants, nor Reflections: I know him, and he is very well known in the City of *London*, he is a Man of very conſiderable Quality, and very good Repute.

Oates. I beſeech your Lordſhip to forgive me, if I miſtake in my Queſtions, I do aſſure you, I deſign no Reflections on Mr. *Foſter*.

L. C. J. Aſk what Queſtions you will, but do not reflect.

Oates. I deſire to aſk Mr. *Foſter* one Queſtion more, and that is, that he would be pleaſed to tell the Reaſon why at the beginning of his Evidence he ſaid, it was his unhappineſs to be a Juryman at that Time?

Mr. *Foſter*. Really, Sir, I think it is not a happineſs for any Man to be of a Jury, where the Life of a Man is in queſtion. I aſſure you, for myſelf, I never accounted it ſo, and if I could have avoided it, I ſhould have been very glad to have been excuſed.

Oates. I have done with Mr. *Foſter*.

Mr. Att. Gen. My Lord, thus we prove what Mr. *Oates* ſwore at the Trial, which Mr. *Oates* himſelf will not deny; for the Fact, Mr. *Oates* has printed in his Narrative, as we have now proved it.

Oates. I intend to produce ſome others of the Jury-men by and by.

Mr. Sol. Gen. Now we ſhall call our Witneſſes to prove, that what he then ſwore was falſe.

Mr. Att. Gen. We call no more to the Point, what he did ſwear; but go on to diſprove what he did then ſwear.

Oates. My Lord, I would put this Queſtion to the Court, Whether this be a Proof ſufficient for this Point?

L. C. J. I leave that to the Jury, it is a Point of Fact that they are to try.

Oates. I beſeech your Lordſhip, that the Court would be pleaſed to give me an Anſwer.

L. C. J. If you aſk impertinent Queſtions, the Court is not obliged to anſwer them. Go on, Mr. *Attorney*.

Mr. Att. Gen. Call *Martin Hilſley*, Eſq; and *Henry Thornton*, Eſq; Swear Mr. *Hilſley*. [*Which was done.*]

Come, Mr. *Hilſley*, pray acquaint my Lord and the Jury, what time you came from *St. Omers*, in the Year 78.

Mr. *Hilſley*. My Lord, I came from *St. Omers* the 24th of *April*, New Stile, where I left the Priſoner, Mr. *Oates*.

L. C. J. From whence did you come, ſay you?

Mr. *Hilſley*. From *St. Omers*, the 24th of *April*, New Stile.

L. C. J. What Year?

Mr. *Hilſley*. In the Year 78, that is, the fourteenth of *April* here; and the three and twentieth of *April* New Stile, I ſaw the Priſoner at *St. Omers*, and went to School with him, and on the four and twentieth I came from *St. Omers*, and went to *Calais*, and from thence into *England*; but he was never in my Company all the while I was coming for *England*, though he ſwore he came over with me.

L. C. J. The three and twentieth of *April* you ſay you ſaw him?

Mr. *Hilſley*. Yes, I was with him, that was the Day before I came from *St. Omers*.

L. C. J. You left him there the Day before you came away, you ſay?

Mr. *Hilſley*. I did not ſee him that Morning that I came away, but here are others that did.

Mr. Att. Gen. Was he a Scholar there?

Mr. *Hilſley*. Yes, my Lord, he was.

Mr. Att. Gen. Did you know him very well?

Mr. *Hilſley*. Yes, my Lord, I did.

Mr. Att. Gen. Did he come over into *England* with you?

Mr. *Hilſley*. My Lord, I came from *St. Omers* to *Calais*, and never ſaw him; from *Calais* to *Dover*; I never ſaw him from *Dover* to *London*, I never

never saw him all the Way; and I am confident he was not in the same Ship I came over in, for I should have seen him if he had.

Mr. Att. Gen. Was he for some time before that constantly at *St. Omers?*

Mr. *Hilsley.* We went perpetually to School together.

L. C. J. What time did you take shipping after you went from *St. Omers?*

Mr. *Hilsley.* The very next Day; the Day I went from *St. Omers* was on the *Sunday* Morning: On *Monday* I took shipping from *Calais* to *Dover*, and I arrived in *England* at Ten of the Clock the same Night.

Oates. When does he say he arrived in *England?*

L. C. J. He says, he went from *St. Omers* on the *Sunday*, he came that Night to *Calais*, and the next Day went on board from *Calais*, and came that Night to *Dover*, that was *Monday* Night.

Mr. *Hilsley.* Yes, I came that Night to *Dover*, and I lay there that *Monday* Night, the next Day was the 26th of *April* New Stile.

Mr. Att. Gen. Where came you then from thence?

Mr. *Hilsley.* I came as far as *Bockton-street*, and there I lay four or five Days, and then I came to *Sittingbourn*, and by long Sea from thence to *London.*

Mr. Att. Gen. Where did you meet Mr. *Burnaby?*

Mr. *Hilsley.* I met him hard by there, at a Relation's of mine.

Mr. Att. Gen. Do you remember what Day you met him?

Mr. *Hilsley.* I think it was a Day or two before I came away from thence to *London.*

Mr. Just. *Withins.* Had you any Discourse with Mr. *Oates*, about your coming into *England?*

Mr. *Hilsley.* Nothing at all, Sir *Francis*, that I remember.

L. C. J. What time did you come to *London?*

Mr. *Hilsley.* I came within a few Days to *London.* I staid four or five Days there by the Way; and I saw Mr. *Burnaby* within four Days, I think, after I came into *England.* It was about *Monday* sevennight after I came from *St. Omers*, that I came to *London.*

Mr. Att. Gen. That was *May* New Stile.

Mr. *Hilsley.* That is their Stile. It was so.

Mr. Sol. Gen. In our Stile it was the 21st of *April.*

Mr. *Hanseys.* Pray did you give an Account to any Body, after you came to *London*, that you left *Oates* at *St. Omers* when you came away?

Mr. *Hilsley.* What say you, Mr. *Hanseys?* I did not well understand your Question.

L. C. J. Then mind me, Sir: It was asked of you, whether you had any Discourse with any body after you came hither, that you had left Mr. *Oates* behind you at *St. Omers?*

Mr. *Hilsley.* I did tell some Persons I left an *English* Parson there, at the same time I came away.

L. C. J. Did you not name him, who it was?

Mr. *Hilsley.* Yes, I named him by the Name he went by there, and that was *Sampson Lucy.*

Mr. Att. Gen. To whom did you tell it?--Mr. *Hilsley.* To one Mr. *Osbourn.*

Mr. Sol. Gen. Did he go by that Name of *Sampson Lucy* in the College?

Mr. *Hilsley.* Yes, he did sometimes, he had three or four Names, he was called sometimes *Titus Ambrosius.*

Oates. Now, my Lord, I desire I may ask that Gentleman a Question or two.

L. C. J. Ay, if they have done with him.

Mr. Att. Gen. We have, my Lord.

L. C. J. Then ask him what you will.

Oates. I desire, my Lord, that you will be pleased to ask that Gentleman what Religion he is of; for it is a fair Question, and an equitable one, and that which very nearly concerns me; and I desire to know where he lives.

L. C. J. What Religion are you of, Sir?

Mr. *Hilsley.* I am a *Roman* Catholick.

L. C. J. Where do you live?

Mr. *Hilsley.* I live in *London*, I am of the *Inner-Temple.*

L. C. J. He says that he is a *Roman* Catholick, and lives in *London.*

Oates. Pray be pleased, my Lord, to ask him when he went to *St. Omers* first, and how long he staved there?

Mr. *Hilsley.* My Lord, I was there about six Years, I presume it was about the Year 1672, when I went there first.

Oates. Pray ask him what he did there, what was his Business?

Mr. Att. Gen. That is not a pertinent Question at all, with Submission, my Lord.

Oates. I beseech you, Mr. Attorney, give me leave to ask my own Questions.

L. C. J. Ay, but you must ask fair and pertinent Questions.

Oates. My Lord, I would know what was his Employment there at *St. Omers?*

Mr. *Hilsley.* I know not myself of any particular Employment I had, any more than any of the rest that were there.

L. C. J. But, Mr. *Oates*, you must not ask any such Questions; what know I, but by asking him the Question, you may make him obnoxious to some Penalty, you must not ask him any Questions to ensnare him.

Oates. My Lord, it tends very much to my Defence to have that Question truly answered.

L. C. J. But if it tends to your Defence never so much, you must not subject him to a Penalty by your Questions.

Oates. The Nature of my Defence requires an Answer to that Question.

L. C. J. But shall you make a Man liable to Punishment, by ensnaring Questions? If a Man should ask you what Religion you are of,——

Oates. My Lord, I will tell you by and by my Reason, and I hope a good one, why I ask it.

L. C. J. I do not believe you can have any Reason; but to be sure we must not suffer any such entangling Questions to be asked.

Oates. Pray ask him, my Lord, when I came to *St. Omers.*

L. C. J. When did *Oates* come to *St. Omers?*

Mr. *Hilsley.* As well as I remember, he came to *St. Omers* either the latter end of *November*, or the beginning of *December*, in the Year 1677, I think it was that Year.

Oates. I desire you would ask him, Whether they were not Priests and Jesuits that govern'd that House?

L. C. J. What a Question is that! I tell you 'tis not fit to be asked.

Oates. I demand an answer to it, upon the Oath he has taken.

L. C. J. And I tell you, upon the Oath you have taken, you are not bound to answer any such Question.

Oates. Good my Lord, let my Questions be answered.

L. C. J. No, Sir, they shall not: How now, do not think to put Irregularities upon us; if you will behave yourself as you ought to do, and keep to that which is proper, well and good.

Oates. If your Lordship pleases, I think this very proper for me.

L. C. J. What, to ask such improper Questions as these are?

Oates. Truly, my Lord, I think they are fit Questions to be asked.

L. C. J. But we are all of another Opinion.

Oates. My Lord, I desire to know, Whether they are not set on by their Superiors to do this?

L. C. J. That is not a fair Question neither.

Oates. Give me leave to make my Defence, my Lord, I beseech you.

L. C. J. Ay, in God's Name; but I pray you then make it in a regular and becoming Way; for I know of no Privilege you have more than other People, to use Witnesses as you do.

Oates. My Lord, I look upon myself as hardly used in the Case.

L. C. J. I care not what you look upon yourself to be; if you will ask Questions, ask none but fair Questions, and while you keep within Bounds, you shall be heard as well as any of the King's Subjects; but if you will break out into Questions that are impertinent, extravagant, or ensnaring, we must correct you, and keep you within proper Limits.

Oates. Then, my Lord, I ask, Whether he was not a Witness at the Trial of the five Jesuits, and at *Langhorn*'s Trial?

L. C. J. Ay, that is a proper Question, what say you to't, Sir?

Mr. *Hilsley.* I was so, Sir.

Oates. Pray, my Lord, ask him what Credit he received at those Trials?

L. C. J. What a Question is that to ask any Man!

Oates. My Lord, I think it is a fair Question.

L. C. J. No, indeed, it is not a fair one at all.

Oates. My Lord, I desire to know what induces him to come here as a Witness now, since it appears that now he comes to give an Evidence that he gave six Years ago, and was not believed?

Mr. *Hilsley.* My Lord, I am subpœna'd.

L. C. J. He has given you an Answer to the Question, though I think it was an idle Question, and not at all to the Purpose.

Oates. It may be, he may have some particular Reason to induce him to it now.

L. C. J. Well, he tells you he came because he was subpœna'd, and that is sufficient: He is not compellable to be a Witness, unless he be subpœna'd; but if a Man will come without a Subpœna, and give Evidence in a Cause, that is no Objection to his Testimony.

Oates. My Lord, I desire to know of him, Whether he is to have any Reward for swearing in this Cause?

L. C. J. What say you, Sir, are you to have any Reward for your Evidence?

Mr. *Hilsley.* None at all as I know of, my Lord, I assure you.

Mr. Just. *Withins.* He is not paid for his Evidence, Mr. *Oates.*

Oates. If he be or be not, I cannot tell, nor do I know who ever was paid for it.

L. C. J. Have you any more Questions to ask him?

Oates. Pray, my Lord, I desire to know, What was the Occasion of his coming away from *St. Omers?*

Mr. *Hilsley.* I had finished my Studies.

Oates. Pray, my Lord, be pleased to ask him, if he never heard of any Consult of the Jesuits here in *England*, in the Month of *April* 78, and from whom he did hear of it?

Mr. *Hilsley.* I did hear of it among the rest of the Students of the College.

L. C. J. What did you hear of?

Mr. *Hilsley.* I did hear of a Consult of the Fathers in *April* 1678.

Mr. Att. Gen. Yes, there was, but not such an one as Mr. *Oates* speaks of, nor was he at it.

Mr. Just. *Holloway.* For what was that Consult, I pray you?

Mr. *Hilsley.* It was nothing but a Triennial Congregation about the Affairs of the Society.

L. C. J. What were they to do there?

Mr. *Hilsley.* My Lord, I was informed among them there, that it was only what they used to have once in three Years for ordinary Affairs.

Oates. My Lord, he pretends to tell when I came thither; I desire to know of him from what time it was he saw me there, and how often?

Mr. *Hilsley.* Generally every Day, as near as I can remember, I think, Mr. *Oates*; you and I, Mr. *Oates*, went to School in the same Place.

Oates. Pray, how many Days was I absent from thence in that Time you were there?

Mr. *Hilsley.* You were there generally as often as I; I do not know whether ever you miss'd a Day or no.

Oates. Pray, my Lord, will you ask the Gentleman one Question more, Whether he can particularly tell that he did see me every Day at *St. Omers?* For 'tis not enough for him to swear that he saw me there; but he ought to give an Account how he comes to know it by some particular Circumstances.

L. C. J. He has given you several Circumstances of his Knowledge; for he says he was there all the while from your coming, till the 23d of *April* New Stile, that he came for *England*; he says he was a Scholar in the same Form and Class with you, and because he does not remember himself to have been absent, he does not remember you to be absent neither.

Mr. Att. Gen. And he swears particularly to the very time he came over, which was *April* the 14th Old Stile.

Oates. Well, I have no more Questions to ask this Gentleman.

L. C. J. Then call another.

Mr. Sol. Gen. Cryer, call Mr. *John Dorrel.* [*Who was sworn.*]

L. C. J. Look ye, Mr. Attorney, you did open things at the first for Method's sake by Periods of time; the first was *Hilsley*'s coming over, the next was the Meeting with *Burnaby*; now pray observe that Method, and call that *Burnaby* next.

Mr. Att. Gen. My Lord, we shall call him by and by; but we have not done with this Business about *Hilsley*, we have some Witnesses that will give an Evidence to strengthen and back his Testimony. Come, Mr. *Dorrel*, what have you to say to this Matter?

Mr. *Dorrel.* My Lord, in *April* 1678, I came from *Brussels* to *England*, where presently after I came, I was with one Mr. *Osbourn* and my Mother; and there was a Discourse between my Mother and him about Religion.

L. C. J. Where was that?—Mr. *Dorrel.* It was here in *England.*

Mr. Att. Gen. Now tell the time when that was.

Mr. *Dorrel.* As near as I can gueſs, it was the 15th or 16th of *April* Old Stile, in the Year 1678.

Mr. Att. Gen. Well, Sir, go on with your Story.

Mr. *Dorrel.* My Mother was laughing at his Religion, and telling him ſome ridiculous Stories, and he replied, There are a great many that are ſo ignorant, that are bred up in the Religion of the Church of *England*, that they are forced to be ſent to the Colleges abroad to be taught, even ſome of the Clergy of that Church, and particulariz'd in one *Sampſon Lucy*, alias *Oates*, that was a Scholar at that time at *St Omers*, as he was aſſured by a Gentleman that was newly come from thence. My Mother is now ſick, or elſe ſhe would have been here, and would have teſtified the ſame I now do.

Mr. Sol. Gen. This Gentleman is a Proteſtant, Mr. *Oates.*

Oates. What is your Name, Sir, I pray?

Mr. *Dorrel.* My Name is *John Dorrel*, Sir.

Oates. Were you never at *St. Omers* a Student there?

Mr. *Dorrel.* I was there, but before your time, Doctor; I had not the Happineſs to be there while you were there.

Oates. I pray, Sir, what Religion are you of?

Mr. *Dorrel.* I am a Papiſt now.

Oates. I deſire, my Lord, the Court would be pleas'd to take notice of it, he owns he was reconcil'd to the Church of *Rome.*

Mr. *Dorrel.* Mr. *Oates*, to ſatisfy you, I went over when I was a Child of 12 or 13 Years old, and ſo was bred in that Perſuaſion.

L. C. J. Well, well, we all obſerve what he ſays.

Mr. Sol. Gen. Pray ſwear Mr. *Oſbourn.* [*Which was done.*

Mr. Att. Gen. My Lord, we call this Perſon only to this Matter. Pray, Sir, will you give the Court and the Jury an Account what Diſcourſe you had with Mr. *Hilſley* about *Oates*, and pray, Sir, tell the time when it was?

Mr. *Oſbourn.* My Lord, I went out of Town the 30th of *April*, the Year before the pretended Plot was diſcover'd by Mr. *Oates*, and I met with Mr. *Hilſley* two or three Days before, and enquiring of him about the affairs of *St. Omers*, he told me of a Miniſter of the Church of *England* that was come thither to be a Student there, who went under the Name of *Sampſon Lucy*, but his right Name was *Oates*; I aſk'd him what he pretended to; did he intend to be of that Order? He told me, he did believe that he would not be admitted for his irregular and childiſh Behaviour, and that he had left him in the College; and this I afterwards in Diſcourſe told to Madam *Dorrel*, who is a Proteſtant; and to my Mother, who is ſince dead.

Mr. Att. Gen. Will Mr. *Oates* aſk this Gentleman any Queſtions?

Oates. I only aſk him what Religion he is of?

L. C. J. What Religion are you of, Sir?

Mr. *Oſbourn.* I am a *Roman* Catholick, my Lord.

Mr. Sol. Gen. Now, my Lord, we come to call Mr. *Burnaby.* Pray ſwear him. [*Which was done.*

Mr. Att. Gen. Mr. *Burnaby*, pray will you acquaint my Lord and the Jury, of the time when you came from *St. Omers* to *England*, and when you met with Mr. *Hilſley?*

Mr. *Burnaby.* I met with *Hilſley* on the 18th of *April* Old Stile, in the Year 78; then I purſued my Journey the following Day to *St. Omers.*

L. C. J. Where did you meet him?

Mr. *Burnaby.* Between *Sittenbourn* and *Canterbury*, and afterwards I purſued my Journey from *Canterbury* to *Dover*, from thence to *Calais*, and from thence to *St. Omers.* I arrived at *St. Omers* the 21ſt of *April* Old Stile, which was the 1ſt of *May* New Stile; upon the 2d of *May* Mr. *Oates* was in my Company; I was walking in the Garden, and he came into my Company.

L. C. J. When was it?

Mr. *Burnaby.* The 2d of *May* New Stile, and the third of *May* again I went into the Garden, and there he was with me again; and the 5th of *May* I ſaw him again.

L. C. J. Where?—Mr. *Burnaby.* In the *Rhetorick* Form.

L. C. J. But where? In what Place?—Mr. *Burnaby.* At *St. Omers.*

L. C. J. You ſpeak of your own Knowledge, you are ſure you ſaw him there at thoſe times?

Mr. *Burnaby.* Yes; in the *Rhetorick* School, and in the Garden.

Mr. Att. Gen. What more do you know of him?

Mr. *Burnaby.* I ſaw him again the 8th of *May* New Stile, that is the 28th of *April* Old Stile; I mean by New Stile, that Stile which was uſed in the Place where I was then.

Mr. Att. Gen. How long was he there before he went away?

Mr. *Burnaby.* I know he was there from the 2d of *May*, the Day after I came thither, to the 20th of *June*, and then I went away, or thereabouts.

L. C. J. Did you ſee him daily all that time?

Mr. *Burnaby.* Yes, from Day to Day he was not out of the Houſe.

L. C. J. Were you a Scholar there with him?—Mr. *Burnaby.* Yes, I was.

L. C. J. What Year was that?—Mr. *Burnaby.* In the Year 78.

Mr. Att. Gen. Mr. *Oates* may aſk him what Queſtions he will.

Oates. My Lord, he ſays he went away; I deſire to know whither he did go.

Mr. *Burnaby.* I went away the 20th of *June* from *St. Omers*, it is no matter whither I went.

Oates. I deſire he may give an account what Religion he is of.

Mr. *Burnaby.* I am a *Roman* Catholick.

Oates. My Lord, I deſire to know whether he be not of that Order.

L. C. J. That I will not aſk him, I'll aſſure you.

Oates. Truly, my Lord, I think it is a very hard matter for me to have Jeſuits admitted as Witneſſes in ſuch a Cauſe againſt me.

L. C. J. I have told you already, you are not to aſk any Queſtions of any Witneſſes that may ſubject them to any Penalty, or make them accuſe themſelves of any Crime.

Oates. My Lord, I humbly deſire he would give an account, whether he were not admitted into the Society.

L. C. J. I tell you, he is not to be aſk'd that Queſtion.

Oates. He has own'd it before.

L. C. J. Do you take your Advantage of it, if you can prove it.

Oates. Then, my Lord, I deſire to aſk him, whether or no he did appear as a Witneſs at the Trial of the five Jeſuits.

Mr. *Burnaby.* No, my Lord, I did not.

Oates. Pray, my Lord, aſk him, whether he was not ſummon'd to appear then.

Mr. *Burnaby.* No, I was not.

Oates. Pray, my Lord, aſk him, what Reward he is to have for coming and giving this Evidence.

L. C. J. Are you to have any Reward for being a Witneſs in this Cauſe?—Mr. *Burnaby.* None, my Lord, that I know of.

L. C. J. That was a proper Queſtion to be aſk'd, and you have a fair Anſwer to it.

Oates. Pray, Mr. *Burnaby*, by what Name did you go at *St. Omers?*

Mr. *Burnaby.* By the Name of *Blunt.*

Mr. Att. Gen. And what Name did he go by there?

Mr. *Burnaby.* Who, Sir?

Mr. Att. Gen. Mr. *Oates?*

Mr. *Burnaby.* By the Name of *Sampſon Lucy.*

Oates. My Lord, I deſire you to aſk him, whether he did know of any Conſult that was to be held here in *London*, in *April* 78, and by whom he knew it?

L. C. J. What ſay you, Sir, did you know of any Conſult?

Mr. *Burnaby.* No, I neither heard of it, nor knew any thing of it.

Mr. Att. Gen. Now, my Lord, we ſhall go on to another period of Time, and that is concerning *Pool.* Swear Mr. *Pool.* [*Which was done.*

Mr. Sol. Gen. Pray will you acquaint my Lord and the Jury, whether you knew Mr. *Burnaby* at *St. Omers?*

Mr. *Pool.* Yes, I did, Sir.

Mr. Sol. Gen. Do you know the time when he came to *St. Omers?*

Mr. *Pool.* No, I do not remember it.

Mr Att. Gen. When did you come over from *St. Omers?*

Mr. *Pool.* The 25th of *April.*

Mr. Att. Gen. What Stile?—Mr. *Pool.* Old Stile.

Mr. Att. Gen. In what Year?—Mr. *Pool.* In the Year 78.

Mr. Att. Gen. Did you know Mr. *Oates* at *St. Omers?*

Mr. *Pool.* Yes, I did know that Gentleman there.

Mr. Att. Gen. Was he at *St. Omers* that time you was there?

Mr. *Pool.* Yes, he was.

Mr. Sol. Gen. Did you leave him there when you came away?

Mr. *Pool.* Yes, I did leave him there when I came away.

Mr. Sol. Gen. Pray tell the Court ſome particular thing why you remember it, and upon what account you came away.

Mr. *Pool.* Upon the Occaſion of my Brother's Death I came over, and I can tell ſeveral Particulars of my Journey; I came away upon the *Thurſday*, and I came to *London* upon the *Sunday* following.

Mr. Att. Gen. You are ſure you left Mr. *Oates* there then?

Mr. *Pool.* Yes, I am ſure I did leave Mr. *Oates* there when I came away, and I came away thence the fifth of *May* New Stile, the twenty-fifth of *April* Old Stile.

Mr. Sol. Gen. Pray how long did you know Mr. *Oates* there?

Mr. *Pool.* I knew him there from *Chriſtmas* before that.

L. C. J. You were of the College, were you not?

Mr. *Pool.* Yes, I was a Student there.

L. C. J. You are ſure he was there all the while?

Mr. *Pool.* I do not remember he was a Day abſent, and if he had gone away, particular Notice would have been taken of it.

L. C. J. Did you ſee him there two or three Days before you came away?—Mr. *Pool.* I ſaw him that Morning I came away.

L. C. J. And what time before?

Mr. *Pool.* I ſaw him two or three Days before that.

L. C. J. Can you name any particular Days?

Mr. *Pool.* I ſaw him the firſt of *May*, and the ſecond of *May*, and the fifth of *May*, which was the 25th of *April* Old Stile, and then I came away.

L. C. J. Are you ſure you left him there then?

Mr. *Pool.* I am ſure I left him there, I can ſwear it without any difficulty at all.

L. C. J. What do you aſk him, Mr. *Oates?*

Oates. I deſire to know what Religion he is of.

L. C. J. What Religion are you of?—Mr. *Pool.* I am a *Roman* Catholick.

Oates. I deſire your Lordſhip would aſk him, whether he was a Witneſs at the Trial of the five Jeſuits, or at *Langhorn*'s Trial.

Mr. *Pool.* No, I was never an Evidence before in my Life.

Oates. Pray, my Lord, aſk him, whether he was not admitted into the Sodality of the Virgin *Mary.*

L. C. J. No, indeed, I ſhall aſk him no ſuch Queſtion.

Oates. Pray, my Lord, let him anſwer it.

L. C. J. Prove what you can when it come to your Turn, but aſk him no entangling Queſtions.

Oates. He has made himſelf liable to a Penalty by being in that Seminary.

L. C. J. I hope a Man may be at *St. Omers*, and yet not be puniſh'd for it, Mr. *Oates.*

Oates. It is my Defence to diſable the Witneſſes againſt me.

L. C. J. But they muſt not be aſk'd what may make them accuſe themſelves.

Oates. My Lord, it is hard that the Witneſſes ſhall not be made to anſwer my Queſtions.

L. C. J. Pray, Sir, be quiet, we have told you often enough already, you muſt not think to govern us, it muſt not be allow'd.

Oates. My Lord, I deſire he may be aſk'd then, what Reward he has to come and ſwear in this Cauſe.

Mr. *Pool.* My Lord, I do not know that I am ſo much as to have my Charges borne.

L. C. J. Are you to have any Reward?

Mr. *Pool.* No, my Lord, that I know of.

Oates. Pray, my Lord, I deſire he may be aſk'd, what was the occaſion of Mr. *Hilſley*'s coming away from *St. Omers.*

Mr. *Pool.* Indeed I did not examine into the occaſion at all, for I was never a Man that meddled or made on any ſide, but lived quietly in the College, and minded my Studies.

Oates. My Lord, I deſire your Lordſhip to aſk him, whether he did know of any Conſult of the Jeſuits in *April* 78, and from whom he knew it.

Mr. *Pool.* I know not of any particular Conſult, I heard ſomething in general of a Triennial Congregation, but I cannot ſpeak any thing of my own Knowlege.

Oates.

Oates. My Lord, I desire to know of him, if he can tell when I came to *St. Omers?*

L. C. J. Do you know when *Oates* came to *St. Omers.*

Mr. *Pool.* About *Christmas*, as near as I can remember, it was the latter end of *November.*

Oates. How much before or after *Christmas* was it?

Mr. *Pool.* I cannot tell exactly.

Oates. What Year was it in?---Mr. *Pool.* In the Year 77.

Oates. I desire to know of him, my Lord, whether he saw me every Day at *St. Omers* at Dinner.

Mr. *Pool.* I cannot say that ever I knew he was absent any one Day, never three Days I think I may affirm, but only when he was in the Infirmary.

Mr. Att. Gen. That's the Place where they go when they are sick.

Oates. Pray, my Lord, ask him by what Name he went, when he was there in the College.

Mr. *Pool.* By the Name of *Killingbeck.*

Mr. Sol. Gen. By what Name did he go, I pray you?

Mr. *Pool.* By the Name of *Sampson Lucy.*

Mr. Sol. Gen. Swear Mr. *Henry Thornton.* [*Which was done.*

Mr. Att. Gen. Mr. *Thornton*, pray where were you in the Year 78?

Mr. *Thornton.* At *St. Omers*, my Lord.

Mr. Att. Gen. Do you remember Mr. *Oates* there? Do you know him?

Mr. *Thornton.* Yes, I know him very well.

Mr. Att. Gen. When did he come thither?

Mr. *Thornton.* He came there about *Christmas* 77.

Mr. Att. Gen. How long did he continue there?

Mr. *Thornton.* He staid there till St. *John Baptist's* Eve, in *June* 78.

Mr. Att. Gen. *Midsummer* you mean?

Mr. *Thornton.* Yes, the Eve of St. *John Baptist.*

Mr. Att. Gen. What Stile?---Mr. *Thornton.* New Stile.

Mr. Sol. Gen. Did you see him there all the while?

Mr. *Thornton.* Yes, I did see him every Day, I believe, in the Refectory at Dinner-time, and at Night in the Dormitory, where all the Collegians have their Beds: I lay over-against him every Night, I saw him particularly upon the Day of *Hilsley's* Departure, which was the 24th of *April* New Stile, and I saw him the 1st of *May* New Stile, upon the coming of Mr. *Burnaby* to the College; and particularly again I remember him there the 2d of *May*, when my School-fellows exhibited an Action, or Play.

Mr. Att. Gen. Was Mr. *Oates* there then?

Mr. *Thornton.* Yes, I saw him present at it, and I know it by this particular Circumstance, there was a Scuffle between him and another about a Place to see the Play.

Mr. *Jones.* Did you see him the 23d of *April* Old Stile, that is, the 3d of *May* New Stile, which was the Day after your Play, that you remember?

Mr. *Thornton.* I do not remember that I did see him that Day, by any particular Circumstance, tho' I believe I did.

Mr. *Jones.* Do you remember when Mr. *Pool* came away from *St. Omers?*

Mr. *Thornton.* Yes, I do.

Mr. *Jones.* When was that?---Mr. *Thornton.* The 5th of *May* New Stile.

Mr. *Jones.* Was *Oates* at *St. Omers* at that time?

Mr. *Thornton.* Yes, he was there then, I am sure.

Mr. Att. Gen. Was not he Reader there in the College?

Mr. *Thornton.* He was Reader in the Sodality, and to my knowledge, he did not miss once from the 24th of *April* New Stile, to the 24th of *May* New Stile, from being there, and reading in the Sodality.

L. C. J. What did he use to read?

Mr. *Thornton.* Some spiritual Book, or piece of Divinity, or the like, as it was usual to have read every *Sunday* and *Holiday.*

L. C. J. And that is one reason why you conclude he was there all that while, because every *Sunday* and *Holiday* he was to read, and did read?

Mr. *Thornton.* Yes, my Lord.

Oates. Pray, my Lord, be pleas'd to ask this Gentleman what Religion he is of.

Mr. *Thornton.* A *Roman* Catholick.

Oates. Where does he live?

L. C. J. Where do you live, Mr. *Thornton?*

Mr. *Thornton.* I am a *Northumberland* Man, that's my Country.

Oates. My Lord, I desire to know of him, when he did come from *St. Omers.*

Mr. *Thornton.* I came from *St. Omers*, my Lord, about two Years after that *Oates* went away from thence.

Oates. Pray, my Lord, be pleas'd to ask him, who it was that was Rector or Governor of that House or College.

Mr. *Thornton.* It was one Mr. *Richard Ashby.*

Oates. Pray, my Lord, be pleas'd to ask him what School he was in there.

Mr. *Thornton.* I was in *Syntax*, my Lord.

Oates. Then, my Lord, I would ask him another Question, and that is this, Whether he was not a Witness in behalf of the five Jesuits and Mr. *Langhorn?*---Mr. *Thornton.* No, I was not, my Lord.

Oates. My Lord, I desire to know if he can tell the occasion of Mr. *Hilsley's* coming away from *St. Omers.*

Mr. *Thornton.* It never concern'd me at all, and I never enquired into it.

Oates. Then, my Lord, I would ask him this Question, Why he is so precise as to his Remembrance of what was done in *April* and *May*, when he does not give any account of any other time, nor did the other Witnesses?

L. C. J. Yes, but they do; they give you a particular account from the time of your coming thither, which was about *Christmas*, some say the latter end of *November* or the beginning of *December*, they are not positive to any particular time, but thereabouts, and so from that time all along till *June.*

Oates. I beg your Lordship's pardon, I did not hear that he said any such thing.

L. C. J. If you will, I'll ask him that Question again for your Satisfaction.

Oates. If you please, my Lord.

L. C. J. Then mind what is said; Do you remember that *Oates* was there in *March* before, and in *February* before?

Mr. *Thornton.* Yes, I particularly remember in *March* before, he did read a ridiculous Book in the Sodality, and he was remarkable in the House by twenty ridiculous Passages.

Oates. I do acknowledge I did in *March* read a pleasant Book, call'd, *The Contempt of the Clergy.*

L. C. J. By whose order did he read that Book in the Sodality?

Mr. *Thornton.* I do not know whether it was by his own Election that he was Reader there, or by the Command of the Prefect of the Studies, that has the Care of the Students, and appoints them their Business.

Oates. Pray, my Lord, be pleas'd to ask him, how long he was resident at *St. Omers.*

Mr. *Thornton.* I was there seven Years.

L. C. J. You said he was there in *June*, till *Midsummer* Eve.

Mr. *Thornton.* Yes, he was so.

Oates. I own that I was there in *June*, but that was after I return'd from *England.*

L. C. J. When do you say he left the College first?

Mr. *Thornton.* He never left the College from the time of his coming thither first till *Midsummer* Eve, only one time that he was at *Watton*, and that was but a Day or two at most, which is not a League out of Town.

L. C. J. Do you remember him there about *Christmas* time?

Mr. *Thornton.* Yes, my Lord, very well.

L. C. J. When was it he went to *Watton?*

Mr. *Thornton.* About the latter end of *January*, as I do remember, and in *February* above *Shrovetide*, I remember him particularly to be there.

L. C. J. Now, Mr. *Oates*, you see he speaks to other times besides *April* and *May*, and he brings, upon my Word, very notable Circumstances.

Oates. He says he went to School with me there, I think, my Lord?

Mr. *Thornton.* No, I say he was in the same College.

L. C. J. But not in the same Classis, for it seems you were in the Rhetorick Form, and he in the Syntax.

Mr. *Thornton.* My Lord, he went there by reason of his Age, and upon no other account; he might have gone elsewhere with us who were of a lower Form, for any great store of Learning he had.

L. C. J. You hear him, I suppose, Mr. *Oates*, he gives no great Commendation of your Scholarship.

Oates. That is nothing to this Question; but pray, my Lord, be pleased to ask him, Whether he did not hear of a Consult of the Jesuits held here in *England* in *April* 78?

L. C. J. What say you, Sir? Did you hear of any such Consult?

Mr. *Thornton.* Yes, my Lord, I did hear of a Triennial Congregation, such as used to be held by them, but that did not belong to me to enquire into it.

Oates. My Lord, I desire to know of whom he did hear it?

L. C. J. How do you know there was such a Consult? Who told you of it?

Mr. *Thornton.* I heard of it in the House, and I had read that it was the Custom of that Society of People, to have such a Meeting once in three Years.

Mr. Att. Gen. Pray for what purpose did they so meet?

Mr. *Thornton.* As I have been told, it was to send a Procurator to *Rome*, and for their managing their other Affairs, which concern'd their Society.

Mr. Sol. Gen. Have the Jesuits usually such a Consult once in three Years, Sir?

Mr. *Thornton.* I was never present at any such Congregation, I was not capable of it.

L. C. J. But was it used to be said so?

Mr. *Thornton.* Yes, my Lord, I have heard it said so, and read of it.

L. C. J. Mr. *Oates*, will you ask him any more Questions?

Oates. No, my Lord.

L. C. J. Well then, go on, Mr. *Attorney*, and call another Witness.

Mr. Att. Gen. Swear Mr. *William Conway.* [*Which was done.*

Mr. Sol. Gen. Mr. *Conway*, pray will you give my Lord and the Jury an account where you were in the Year 1677, and in the Year 1678?

Mr. *Conway.* I was then at *St. Omers*, my Lord.

Mr. Sol. Gen. Do you remember Mr. *Oates* there at any time?

Mr. *Conway.* Yes, my Lord, I do.

Mr. Sol. Gen. Pray, at what time was he there, as you remember?

Mr. *Conway.* He came in *December* before *Christmas* 1677, and did not go away till *June* 1678.

Mr. Sol. Gen. What time in *June* did he go away?

Mr. *Conway.* About the twentieth of *June*, I think.

Mr. Sol. Gen. Were you there all that Year?

Mr. *Conway.* Yes, I was there a Scholar in the College.

Mr. *Jones.* Was he all the time you speak of in the College?

Mr. *Conway.* He lay out one Night.

Mr. Sol. Gen. What time was that?

Mr. *Conway.* In *January*, to the best of my remembrance.

Mr. Sol. Gen. Could he be out of the College any time and not be miss'd?

Mr. *Conway.* No, my Lord, he could not.

Mr. Sol. Gen. Did you miss him at any time?

Mr. *Conway.* No, my Lord.

Mr. Sol. Gen. Was he there in *April* 1678?

Mr. *Conway.* Yes, my Lord.

Mr. Sol. Gen. Can you tell any particular Passages that can make you remember it?---Mr. *Conway.* Yes, my Lord, I can.

Mr. Sol. Gen. Tell my Lord and the Jury how you can remember it.

Mr. *Conway.* I remember Mr. *Hilsley's* Departure, which was the 24th of *April* New Stile, and soon after Mr. *Burnaby* came, but I do not know the time exactly; I was desirous to know of Mr. *Burnaby*, whether he met Mr. *Hilsley* upon the way? And he told me he did meet him; and the next Day I saw Mr. *Oates* and Mr. *Burnaby* walking together very familiarly, and I took particular notice of it at that time, Mr. *Burnaby* being but newly come, so that I took him to have known Mr. *Burnaby* before, or else I concluded him to be a little impudent by his intruding into his Company.

Mr. Sol. Gen. Do you remember him in *March* before?

Mr. *Conway.* Yes, Sir.

Mr. Sol. Gen. What Particulars do you remember of his being there then?

Mr. *Conway.* I remember him to be there on the *Thursday* in *Mid-Lent*, the Scholars in the College had a peculiar Recreation, which they call, *Sawing of the Witch*, and Mr. *Oates* was among them; and I was one of them that broke a Pan about his Head for Recreation.

Mr. Sol. Gen. Do you remember the 1st of *May*, that there was in your College a Play acted?

Mr.

Mr. *Conway*. As for the Play, I remember what Part Eſquire *Pool* acted in it, but I remember not any Particulars that can make me ſo ſure as to ſwear that *Oates* was there.

Mr. Att. Gen. Do you remember any ſcuffling for a Place there?

Mr. *Conway*. I do not remember it of my own Knowledge; I heard of it afterwards.

Mr. Sol. Gen. You ſay that you ſaw Mr. *Burnaby* and him walking together the next Day after he came?—Mr. *Conway*. Yes, I did ſo, Sir.

Mr. Sol. Gen. Did *Oates* uſe to read in the *Sodality*?

Mr. *Conway*. My Lord, there was another choſen according to the Cuſtom to read; but Mr. *Oates* took the Book, and did read.

Mr. Sol. Gen. Did he read conſtantly?

Mr. *Conway*. I did never miſs him any *Sunday* or *Holiday* all the time.

L. C. J. From what time to what time did he read?

Mr. *Conway*. From a little after *Eaſter* till he went away.

Mr. Att. Gen. Is it uſually taken notice of in the College when any Perſon who is a Student goes away from the College?

Mr. *Conway*. There is nothing more diſcours'd of among the Scholars than that, when it happens any one goes out of the College.

L. C. J. And pray when did he go away?

Mr. *Conway*. In *June*, about the twentieth, as near as I can remember.

Mr. Sol. Gen. Did you obſerve him at Dinner there conſtantly?

Mr. *Conway*. Yes, he ſat by himſelf.

Mr. Sol. Gen. How came that to paſs?

Mr. *Conway*. He ſat at a little Table in the Hall by himſelf, for he pretended, being a Man in Years, he could not diet as the reſt of the young Students did, and therefore obtained leave to ſit alone at a little Table by himſelf, and he ſat next to the Table of the Fathers, to which all the Students were to make their Reverence before they ſat down.

L. C. J. He was a very remarkable Man by his ſitting by himſelf; did he ſit there always?

Mr. *Conway*. He changed his Table once, and I took notice that he ſat on the other ſide of the Refectory.

Mr. Sol. Gen. When was that I pray, can you remember?

Mr. *Conway*. That was a little after *Eaſter*.

Mr. Att. Gen. Will Mr. *Oates* aſk him any Queſtions?

Oates. Pray, my Lord, will you aſk this Gentleman what Religion he is of?

Mr. *Conway*. I am a *Roman* Catholick.

Oates. Pray, aſk him where he lives?

L. C. J. Where do you live, Sir?

Mr. *Conway*. Where, now at preſent, my Lord?

L. C. J. Where do you uſually live?

Mr. *Conway*. I am a *Flintſhire* Man, my Lord.

Oates. Pray aſk him what name he did go by at *St. Omers*?

Mr. *Conway*. By the Name of *William Parry*.

Oates. Pray aſk him by what Name he gave his Evidence in at the five Jeſuits Trial?

L. C. J. Were you a Witneſs at the Trial of the five Jeſuits?

Mr. *Conway*. Yes, I was.

L. C. J. By what Name did you give your Evidence there?

Mr. *Conway*. By the Name of *Parry*.

Oates. Then I deſire the Court to take Notice he repreſented himſelf by a feign'd Name in a Court of Record.

Mr. *Conway*. I went by both Names, my Lord.

L. C. J. Well; make what Advantage you can of it by and by.

Oates. Pray, my Lord, aſk him, if ever he heard of any Conſult of the Jeſuits held here in *England* in *April* 1678?—Mr. *Conway*. Yes, I did.

Oates. Pray, my Lord, aſk him, who informed him of that Conſult?

Mr. *Conway*. I heard it among the reſt of the Scholars; and ſeeing ſome of the Fathers go over to it, I was told ſo.

Mr. Att. Gen. Is it an uſual thing for them to have ſuch Meetings?

Mr. *Conway*. They have a Congregation ordinarily once in three Years.

Mr. Sol. Gen. Does it go by the Name of a Conſult, or what Name has it?

Mr. *Conway*. Some call it a Congregation, and ſome a Conſult.

Mr. Sol. Gen. What is the End of ſuch Meeting, as you have heard?

Mr. *Conway*. They ſay it was to chuſe a Procurator to ſend to *Rome*, and give an Account of the Province.

Oates. My Lord, I would aſk him another Queſtion, Whether he is to have any Reward for giving this Evidence here?

Mr. *Conway*. No, not that I know of, but what I expect from Almighty God.

Oates. Pray aſk him, how long he liv'd at *St. Omers*?

Mr. *Conway*. Five Years.

Oates. My Lord, I have done with him.

Mr. Sol. Gen. Then call Mr. *Haggerſtone*, and ſwear him. [*Which was done.*]

Mr. Att. Gen. Mr. *Haggerſtone*, pray will you acquaint my Lord and the Jury, were you at *St. Omers* in the Year 1678, with Mr. *Oates*?

Mr. *Haggerſtone*. Yes, I was, my Lord, I had the Honour to be of the ſame Bench with the Doctor of *Salamanca*.

L. C. J. You mean you were of the ſame Claſs with him?

Mr. *Haggerſtone*. Yes, my Lord, of the ſame Claſs.

L. C. J. In what Year was it?—Mr. *Haggerſtone*. In the Year 1678.

Mr. Att. Gen. In what Form were you?

Mr. *Haggerſtone*. In the ſame Bench with Dr. *Oates*, in the Rhetorick Form.

Mr. Att. Gen. Do you remember Mr. *Oates* in *April* 1678?

Mr. *Haggerſtone*. Yes.

Mr. Att. Gen. What time?

Mr. *Haggerſtone*. He ſpoke unto me on the 25th of *April*.

Mr. Att. Gen. What Stile do you mean?

Mr. *Haggerſtone*. New Stile, Sir; to avoid Confuſion, I ſpeak of the Stile of the Place where I was; he aſk'd me concerning our Schoolfellow Mr. *Hilſley*, who was then gone from the College, whether I had heard any thing from him ſince he went away; and he ſpoke of an Indiſpoſition he had, for which he preſcribed him a Medicine of Poppy, and he thought it would do his Buſineſs effectually.

L. C. J. Who ſaid ſo?

Mr. *Haggerſtone*. The Doctor of *Salamanca*; he was called *Sampſon Lucy* in the College: and likewiſe he forbid him to chew Tobacco, which he uſed to do very much: he was called *Titus Ambroſius*, he had twenty Names.

Mr. Att. Gen. Was he there all *April*, Sir?

Mr. *Haggerſtone*. Yes, he was, Sir.

Mr. Att. Gen. Did you know him in *March* before?

Mr. *Haggerſtone*. Yes, he was there all *March* before.

Mr. Att. Gen. Was he there in *February*?

Mr. *Haggerſtone*. Yes, as near as I can remember, he was abſent but one Day, and then he went to *Watton* in *February*, or elſe in *January*.

L. C. J. Do you remember when he came thither firſt?

Mr. *Haggerſtone*. Yes, my Lord, he came in *December* near *Chriſtmas*, as I remember.

L. C. J. Was it about that time, upon your Oath?

Mr. *Haggerſtone*. I ſpeak it upon my Oath, it was.

L. C. J. When did he go away?

Mr. *Haggerſtone*. About the latter End of *June*.

L. C. J. Was he abſent any time between *December* and *June*?

Mr. *Haggerſtone*. I do not remember that he was abſent, ſave only in *January* or *February*, and that was not for above a Night, when he went to *Watton*.

L. C. J. Might not he be abſent, and you not mind it, or know it?

Mr. *Haggerſtone*. Sure if he had been abſent, we could not but have known it.

L. C. J. How ſo, pray you?

Mr. *Haggerſtone*. If any goes away, 'tis ſo publick, that it cannot be without notice being taken of it.

Mr. Att. Gen. Can you remember by any particular Token he was there in *April* or *May*?

Mr. *Haggerſtone*. He ſpoke to me on the 29th of *April* New Stile, and told me, that there was a craving *Engliſhman* had been there to beg an Alms, and there was a Collection made for him among the Scholars; but he ſaid he would give him nothing, for he told me he had been cheated by ſuch an one of ſome Pieces of Eight in *Spain*; this I remember was the 28th or 29th of *April* New Stile. I ſaw him there the 1ſt of *May*; upon the 2d of *May* there was an Action of the Scholars, and he was preſent at it; the 5th of *May* I was at School with him, when Mr. *Pool* went away for *England*, and I heard him about that time preach a pleaſant Sermon, for he would undertake ſometimes to preach, and he ſaid in it, That the late King *Charles* II. halted betwixt two Opinions, and a Stream of Popery went between his Legs.

L. C. J. Was this in *May*?

Mr. *Haggerſtone*. Yes, juſt after Mr. *Pool* went away for *England*, and he had ſome pretty Reflections in his Sermon about *Toby's* Dog wagging his Tail.

L. C. J. Well, do you aſk this Witneſs any Queſtion, Mr. *Oates*?

Oates. Pray be pleaſed to aſk him, my Lord, what Religion he is of?

Mr. *Haggerſtone*. I am a Papiſt, my Lord, I am not aſham'd of it.

Oates. Pray, my Lord, aſk where he lives?

Mr. *Haggerſtone*. At *London*.

Oates. Pray aſk him what Countryman he is?

Mr. *Haggerſtone*. I am a *Northumberland*-man; my Father is Sir *Thomas Haggerſtone*, a Man better known than your Father, Dr. *Oates*.

L. C. J. Nay, nay, do not be in a Paſſion, Man.

Oates. Pray aſk him how long I was with him at *St. Omers*?

Mr. *Haggerſtone*. For half a Year at leaſt.

Oates. My Lord, I deſire to know how long he ſtaid there himſelf?

Mr. *Haggerſtone*. I ſtudied my whole Courſe of Humanity there.

L. C. J. How long were you there in all?

Mr. *Haggerſtone*. Seven Years.

Oates. Pray, my Lord, aſk him, Whether he knows of any Conſult held, or to be held here in *England* in *April* 1678?

Mr. *Haggerſtone*. Yes, my Lord, I ſaw two of the Fathers go from *St. Omers* to the Congregation, and was there at their Return; but all that time I frequented Dr. *Oates*'s Company, and he remained in the College.

Oates. Pray, who were theſe two Fathers?

Mr. *Haggerſtone*. Mr. *Williams* and Mr. *Marſh*; and when they return'd, *Oates* asked me about it, Whether they had been to the Conſult? and I told him there was ſuch a thing, but he never knew it till afterwards; but this I am ſure of, he was never miſſing all the while; I ſat on the ſame Bench with him.

Oates. Pray, my Lord, ask him, what Name he went by at *St. Omers*?

Mr. *Haggerſtone*. I went by the Name of *Harry Howard*; my Mother was a *Howard*, Doctor.

Oates. Pray ask him, Whether he came into *England* when he went away from thence?

Mr. *Haggerſtone*. No, I went and ſtudied my Philoſophy at *Doway*.

Oates. I deſire to ask him one Queſtion more.

Mr. *Haggerſtone*. Twenty, if you pleaſe, Doctor.

Oates. I deſire to know of him the Occaſion of Mr. *Hilſley*'s coming away?

Mr. *Haggerſtone*. I do know it, but truly I cannot tell whether it be fit for me to ſpeak of it, it was upon ſome unhandſome account, but I muſt not blemiſh any Gentleman, I think.

Oates. My Lord, I will ask him one Queſtion more, Whether ever he was admitted into the Society?

L. C. J. I will not ask him that Queſtion; how often have I told you no ſuch Queſtions are to be ask'd? Muſt I make him liable to Penalty? No, ask Queſtions that are fair, and you ſhall have a fair Anſwer.

Oates. My Lord, I have done then with him.

Mr. Sol. Gen. Then ſwear Mr. *Robert Beeſton*. [*Which was done.*]

Mr. Att. Gen. Pray, Sir, were you at *St. Omers* in the Year 77 and 78?

Mr. *Beeſton*. Yes, my Lord, I was.

Mr. Att. Gen. Did you ſee Mr. *Oates* there then? Do you know him?

Mr. *Beeſton*. Yes, I know him very well, I did ſee him there.

Mr. Att. Gen. What Months did you ſee him there?

Mr. *Beeſton*. He came there in *December*, the beginning as I remember, and he ſtaid there to *June* the latter end.

Mr. Att. Gen. What Year was that in?

Mr. *Beeſton*. He came in 77, and went away in 78.

Mr.

Mr. Att. Gen. Did you obſerve him to be there in *April* and *May* 78?

Mr. *Beeſton.* The latter end of *April*, and the beginning of *May*, I did.

Mr. Att. Gen. Tell the Court particularly how you remember it.

Mr. *Beeſton.* My Lord, I ſaw him the firſt of *May* at *St. Omers*, where he played at Nine-pins, and I laid a Wager upon the ſame ſide that he did, and loſt my Money as well as he.

L. C. J. Do you remember any other time?

Mr. *Beeſton:* I ſaw him the 2d of *May*, by the ſame token that I met him in the College that Day, when our School exhibited an Action in the Hall, and I met him after Supper; now in this Action I had both acted and ſung, and they came and congratulated me for my ſinging. Mr. *Oates* ſaid, if I had paid for learning to ſing, I had been baſely cheated: and then in the Morning I was choſen Reader in the *Sodality*, the 25th of *April*, or thereabouts, for a Fortnight, and Mr. *Oates* by his own Submiſſion was admitted to read, only with this Condition, that if ever he were wanting, I was to read again: but this I ſay, I never ſupplied the Place; therefore I am ſure he did continue there all the while, and if he had been out, I muſt have been called upon to read.

L. C. J. Were you in the College all the time he was there?

Mr. *Beeſton.* Yes, my Lord, I was.

L. C. J. Did you miſs him at any time?

Mr. *Beeſton.* No, I never miſs'd him.

L. C. J. Are you ſure he was not away all that time?

Mr. *Beeſton.* I am ſure, as much as a Man can be certain of one that is of the ſame Family with himſelf; nay, I am as ſure of it, as that I was there myſelf.

L. C. J. Can you ſpeak any thing particularly of his reading?

Mr. *Beeſton.* My Lord, I was to have read, if he was abſent; but I was never called upon to read, and therefore I may well conclude he was there all the while.

L. C. J. He gives a material Evidence.

Mr. Sol. Gen. Was Mr. *Oates* ſuch a remarkable Man that he muſt be miſs'd?

Mr. *Beeſton.* He was very particular, both for Age, and that he had a particular Table to eat at.

Mr. Sol. Gen. Can you remember any thing elſe?

Mr. *Beeſton.* I remember too, that when Mr. *Burnaby* came firſt, he was often with him; the 2d, 3d, and 4th of *May*, I ſaw him there with Mr. *Burnaby*, and I took particular notice of the Friendſhip between them, which I thought ſtrange between Perſons that I ſuppoſed never ſaw one another before.

L. C. J. Have you any Queſtions to aſk this Man, Mr. *Oates?*

Oates. My Lord, I deſire to aſk this Gentleman what Religion he is of?

Mr. *Beeſton.* I am a *Roman* Catholick.

Oates. Pray, my Lord, be pleaſed to aſk him, when he went to *St. Omers*, and when he came away from thence, and how long he was reſident there.

Mr. *Beeſton.* I know not exactly what Year it was I came, but I ſtaid the greateſt Part of ſeven Years there.

Oates. Pray, my Lord, aſk him, what Jeſuits went from *St. Omers* to the Conſult of *April* 78?

Mr. *Beeſton.* There was ſome that paſs'd by, I did not take much notice of them.

Oates. Pray, my Lord, aſk him, who it was informed him of that Conſult?

Mr. *Beeſton.* I do not know who particularly, I only heard of ſuch a Rumour.

Mr. Att. Gen. Was it an extraordinary thing?

Mr. *Beeſton.* No, it was but an ordinary thing as they uſed to have once in three Years.

Oates. You ſay you ſaw me every Day there?

L. C. J. He ſays he believes he might, becauſe you were Reader in his ſtead; and if you had been abſent he muſt have been called upon to read, which he was not, he ſays.

Oates. Very well, my Lord, I deſire you would aſk him, whether he does not remember ſuch a thing as an Eight-days Exerciſe, wherein thoſe that perform the Exerciſe, are ſeparated from all Company during that time?

Mr. *Beeſton.* Yes, my Lord, I do remember that he was once in that Eight-days Exerciſe, and during the Eight Days I ſaw him walk in the Garden ſeveral times.

Oates. Pray, my Lord, aſk him, if he were an Evidence at the Trial of the five Jeſuits, or *Langhorn*, and whether he gave this Evidence long ago?

Mr. *Beeſton.* No, I did not, I was not there.

Oates. Pray, my Lord, aſk him what Reward he is to have?

L. C. J. Are you to have any Reward for your Teſtimony, Mr. *Beeſton?*

Mr. *Beeſton.* No, my Lord.

Oates. My Lord, I deſire to know of him, how he comes to be pick'd out among the reſt of the Students there, to come here, and be an Evidence in this Cauſe.

Mr. *Beeſton.* My Lord, I was ſubpœna'd by his Majeſty, if I knew any thing of this Matter, that I ſhould come here and teſtify my Knowledge.

Oates. Pray, by what Name did he go at *St. Omers?*

Mr. *Beeſton.* By the Name of *Beeſton*, as I do now.

Oates. And is that his own Name?----Mr. *Beeſton.* Yes, my Lord.

L. C. J. Pray, go on, Mr. *Attorney.*

Mr. Att. Gen. Swear *Clement Smith.* [*Which was done.*]

Mr. Sol. Gen. Pray, Sir, was you at *St. Omers* in the Year 77 and 78?

Mr. *Smith.* Yes, I was.

Mr. Sol. Gen. Do you remember Mr. *Oates* there at that time?

Mr. *Smith.* Yes, I was in the ſame Claſs with him.

Mr. Att. Gen. Pray, when came he thither, and how long did he ſtay there?

Mr. *Smith.* He came a little before *Chriſtmas*, and ſtaid till *June.*

Mr. Att. Gen. Was he not abſent at any time all that while?

Mr. *Smith.* No, he was not, except one Day.

Mr. Att. Gen. Do you remember *Watſon*'s Buſineſs, his going thither in *January?*

Mr. *Smith.* He told me of it, and that he deſign'd to aſk the Rector leave to go.

L. C. J. Was he abſent any other time till *June?*

Mr. *Smith.* No, my Lord, for I will tell you, I every Day dined with him, eat a Collation with him in the afternoon, and breakfaſted and ſupp'd in the ſame Refectory, during all that time, except when he or I was in the Infirmary.

L. C. J. Whenever he was abſent, he was in the Infirmary, was he?

Mr. *Smith.* Yes my Lord.

L. C. J. Did not he miſs his Breakfaſt any time all that while?

Mr. *Smith.* If he did, we uſed to enquire after him.

Mr. Att. Gen. Pray, when were you in the Infirmary?

Mr. *Smith.* The 21ſt of *April*, New Stile, I fell ſick, and remain'd ſick till *May* the 7th, and was in the Infirmary, and then he viſited me almoſt daily, or every other Day in the Infirmary; and on the 2d of *May* I ſaw him and one Mr. *Burnaby* together, and on the Day Mr. *Pool* departed, which I take to be the 5th of *May*, Mr. *Oates* came to me as ſoon as he was gone out of the Houſe, and told me of it; and he did the ſame too that Day that Mr. *Hilſley* went away, which was the 24th of *April*, New Stile.

Mr. Att. Gen. Was not he in the Infirmary himſelf?

Mr. *Smith.* Yes, during this time he came into the Infirmary, and was ſick there.

Mr. Att. Gen. When was that?

Mr. *Smith.* A Day or two after Mr. *Hilſley* went away, and continued there two or three Days, and I remember it particularly by this Circumſtance, that he propoſed a Queſtion to the Phyſician about himſelf in *Latin*, and ſpoke a Soleciſm, which was this, he ſaid, *Si placet Dominatio veſtra.*

Oates. Who did ſay ſo?

L. C. J. You did, he ſays, ſpeak that falſe *Latin* to the Doctor.

Oates. That's falſe *Latin*, indeed!

L. C. J. We know that; but it ſeems it was your *Latin.*

Mr. Att. Gen. When came he away from *St. Omers?*

Mr. *Smith.* About the 20th of *June*; ſomething after the 20th of *June*, as I remember.

L. C. J. Are you ſure he was not out of the College ſo long as to make a Journey to *London*, and back again?

Mr. *Smith.* No, I am ſure he could not without being miſs'd; and going to School with him, and eating Dinner and Supper with him conſtantly always at the ſame place, I muſt needs know if he had gone.

Oates. When went I from *St. Omers*, does he ſay?

Mr. *Smith.* After the 20th of *June* 78.

L. C. J. He is your old Acquaintance and Schoolfellow, Mr. *Oates*; you viſited him when he was ſick.

Oates. What Religion is this Gentleman of, my Lord, I would know?

Mr. *Smith.* I am a *Roman* Catholick.

Oates. I deſire your Lordſhip to aſk him how long he liv'd at *St. Omers?*-----Mr. *Smith.* Above ſix Years.

Oates. Pray aſk him, when he came away?

Mr. *Smith.* A little after Dr. *Oates* came away.

Oates. Did he come directly for *England?*---Mr. *Smith.* No, I did not.

Oates. Whither did he go then?----Mr. *Smith.* I went about a little—

Oates. Where, my Lord?

Mr. *Smith.* I went about to take ſome Turns in the *Low-Countries*; I went to *Watton*, and up and down.

Oates. He is a Jeſuit, my Lord, and that the World knows, and muſt know.

L. C. J. I know nothing of it, I do aſſure you.

Oates. Pray, my Lord, be pleaſed to aſk him, whether he did not hear of a Conſult of Jeſuits in *April* 78, and what Jeſuits went from *St. Omers* to it?

Mr. *Smith.* I heard it as a Rumour in the College, that there was to be a Congregation at that time, but I know not where particularly it was to be kept; but I know that then there paſs'd by *St. Omers* two Fathers, Mr. *Marſh* and Mr. *Williams.*

Oates. What were they?-----Mr. *Smith.* Jeſuits.

L. C. J. He told you they were Fathers.

Mr. Att. Gen. Pray, was it an extraordinary, or an ordinary Meeting that?

Mr. *Smith.* They uſed to ſay in the College, that it was an ordinary thing to have ſuch a Congregation every three Years.

Mr. Sol. Gen. Pray, ſwear Mr. *Edward Price.* [*Which was done.*]

Mr. Att. Gen. Pray, Mr. *Price*, will you give my Lord and the Gentlemen of the Jury an account, whether you were at *St. Omers* in the Year 77, and 78?

Mr. *Price.* I was there both theſe Years.

Mr. Att. Gen. Do you remember Mr. *Oates* there?

Mr. *Price.* Yes, my Lord, I do.

Mr. Att. Gen. When did he come, and when did he go away?

Mr. *Price.* He came there about *December* 77, and he continued there till *June* 78.

Mr. Att. Gen. Was he abſent from *St. Omers*, at any time all that while?

Mr. *Price.* Never, that I know of, but one Night at *Watton*, when he came back the following Day, and that was in *January.*

Mr. Att. Gen. Do you remember particularly that he was there in *April* and *May* 78?

Mr. *Price.* I remember Mr. *Hilſley*, according to the foreign Stile, left St. *Omers* upon the 24th of *April* 78. I was told the following Day that Mr. *Oates* went into the Infirmary, which was *Monday* the 25th, and ſtaid there a Day or two, and upon *Wedneſday* the 27th I ſaw him going to Maſs; then upon the *Sunday* following, which was the 1ſt of *May* New Stile, came Mr. *Burnaby* to *St. Omers*, and I ſaw him in *Oates*'s Company that Day, and I ſaw him on *Monday* again the 2d of *May* in his Company; I ſaw him the 3d of *May* at the Table, which I particularly remember, becauſe it was the Feaſt of the Invention of the Holy Croſs: the 4th of *May* I have no Circumſtance to remember him by; but the 5th of *May* I ſaw him take his leave of Mr. *Pool*, and I likewiſe ſaw him the 10th or 11th of *May* at another of our Actions, wherein Mr. *Watſon* had a Quarrel with him, and beat him. I ſhould have miſs'd him above any other Man, becauſe he was ſo noted a Man.

Mr. Att. Gen. What was he noted for? For any thing elſe but his diſtinct Place in the Refectory?

Mr. *Price.* Yes, he was very abſurd, and always quarrelling with the Students there.

L. C. J. Do you remember him read in the *Sodality?*

Mr. *Price.* I was not of that Bench that he was of.

Oates. My Lord, I deſire to know what this Gentleman's Religion is?

L. C. J. What Religion are you of, Sir?

Mr. *Price.* If your Lordſhip pleaſe to know, I am a *Roman* Catholic.

Oates. My Lord, I deſire to aſk him, when he went firſt to *St. Omers*, and when he came away?

Mr. *Price.* I was ſix Years at *St. Omers*; I was there a twelve-month before Mr. *Oates* came thither, and came from thence about three Years ago.

Oates. Did you come directly to *England* when you came away?

Mr. *Price.* My Lord, I went to *Liege* to ſtudy Philoſophy, and I live now with my Father at home.

Oates. My Lord, I deſire to ask him, Whether he did not hear of a Conſult to be held in *April* 78?

Mr. *Price.* I did hear there was a Congregation which was their uſual Triennial Meeting, and particularly I remember about that time there came Mr. *Williams*, and Mr. *Marſh*, and it was reported that they were going to the Congregation.

Oates. I deſire to aſk him, if he was not a Witneſs at the Trial of the five Jeſuits, or at the Trial of *Langhorn*?—Mr. *Price.* No, I was not.

Oates. Pray, what Name did he go by at *St. Omers*?

Mr. *Price.* By my own Name, which is *Edward Price.*

Mr. Sol. Gen. Then ſwear the next, that is Mr. *James Doddington.*

Mr. Att. Gen. Pray, Sir, were you at *St. Omers* in the Year 77, and 78?—Mr. *Doddington.* Yes, Sir, I was.

Mr. Att. Gen. Did you know that Gentleman, Mr. *Oates*, there?

Mr. *Doddington.* I know him very well.

Mr. Att. Gen. What time did he come to *St. Omers*, and how long did he ſtay there?

Mr. *Dod.* He came about *Chriſtmas*, and ſtaid about the latter end of *June.*

Mr. Att. Gen. How do you remember he ſtaid there ſo long? What Circumſtances have you to make you remember it?

Mr. *Doddington.* In general his Converſation and Canting Stories after Dinner and Supper, and Times of Recreation, made him ſo remarkable, that no body could miſs him all the time he was there.

Mr. Att. Gen. Did you obſerve him to be in the Hall, or at the Exerciſes?

Mr. *Doddington.* Yes, I ſaw him ſeveral times.

Mr. Sol. Gen. Do you remember the time Mr. *Hilſley* went away?

Mr. *Doddington.* Yes, it was a little after *Eaſter*, and I do remember that two or three Days after I went into the Infirmary, and ſaw Mr. *Oates* there, and had Diſcourſes with him.

Mr. Att. Gen. Do you remember Mr. *Burnaby*'s coming to *St. Omers*, and when was it?

Mr. *Doddington.* Yes, the 1ſt of *May* Mr. *Burnaby* came to *St. Omers*, and the next Day I ſaw *Oates* with him, and for ten or twelve Days ſucceſſively they were in one another's Company; and then of a ſudden the Correſpondence broke off, but I know not upon what account.

L. C. J. Was he a Reader there, as you remember?

Mr. *Doddington.* I do remember he did read in the *Sodality.*

L. C. J. When was that?

Mr. *Doddington.* I remember he read at *Shrovetide.*

Oates. Did you hear me read there?—Mr. *Dod.* Yes, that I did, Sir.

Oates. Were you of the *Sodality?*

Mr. *Doddington.* Yes, I was, Sir.

Mr. Att. Gen. Do you remember the time he came away from *St. Omers?*—Mr. *Doddington.* It was about *Midſummer*, my Lord.

Mr. Att. Gen. Were you out of the College yourſelf at any time when he was there?—— Mr. *Doddington.* No, I was not.

L. C. J. Come, I will aſk you a plain Queſtion; Was he ſo long at any time out of the College as to come to *London* and ſtay here two or three Days, and come back again?

Mr. *Doddington.* My Lord, he was ſo remarkable by his Stories and ridiculous Actions, and falling out with every one of the College, that if he had been abſent, we muſt needs have miſſed him.

L. C. J. Did you miſs him at any time?

Mr. *Doddington.* My Lord, I never miſs'd him but one Day.

L. C. J. When was that?

Mr. *Doddington.* They ſaid he was gone to *Watton.*

L. C. J. What time was that?

Mr. *Doddington.* In *January*, about ſix Weeks after he came firſt.

Oates. Pray, my Lord, aſk him what Religion he is of?

Mr. *Doddington.* I am a *Roman* Catholick.

Oates. And a Scholar of *St. Omers?*

L. C. J. Make your Remarks by and by.

Oates. Pray, my Lord, aſk him what Name he went by at *St. Omers?*

Mr. *Doddington.* By the Name of *Hollis*, my Lord.

Oates. Pray, my Lord, aſk him how long he was reſident there?

Mr. *Doddington.* Near upon five Years.

Oates. Pray, my Lord, aſk him the occaſion of his coming over at firſt?

Mr. *Ded.* I had Buſineſs in *England*, and I had a mind to ſee my Friends.

Oates. Pray, my Lord, aſk him, Whether he did not pretend at the five Jeſuits Trial, that he came over upon the King's Proclamation, to call home thoſe that were in the Seminaries?

L. C. J. Were you at the Trial of the five Jeſuits?

Mr. *Doddington.* Yes, I was; but if I came over upon the King's Proclamation, what hurt is there in that?

L. C. J. None at all, as I know of.

Oates. Pray, my Lord, aſk him, Whether he did return again to *St. Omers*, or no?

Mr *Doddington.* My Lord, I paſs'd by *St. Omers* once, but I never ſtaid a Day in the College ſince.

Oates. Pray, my Lord, be pleaſed to aſk him, Whether he ever heard of a Conſult of the Jeſuits in *April* 78?

Mr. *Doddington.* I did hear of a Congregation.

Oates. Call it a Conſult or a Congregation, it is all one.

L. C. J. He ſays he did hear of it.

Oates. Aſk him, by whom he did hear of it?

Mr. *Doddington.* I ſaw the Provincial when he came back from *England.*

Oates. Who was that Provincial? What was his name?

Mr. *Doddington.* Mr. *Whitebread.*

Oates. Was not Mr. *Whitebread* reſident ſome time at *St. Omers?*

Mr. *Doddington.* Yes, a while he was.

Oates. Pray, was not that Houſe under his Government?

Mr. *Doddington.* My Lord, I can give no account of that, but it is generally under the Government of the Rector of *St. Omers.*

Mr. *Hanſeys.* Pray, Sir, give me leave to aſk you one Queſtion: Mr. *Oates* ſpeaks of Mr. *Whitebread*; pray, how did Mr. *Whitebread* uſe *Oates*, when he came back from *England?*

Mr. *Doddington.* I heard ſay, he did check him very ſeverely for his many Miſcarriages.

L. C. J. He heard it, he ſays, but he does not know it of his own Knowledge; that is no Evidence.

Mr. Sol. Gen. Pray ſwear Mr. *William Gerrard.* [*Which was done.*

Mr. Att. Gen. Were you at *St. Omers*, Mr. *Gerrard*, in the Years 77, and 78?——Mr. *Gerrard.* Yes, I was.

Mr. Att. Gen. Did you know Mr. *Oates* there?

Mr. *Gerrard.* Where is he, Sir?

Mr. Att. Gen. There he is in that Corner, do you know him?

Mr. *Gerrard.* Yes.

Mr. Att. Gen. When came he to *St. Omers?*

Mr. *Ger.* He came to *St. Omers* in the Year of our Lord 77, and he went away in *June* 78.

Mr. Att. Gen. Was he there all the time?

Mr. *Gerrard.* I never remember to have miſs'd him, but only once when he went to *Watton* for a Night.

Mr. Att. Gen. By what tokens do you remember him at any time there in *April* or *May?*

Mr. *Gerrard.* The 2d of *May* we had a Play, and he was there then; and I remember the 26th of *May* he was confirmed, and ſo was I, it being St. *Auguſtin*'s Day, and in the Refectory he had a Table by himſelf, and I uſed always at Meal-times to paſs by that Table, and make a Bow to the Fathers above before I ſat down at Table; and I do not remember that ever he was abſent, and if he had, I ſhould ſurely have miſs'd him.

L. C. J. When was St. *Auguſtin*'s Day, that you ſay you and he were confirm'd?——Mr. *Gerrard.* It was the 26th of *May.*

Mr. Att. Gen. Do you remember him in *April* there?

Mr. *Gerrard.* I cannot tell any particular Circumſtance in *April*, but I do not remember to have miſs'd him at all in *April.*

Mr. Sol. Gen. But you ſaw him there the 2d of *May*, you ſay?

Mr. *Gerrard.* Yes, I did ſo, and the 26th of *May.*

Oates. The 26th of *May* Old Stile I was there, my Lord.

L. C. J. Ay, but he ſays the 26th of *May* New Stile.

Oates. I was not there then, my Lord.

L. C. J. He ſwears you were.

Mr. Sol. Gen. Pray, between the 2d and 27th of *May* New Stile, was he abſent from *St. Omers* at any time?

Mr. *Gerrard.* I never remember to have miſs'd him at all in that time.

Mr. Att. G. Do you remember Mr. *Pool*'s and Mr *Hilſley*'s going away?

Mr. *Gerrard.* I do remember Mr. *Hilſley*'s and Mr. *Pool*'s going away, but I cannot ſpeak particularly and exactly what time that was.

L. C. J. Is it uſual to have Scholars go away without being miſs'd?

Mr. *Gerrard.* No, my Lord, and he had a particular Place by himſelf.

Oates. Pray, aſk him, my Lord, how he came to know that I went away in *June?*

Mr. *Gerrard.* We miſs'd him in his Place then, and 'twas diſcours'd of all over the Town, that when the Provincial came he was to be diſmiſs'd.

Oates. I deſire to know what Religion this Gentleman is of?

Mr. *Gerrard.* My Lord, I am a *Roman* Catholick.

Oates. Pray, my Lord, aſk him what Name he went by at *St. Omers?*

Mr. *Gerrard.* By the Name of *William Clovel.*

Oates. Pray, my Lord, aſk him, When he went to *St. Omers*, and how long he was reſident there?

Mr. *Gerrard.* I came there about two Years before he came, and was there about two years after he went away.

Oates. Pray, my Lord, aſk him, Whether he came directly for *England* when he left *St. Omers?*

Mr. *Gerrard.* No, my Lord, I was four Years in *Low-Germany* and *France*, and came into *England* the laſt Year.

Oates. Pray, Sir, were you a Witneſs at the five Jeſuits Trial, or at *Langhorn*'s Trial?

Mr. *Ger.* No, I was not; I came but laſt Year to *England*, I tell you.

Oates. Pray, my Lord, aſk this Gentleman, Whether he did not know or hear of a Conſult of Jeſuits, that was to be in *April* 78, and from whom he heard it?

Mr. *Ger.* My Lord, I know it is the Cuſtom of the Fathers of that Order to have a Congregation once in three Years, about the Affairs of their Society, but then no Perſon is admitted to be one of that Congregation, but them that have been eighteen Years Jeſuits; and he not having been ſo much as a Novice, I know not how, if he had been here, he could have been preſent at it.

L. C. J. He ſays, that there uſed to be a triennial Congregation for the Buſineſs of the Society, but you could not be preſent at it, becauſe you had not been eighteen Years a Jeſuit.

Mr. *Ger. Ann. decimo octavo currente*, is the Word of the Rule.

Oates. Pray, my Lord, aſk him this Queſtion, How he knows that to be the Rule?

Mr. *Ger.* You or any Man may read them in their Books.

L. C. J. It ſeems he has read them, and he ſays you muſt paſs through eighteen Years before you be admitted of the Congregation; and he believes you were not there, for you were not capable of ſo much as a Noviceſhip.

Oates. I deſire your Lordſhip to aſk him, Whether or no he heard me read in the Sodality?——Mr. *Ger.* Yes, I did.

Oates. Were you of the Sodality?——Mr. *Ger.* Yes, I was.

Oates. Pray, my Lord, aſk him, What Oaths are there taken before they be admitted into the Sodality?

L. C. J. No, by no means, I will not do it.

Oates. Why, my Lord, may not I aſk it, to ſhew what kind of Men theſe are?

L. C. J. No, indeed, it is but the ſame Queſtion again, that I told you before is not to be aſked, for it may make him liable to a Penalty; if you come to be a Witneſs, no man ſhould ask you a Queſtion that might make you obnoxious to a Penalty; no more muſt you ask them any ſuch Queſtions.

Oates.

Oates. I have done with him, my Lord.

Mr. Sol. Gen. Where is my Lord *Gerrard* of *Bromley?*

Lord *Gerrard.* Here I am, Sir.

Mr. Att. Gen. Pray, my Lord, do you remember Mr. *Oates* at *St. Omers* in the Year 77 and 78?

Lord *Gerrard.* He was disguised in another Habit, and another coloured Perriwig, the Hair was blacker than that he has on now; but I remember his Face very well; and know him again by the Tone of his Voice, which was very remarkable; but I never remember that he was absent from *St. Omers* after he came thither. I remember his coming exactly, which was about *Christmas*; nor did I ever hear that he was absent till *June* 78, New Stile, when he went away.

Mr. Sol. Gen. Do you remember, my Lord, when Mr. *Burnaby* came?

Lord *Gerrard.* I do remember Mr. *Burnaby*'s coming, but what time it was, I cannot exactly tell.

L. C. J. Is my Lord *Gerrard* sworn?——*Mr. Sol. Gen.* I think so.

Lord *Gerrard.* No, my Lord, I am not sworn.

L. C. J. You must be sworn, my Lord. [*Which was done.*
Now if you be pleased to ask my Lord any Questions, do.

Mr. Att. Gen. My Lord, we desire to know of my Lord *Gerrard* of *Bromley*, whether he knew Mr. *Oates* at *St. Omers?*

Lord *Gerrard.* My Lord, I remember he came in 77, as I take it, it was the beginning of *December*; and never heard he was absent or missed till *June* 78. I remember particularly upon the 25th of *March*, there was a new Lector to be Reader of the Sodality; and Mr. *Oates* desiring it, he was appointed to read. I was there my self, and I never missed him; I heard him read, that I do remember, several *Sundays* and *Holidays*, and never knew him absent any one: however, for five or six Weeks he was constant at Reading; and I can the better remember it, because he had a particular Cant in his Tone, which all Men may know, who ever conversed with him.

Mr. Sol. Gen. If *Oates* please to ask my Lord *Gerrard* any Questions, he may.

Lord *Gerrard.* Pray, my Lord, let me speak a Word or two more.

L. C. J. Ay, my Lord, pray go on.

Lord *Gerrard.* I remember I heard Mr. *Oates* was at the Confirmation, which was upon St. *Augustin*'s Day; there was a Confirmation by a Catholick Bishop, about the 26th of *May*, New Stile; I remember I heard Mr. *Oates* was there, and the Bishop did particularly note him as a Person of elder Years than the rest of the Students.

L. C. J. Do you know this, my Lord, of your own Knowledge?

Lord *Gerrard.* I do, my Lord.

L. C. J. Because you say, you heard it.

Lord *Gerrard.* My Lord, further I remember this, when the News of the Plot being discovered by *Oates*, came to *St. Omers*, where he went by the Name of *Sampson Lucy*, and sometimes *Titus Ambrosius*; it was wondered by all the Scholars that knew him there, how he came to be so impudent to pretend he was at such a Consult the 24th of *April* 78, when all the College saw him every Day in *April* and *May* at *St. Omers*, as much as a Man can be seen in a Family, and was never known to be absent so much as one Day; besides, my Lord, 'tis a thing as generally noted as a thing can be, that no Scholar goes away from, or comes to the College of *St. Omers*, but it is particularly known to the whole House; it is the common News and Discourse as much as any new Occurrences are here about the Town.

Mr. Sol. Gen. If *Oates* be pleased to ask him any Questions, he may.

Oates. My Lord, I desire this noble Lord may be asked a Question or two; I do not remember his Lordship there.

Lord *Gerrard.* I do very well remember the Man by particular Remarks.

Oates. Yes, my Lord, you have occasion to remember me, and so have your whole Party. Pray, my Lord, let my Lord *Gerrard* be asked, What Name his Lordship went by at *St. Omers?*

Lord *Gerrard.* Mr. *Oates*, I am not difficult in telling the Name I went by there. It was *Clovel.*

Oates. Pray, my Lord, I desire to know what Religion his Lordship is of?

Lord *Gerrard.* Neither am I ashamed to own my Religion, Mr. *Oates*; I am a Catholick.

Oates. Pray, my Lord, if you please, because this Noble Lord pretends he heard me read, I desire to know of him, Whether he was of the Sodality?

Lord *Gerrard.* I remember you particularly by your Voice, and that is one thing that particularly brings you to my Remembrance now.

Oates. Pray ask this Noble Lord, if he was a Witness at the Jesuits Trial?

Lord *Gerrard.* No, I was never a Witness in my Life before; by the Oath that I have taken.

L. C. J. 'Tis very well, my Lord.

Oates. Pray, my Lord, ask this Nobleman, Whether he did not know of a Consult in *April* 78, and from whom he knew it?

Lord *Gerrard.* No, I know of none, nor heard of any but by Rumour, after that you pretended to discover such a thing.

Oates. Did his Lordship see me every Day, does he say?

Lord *Gerrard.* I cannot say every Day; but I saw him at the Refectory generally, and I remember it particularly, because he sat at a Table by himself; I believe he could not be absent without being missed, because we knew every Person that came in and went out.

Mr. Sol. Gen. Then swear Mr. *Samuel Morgan.* [*Which was done.*

Mr. Att. Gen. Mr. *Morgan*, were you at *St. Omers* in 77, and 78?

Mr. *Morgan.* I was, my Lord.

Mr. Att. Gen. Did you observe Mr. *Oates* to be there at that time?

Mr. *Morgan.* Yes, I did.

Mr. Att. Gen. Pray give an account when he came, and when he went away.

Mr. *Morgan.* He came 14 or 15 Days before *Christmas*, as I remember, and went away in *June.*

Mr. Att. Gen. What *Christmas* do you mean, Mr. *Morgan?*

Mr. *Morgan.* *Christmas* 77.

Mr. Att. Gen. And when did he go away?

Mr. *Morgan.* In *June* 78, he went away.

Mr. Att. Gen. Was he absent any time during that space?

Mr. *Morgan.* My Lord, I know not that he was ever absent above one Night in all that time.

Mr. Att. Gen. What time was that one Night?

Mr. *Morgan.* Truly, my Lord, I cannot tell what Month it was very exactly.

Mr. Att. Gen. Whither was he gone that Night?

Mr. *Morgan.* He went to *Watton*, three Miles off from *St. Omers.*

Mr. Att. Gen. Do you remember the time when Mr. *Hilsley* came away, and when Mr. *Burnaby* came to *St. Omers?*

Mr. *Morgan.* Yes, I do, my Lord, very well.

Mr. Sol. Gen. Was Mr. *Oates* there when *Hilsley* went away?

Mr. *Morgan.* He was there then.

Mr. Sol. Gen. Was he there when Mr. *Burnaby* came?

Mr. *Morgan.* He was there when Mr. *Burnaby* came thither.

Mr. Sol. Gen. Was he there when Mr. *Pool* came away?

Mr. *Morgan.* Yes, my Lord, he was so.

Mr. Sol. Gen. I will ask you this short Question, Do you believe in your Conscience that he was absent any particular time all that while?

Mr. *Morgan.* No, my Lord, I have no reason to believe so.

Oates. Pray, my Lord, ask him what Religion he is of?

Mr. *Morgan.* I am of the Church of *England.*

Oates. When were you reconciled to the Church of *England?*

Mr. *Morgan.* Five years since.

Oates. I desire to know of him, what induced him to be reconciled to the Church of *England?*

L. C. J. This is not a pertinent Question, nor fit to be asked. Is he to give an account of his Faith here?

Mr. Just. *Withins.* It seems Mr. *Oates* is angry when the Witnesses are Papists and when they are Protestants too.

Oates. When was it that I came to *St. Omers*, do you say?

Mr. *Morgan.* You came thither in *December* 77.

L. C. J. So he told you before; why do you repeat things over and over again?

Oates. When was it I went away from thence, say you?

Mr. *Morgan.* In *June* 78.

Mr. Sol. Gen. Do you remember the 24th of *April* Old Stile that Year?

Mr. *Morgan.* Yes, my Lord, I do remember it very well.

Mr. Sol. Gen. Do you remember him to be at *St. Omers* that Day?

Mr. *Morgan.* Yes, I do, by this Circumstance.

Mr. Sol. Gen. Ay, pray tell my Lord and the Jury that Circumstance, how you come to remember it.

Mr. *Morgan.* We had the Trial of *Ireland* brought over to us soon after it was printed, and there we found mentioned, that Mr. *Oates* had depos'd, that the 24th of *April* 78, there was a Consult of the Jesuits, and they met at the *White Horse* Tavern, where they resolved to kill the King, and he carried that Resolution from Chamber to Chamber, and he did nominate the Day; and having it then fresh in my Memory, tho' he swore that he was the 24th of *April* Old Stile in *London* at that Consult, yet I found him to be at *St. Omers* by a very particular Circumstance. My Lord, I was playing at Ball that Day, and struck it over into a Court, into which I could not get over myself, but I saw Mr. *Oates* then walking in the Court, and I came and borrow'd his Key, and so went in, and there pass'd between us Words of Friendship.

L. C. J. When was this, do you say?

Mr. *Morgan.* The 24th of *April* 78, Old Stile.

Oates. I desire to let his Orders be seen.

L. C. J. No, he shall not be put to shew any such thing.

Oates. He is a Minister of the Church of *England*, my Lord.

L. C. J. Sir, we tell you we will not do it; what ado is here with your impertinent Questions? Have not I told you, you shall not ensnare the Witnesses?

Oates. He was going to pull out his Orders himself.

Mr. Att. Gen. My Lord, Mr. *Oates* may see them if he will, he is a Beneficed Minister of the Church of *England.*

L. C. J. Does he mean those Orders?

Mr. Att. Gen. Yes, he does, and here they are.

L. C. J. Let him see them. [*Which was done.*

Oates. My Lord, I desire to know of this Gentleman, what Name he went by at *St. Omers?*

Mr. *Morgan.* By the Name of *Morgan.*

Mr. Sol. Gen. Swear Mr. *Arundel.* [*Which was done.*

Mr. Att. Gen. Pray, Sir, will you give an account in short, Whether you were at *St. Omers* in 77 and 78, and the Time when *Oates* came thither, and when he went away?

Mr. *Arundel.* I was there when Dr. *Oates* came, and when he went away.

Mr. Att. Gen. When was that?

Mr. *Arundel.* Sir, I cannot be positive to the time exactly, but I think it was about *January* 77, that he came there, and he went away about *June* 78. I cannot be positive to the time exactly.

L. C. J. He does not particularly remember the time, but he thinks it was about *January* 77, he came thither.

Mr. *Arundel.* I beg your Lordship's pardon, he came there about *December.*

Mr. Att. Gen. Do you remember any particular Circumstances, that you saw him there any particular time?

Mr. *Arundel.* Upon St. *Augustin*'s Day I saw him confirmed.

Mr. Sol. Gen. What Day is that?

Mr. *Arundel.* The 26th of *May*, according to the foreign Account.

L. C. J. Did you know him there then?

Mr. *Arundel.* Yes, my Lord, I say I saw him confirm'd.

Mr. Sol. Gen. Do you remember Mr. *Hilsley*'s going away?

Mr. *Arundel.* I do not remember the time particularly, but I do remember Mr. *Oates* was actually there then.

Mr. Sol. Gen. Do you remember when Mr. *Burnaby* came to *St. Omers?*

Mr. *Arundel.* No, I do not remember the time, but he was there then too.

Mr. Sol. Gen. Do you remember when Mr. *Pool* went away?

Mr. *Arundel.* No, I cannot tell what Day it was, but he was there at the time of his going away, upon my Oath.

Mr. Sol. Gen. Can you tell any other particular time?

Mr *Arundel.* The 11th of *May* New Stile, there was an Action exhibited in the College.

L. C. J. Was *Oates* there then?

Mr. *Arundel.* To the best of my remembrance he was.

L. C. J. He does not affirm any Particular, but only speaks in general.

Oates.

Oates. Are you a Proteſtant too, Sir?

Mr. *Arundel.* No, Doctor, I am not.

Oates. Pray, my Lord, I deſire to know what Religion he is of?

Mr. *Arundel.* I am a Papiſt, my Lord.

Oates. Pray aſk him, by what Name he went at *St. Omers?*

Mr. *Arundel.* I believe you know that as well as I, Dr. *Oates.*

L. C. J. You muſt anſwer his Queſtion.

Mr. *Arundel.* I went by the Name of *Spencer*, my Lord.

Oates. I do remember him, my Lord, to have been there.

Mr. *Arundel.* Sir, your humble Servant.

Oates. It is almoſt ſeven Years ago, my Lord, and I may not ſo well remember them as they do me; but I deſire to know when he went to *St. Omers* firſt, and how long he was there?

Mr. *Arundel.* I was there ſeven Years.

Oates. Pray, my Lord, aſk him, whether he was of the Sodality?

Mr. *Arundel.* Yes, my Lord, I was.

L. C. J. Was he Reader of the Sodality?

Mr. *Arundel.* Yes, my Lord, in my time he was Reader.

Oates. Then, my Lord, I deſire to aſk him, whether he ever heard of a Conſult of the Jeſuits, that was to be held in *England*, in *April* 78; and from whom he heard it?

Mr. *Arundel.* Yes, my Lord, I did hear in the College of a Congregation.

Mr. Sol. Gen. Was that an extraordinary one, or of courſe?

Mr. *Arundel.* It was only of courſe, as they told us; once in three Years they have one.

Oates. Pray, my Lord, be pleas'd to aſk this Gentleman, what Studies he followed at *St. Omers?*

L. C. J. He was of the Sodality, he ſays.

Mr. *Arundel.* My Lord, I ſtudied to the end of Rhetorick.

Oates. My Lord, I deſire to know whether when he came from *St. Omers*, he did come directly for *England?*

Mr. *Arundel.* No, I went from thence to *Paris*, my Lord.

Mr. Sol. Gen. Swear Mr. *Chriſtopher Turbervile.* [*Which was done.*]

Mr. Att. Gen. Pray, Mr. *Turbervile*, will you acquaint my Lord and the Jury whether you were with Mr. *Oates* at *St. Omers*, and when?

Mr. *Turbervile.* Yes, my Lord; he went by the Name of *Sampſon Lucy* there, and there I ſaw him, and there I was with him all the time; I was there before him, and I remain'd there after he went away.

Mr. Att. Gen. What time did he come to *St. Omers*, I pray you?

Mr. *Turbervile.* Before *Chriſtmas.*

L. C. J. What Year?-----Mr. *Turbervile.* In the Year 77.

Mr. Att. Gen. What time was it he went away?

Mr. *Turbervile.* In *June* 78.

L. C. J. Were you there all that while at *St. Omers?*

Mr. *Turbervile.* Yes, I was.

L. C. J. And to the beſt of your apprehenſion, you think he was there all that while?——Mr. *Turbervile.* Yes, I do ſo, my Lord.

Mr. Sol. Gen. Can you ſpeak of any particular Days you can remember?

Mr. *Turbervile.* Yes, I do remember him upon the fourth, fifth, and ſixth of *May*, for two or three Days together; for, my Lord, I do remember this Circumſtance: Mr. *Pool* about that time went away, and that very Day Mr. *Pool* went from the College, I chang'd my Lodging and went into his Lodging, and that Day I ſaw Dr. *Oates* in the Chamber, and by the Chamber-Door.

Mr. Att. Gen. Did he continue in the College from the time he came about *Chriſtmas*, to the time he went away in *June?*

Mr. *Turbervile.* Yes, he did, all the while, except it were one Night in *January*, when he went to *Watton.*

L. C. J. What time in *June* did he go away?

Mr. *Turbervile.* I am not poſitive, but I am morally ſure he went away the 23d of *June*, as near as I can remember.

Oates. I was there in *June*, that is very well known.

L. C. J. What do you remember of his reading in the College?

Mr. *Turbervile.* I do remember he was Reader there on *Sundays* and *Holidays* for a great while; I cannot ſwear upon what *Sunday* he began, but he left off the *Sunday* before he went away.

L. C. J. As near as you can remember, when did he begin to read?

Mr. *Turbervile.* It was the beginning of *April*, or latter end of *March*; I cannot juſtly ſwear which it was.

Mr. *Molloy.* Did he read on *Holidays* as well as *Sundays?*

Mr. *Turbervile.* Yes, he did.

Oates. I muſt aſk this Gentleman one Queſtion, if your Lordſhip pleaſe, and that is this, what Name he went by at *St. Omers?*

Mr. *Turbervile.* I went there by the Name of *Farmer.*

Oates. Pray you, my Lord, aſk him what Religion he is of?

Mr. *Turbervile.* It is a hard Queſtion to anſwer that.

Oates. Nay, my Lord, I deſire to know what is his Religion?

Mr. *Turbervile.* I am, my Lord, a *Roman* Catholick.

Oates. Aſk him when he went to *St. Omers* firſt, and how long he ſtaid there?

Mr. *Turbervile.* I was there ſeven Years very near.

Oates. I deſire to know whether he did come away directly to *England*, when he came from *St. Omers?*

Mr. *Turbervile.* No, my Lord, I went into *Italy.*

Oates. Pray you, my Lord, I deſire to know whether he did go to *Rome?*

L. C. J. What if he did, what then? that is not at all to the purpoſe, he went into *Italy.*

Oates. Pray, my Lord, be pleas'd to aſk him this Queſtion further: was he a Witneſs on the behalf of the five Jeſuits, or of *Langhorn* at their Trials?

Mr. *Turbervile.* No, my Lord, I was not.

Oates. Pray, my Lord, be pleas'd to aſk him then, what Reward he has been promis'd, or is to have for giving this Evidence?

Mr. *Turbervile.* None at all, my Lord.

Oates. Pray, my Lord, aſk him, whether or no he heard of any Conſult of the Jeſuits in *April* 78, and from whom?

Mr. *Turbervile.* There was a Congregation, as I heard, but I do not remember that any of the Fathers went from the College to it; ſeveral came by there, and lodg'd there as they went, and as they came back.

Oates. Pray, my Lord, aſk him how he came here to be a Witneſs in this Cauſe?

Mr. *Turbervile.* I was ſubpœna'd.

Oates. Who ſerv'd the Subpœna upon him?

Mr. *Turbervile.* The Managers; it was ſent to me by the King's Counſel, I ſuppoſe; a Man brought it to me.

L. C. J. 'Tis no Matter who brought it you, you were ſubpœna'd, that's enough.

Mr. Sol. Gen. Swear Mr. *Anthony Turbervile.* [*Which was done.*]

Mr. Att. Gen. Were you at *St. Omers* in 77 and 78?

Mr. *A. Turbervile.* Yes, my Lord, I was.

Mr. Att. Gen. Did you obſerve the Defendant Mr. *Oates* there at that time?

Mr. *A. Turbervile.* Yes, I obſerv'd him all the while he was there.

Mr. Att. Gen. When did he come to *St. Omers?*

Mr. *A. Turbervile.* In the Year 77, about *Chriſtmas.*

Mr. Att. Gen. When went he away?

Mr. *A. Turbervile.* A Gentleman who was formerly ſworn, (Mr. *Thornton*) and I were at Breakfaſt with him the ſelf-ſame time when he went away.

L. C. J. When was that?

Mr. *A. Turbervile.* I ſuppoſe about the latter end of *June* 78.

Mr. Att. Gen. Did you obſerve him to be there in *April* or *May* 78?

Mr. *A. Turbervile.* He was not abſent above one Night in *January* that I can remember from his firſt coming thither, for it was impoſſible he ſhould be abſent and not miſs'd, he ſitting at a diſtinct Table by himſelf, and his Converſation being ſo remarkable for a great many ridiculous Actions, and great many pretty Jeſts that he uſed; ſo that he was like a ſilly Perſon, as I may call him, that uſed to make ſport, and nobody could be miſs'd ſo ſoon as he: And I ſaw a little Boy in the College beat him up and down with a Fox's Tail. Indeed, my Lord, all his Actions were very remarkable: I ſaw him very much abuſive to Perſons that liv'd with him in the College; and Mr. *Oates* could not be a Perſon of this Note, but all the World muſt take Notice of him, and all that knew him muſt miſs him, if he were away.

L. C. J. You hear him, Mr. *Oates*; he gives you a particular Character; he ſays you were a very notorious Perſon in many Inſtances.

Mr. *A. Turbervile.* My Lord, I was a Perſon then the youngeſt in the whole Company, and Mr. *Oates* being very abuſive to me, I did what became me to right myſelf upon him.

Oates. Pray, my Lord, be pleas'd to aſk this Gentleman what the Name was he went by at *St. Omers?*

Mr. *A. Turbervile.* By my Grandmother's Name, which was *Farmer.*

L. C. J. Do you remember the time when Mr. *Hilſley* went away from *St. Omers.*

Mr. *A. Turbervile.* He went away upon a *Sunday.* Mr *Oates* remain'd afterwards there: I am poſitive I ſaw him ſeveral days after.

L. C. J. Do you remember when Mr. *Burnaby* came thither?

Mr. *A. Turbervile.* Yes, my Lord, and Mr. *Oates* was there then.

L. C. J. Will you aſk him any Queſtions? If you are not ready, I will aſk him ſome for you. Come, what Religion are you of?

Mr. *A. Turbervile.* I am a *Roman* Catholick, my Lord.

L. C. J. Well, and how long were you at *St. Omers?*

Mr. *A. Turbervile.* Six Years and upward, my Lord.

L. C. J. When you came away from thence, did you come directly for *England?*

Mr. *A. Turbervile.* I took a Circumference round.

Oates. My Lord, I do find my Defence is under a very great Prejudice.

L. C. J. Why ſo? Becauſe we won't let you aſk impertinent Queſtions, or ſuch as may render the Witneſſes obnoxious to a Penalty.

Oates. No, my Lord, it is not fit they ſhould, for there is a Turn to be ſerv'd.

L. C. J. What do you mean by that? Ay, and a good Turn too, if theſe Witneſſes ſwear true: 'Tis to bring Truth to light, and perjur'd Villains to condign Puniſhment.

Oates. Good my Lord, be pleas'd to hear me.

L. C. J. If you behave not yourſelf with that reſpect to the Court as you ought, pray get you gone. Do you think you ſhall give ſuch Language as this in a Court Juſtice?

Oates. My Lord, I did not deſign——

L. C. J. If you behave yourſelf as you ſhould, you ſhall have all due Regard; but if you fly out into ſuch abuſive Extravagancies, we'll calm you as you ought to be calm'd.

Oates. I would vindicate myſelf, I meant it not of the Court.

L. C. J. So you had need. Don't think we ſit here to let you aſperſe the Juſtice of the Court and of the Nation, as if the Judges ſat here to ſerve a Turn.

Oates. I ſay, theſe Men do come to ſerve a Turn; but I laid no Aſperſion upon the Court, nor meant it of them.

L. C. J. Behave yourſelf as you ought, and you ſhall be heard with all the Fairneſs can be deſir'd.

Oates. I did perceive your Lordſhip and the Court made yourſelves pleaſant with my Queſtions.

L. C. J. I did not make myſelf pleaſant with your Queſtions, but when you aſk impertinent ones you muſt be corrected: You ſee we do the ſame thing with them; I find fault with nothing but what is not to the purpoſe.

Oates. My Lord, I deſire it may be obſerv'd, that theſe Men that come now, are the ſame Witneſſes that appeared at the *Old Bailey*, and were not believ'd there.

L. C. J. Obſerve what you will by and by.

Mr. Att. Gen. No, they are other Men, but they bear the ſame Teſtimony indeed.

Mr. Sol. Gen. Swear Mr. *Clavering.* [*Which was done.*]

Mr. Att. Gen. Come, Sir, I'll aſk you a ſhort Queſtion; were you at *St. Omers* with Mr. *Oates*, and when?

Mr. *Clavering.* Yes, I was; I came the 10th of *December* 77, to *St. Omers*; he told me he came thither that Day too, and I liv'd there all the time that he was there, which was till towards the middle of Summer: I do not remember that he ever was abſent, but once at *Watton.*

Mr. Att. Gen. Do you remember Mr. *Burnaby*'s coming thither?

Mr. *Clavering.* Mr. *Oates* was there when Mr. *Burnaby* came there.

Mr. Sol. Gen. Was he there when *Pool* came away? Mr,

Mr *Clavering*. He was there when Mr. *Pool* went away, and likewise I remember his being there at the time of the Congregation.

Mr. Att. Gen. Pray, tell the Circumstance how you know he was there then?

Mr. *Clavering*. There came a Gentleman there that desir'd a Charity of the Students, and I was the Person that made the Collection for him in the House; and I remember he did ask, if there was any one that was a Student there that had been in *Spain?* We told him there was one, and describ'd him; upon which he knew the Gentleman in *Spain*. Upon that I told Mr. *Oates*, that there was one there that knew him, but he deny'd to come and speak with him. Now I remember that it was the time of the Congregation, for some made Enquiry why he got so little Money at *Watten*, and it was said it was because the Fathers were gone to the Congregation in *England*. And he ask'd me particularly, what was done at the Congregation in *England?*

L. C. J. Did *Oates* ask that Question?

Mr. *Clavering*. Yes, my Lord, he did.

L. C. J. Whom did he ask it of?—Mr. *Clavering*. Of me.

L. C. J. When was that?

Mr. *Clavering*. I think it was about the time of the Congregation.

L. C. J. How came he to enquire after it?

Mr. *Clavering*. I was talking with him, and said he to me, *Know you nothing what the Business is that they are to do at the Congregation?* Said I, *Mr.* Lucy, *I know not what they do; I think not much: For I hear at those Meetings many times they stay an Hour or two, and have done when they have chosen their Procurator.*

Mr. Sol. Gen. And you believe he was there all the time?

Mr. *Clavering*. Yes, my Lord, I do believe it.

Oates. Pray, my Lord, let me ask him a Question or two.

L. C. J. Ay, what you will.

Oates. What Religion is this Gentleman of?

Mr. *Clavering*. I am a Catholick.

Oates. A *Roman* Catholick you mean, I suppose?

Mr. *Clavering*. Yes, I always understood it so, Mr. *Oates*.

Oates. My Lord, I desire to know how he came not to be produc'd at the Jesuits Trial, to give this Evidence he gives now?---Mr. *Clavering*. I can give a very good Reason perhaps: I was then, my Lord, in *Germany*.

L. C. J. That's Reason good enough of all conscience.

Mr. Just. *Withins*. That was a new Question, and you have a satisfactory Answer, I think.

Mr. Sol. Gen. Swear Mr. *John Copley*. [*Which was done.*

Mr. Att. Gen. Were you at *St. Omers* in 77 and 78?

Mr. *Copley*. Yes, I was.

Mr. Att. Gen. Was *Oates* there then?

Mr. *Copley*. I saw him all the time he was there.

Mr. Sol. Gen. When did he come thither?---Mr. *Copley*. He came a little before *Christmas*, to the best of my Remembrance.

Mr. Sol. Gen. When went he away?---Mr. *Copley*. In 78.

Mr. Sol. Gen. In what Month in 78?---Mr. *Copley*. In *June* 78.

Mr. Sol. Gen. Was he absent any part of that time?

Mr. *Copley*. I was there, and he was there too.

Mr. Sol. Gen. Was he absent any part of the time from *Christmas* to *June?*

Mr. *Copley*. Nay, I am sure he was there all the time, except that Night that he was absent at *Watten*, and that was in *January*.

Oates. Pray, my Lord, ask him what Religion he is of?

Mr. *Copley*. Does your Lordship ask me that Question?

L. C. J. Yes, I do ask you; Mr. *Oates* would know it.

Mr. *Copley*. I am a *Roman* Catholick, my Lord.

Mr. Sol. Gen. Swear Mr. *Cook*. [*Which was done.*

Mr. Att. Gen. Did you know Mr. *Oates* at *St. Omers*, and when?

Mr. *Cook*. He came there a little before *Christmas* 77.

Mr. Att. Gen. How came you to know him there?

Mr. *Cook*. I liv'd in the House then.

Mr. Att. Gen. Was he there all *April* and *May?*

Mr. *Cook*. Yes, he was till the latter end of *June*.

Mr. Att. Gen. Did you see him every day?---Mr. *Cook*. Yes, I did.

Mr. Att. Gen. Can you tell any particular time?

Mr. *Cook*. I am positive he was there the 30th of *April*.

Mr. Att. Gen. What Stile?---Mr. *Cook*. New Stile.

L. C. J. How do you know he was there then?

Mr. *Cook*. It is a remarkable time; there is a Procession that they keep there on that Day from the *Sodality* to the Church, and I saw him go among the rest at the latter end among the Rhetoricians.

L. C. J. What say you, was he there on that Day Mr. *Hilsley* went away?

Mr. *Cook*. I do not remember that.

L. C. J. Do you remember *Burnaby?*

Mr. *Cook*. I was there when Mr. *Burnaby* went away.

L. C. J. But when he came, was *Oates* there?

Mr. *Cook*. I cannot speak particularly to that.

Mr. Att. Gen. What was your Place in the College?

Mr. Sol. Gen. My Lord, he is a Lay-man, be sure.

Mr. *Cook*. I was a Servant in the House.

Oates. In what Place do you serve?---Mr. *Cook*. I was a Taylor.

Oates. I do not remember him.

Mr. *Cook*. But I remember you.

Mr. Sol. Gen. Swear *Jo. Wright*, Esq; [*Which was done.*

Mr. Att. Gen. Do you remember *Oates* at *St. Omers?*

Mr. *Wright*. Yes, I do.

Mr. Att. Gen. When was it?

Mr. *Wright*. The Winter before the notice of the Plot was.

Mr. Att. Gen. What Year was it in?---Mr. *Wright*. In the Year 77.

Mr. Att. Gen. What Month in that Year did he come thither?

Mr. *Wright*. I cannot tell, it was Winter-time.

Mr. Att. Gen. When did he go away?

Mr. *Wright*. He went away in Summer, I cannot tell just the time.

Mr. Att. Gen. Was he absent at any time, from his coming in Winter, to his going away in Summer?

Mr. *Wright*. The Scholars said he was once at a Place called *Watten*.

L. C. J. Come, this says nothing to the purpose.

Mr. Sol. Gen. My Lord, we leave it here.

L. C. J. What say you to it then, Mr. *Oates?*

Oates. Has Mr. *Attorney* done?

Mr. Att. Gen. Yes, we have done for the present.

L. C. J. Then are you to make your Defence.

Oates. My Lord, here is an Indictment brought against me for Perjury; and this Indictment sets forth, *That I should, upon the 17th of* December, *appear at the* Old Bailey. *and there swear, That there was a Treasonable Consult of the Jesuits met at the* White-Horse *Tavern in the* Strand, *and that this Treasonable Consult did divide itself into lesser Companies and Meetings, and that I carried about a certain Resolution, which the Jesuits came to, concerning killing the King, from Chamber to Chamber to be sign'd.* My Lord, I have a great Exception to make to this Indictment, and that is, my Lord, as to the Form: For, by your Lordship's Favour, I think the Perjury is not well assign'd, and according as I am advised, I offer this to your Lordship's Consideration. It says in the Assignment of the Perjury, *Ubi revera & in facto prædictus* Titus Oates *non præsens fuit ad aliquam Consultationem Jesuitarum apud le* White-Horse Tavern *prædict' in le* Strand, *in Com' Midd' prædict', super vicesimum quartum diem* April', *anno Dom' Millicesimo.*

L. C. J. How, *Millicesimo!*

Oates. My Lord, it is Law-*Latin*; I suppose it may serve in a Court?

L. C. J. No, it is true *Latin* there.

Oates. I cannot tell how to read it better.

L. C. J. I do believe that.

Oates. It is written in such a Hand, I cannot read it; but the Substance of it is, it says here, That I did not carry any Resolution from Chamber to Chamber *signand'*. Now the Evidence charged upon me to be given, is, that I did not see it *signat'*: So that the Assignment of the Perjury does not pursue the Oath as it is set forth; for if it be *signat'* in the Evidence that was given, it ought to be *signat'* in the Perjury that is assigned; and I humbly crave the Opinion of your Lordship and the Court upon this Point.

L. C. J. Look you, Mr. *Oates*, that you offer'd before, and I gave this Answer, which I must now repeat, That now we are upon the Fact, and this Exception will be sav'd to you for its proper time, if you be convicted. It is not proper now; but suppose there were that thing which you say is an Objection, yet you must know, that there are two Perjuries that are assign'd; the one is upon the first part of your Oath, which was, that you were present at a Consult of the Jesuits the 24th of *April* 78, at the *White-Horse* Tavern in the *Strand*; *Ubi revera*, you were not there. Now, do you admit in the first place, that you were forsworn in that particular?

Oates. No, my Lord, I do not.

L. C. J. If the Jury find that you were forsworn in that first Point, that you were not there, it will be easily believed you swore false in the other Point, that you did not carry the Resolution from Chamber to Chamber.

Oates. But, my Lord, it is not well assign'd, I think.

L. C. J. That will be sav'd to you after the Verdict, I tell you, if there be occasion for it.

Oates. My Lord, I suppose the Proof ought to be according to the Record, and the Record makes the Perjury differ from the Oath.

L. C. J. I tell you, that is to the Form, and that will be sav'd to you after the Verdict one way or the other.

Oates. Then will your Lordship be pleased to consider there was a Record brought in, which is almost the same with that I am to offer to be read on my behalf, and which is the first Proof that I have to offer of the Consult that was held in *London*, in *April* 78. And I desire Mr. *Percivile* may be called, I forget his Christian Name, and Mr. *Vaughan* who is my Solicitor: But pray, my Lord, let me first have the Opinion of the Court, whether they did prove the Words that I am said to swear, as they are laid in the Indictment.

L. C. J. Yes, very fully, we think so; but the Jury are to try that; that is a Point of Fact: but if you will, you shall have our Thoughts about it; We think they are fully proved.

Cryer. Here is Mr. *Percivile*.

Oates. Pray swear him. [*Which was done.*

L. C. J. What do you ask him?

Oates. Mr. *Percivile*, you examin'd the Conviction of Mr. *Ireland*, pray put it in: Is it a true Copy?

Percivile. Yes, it is.

Oates. My Lord, I desire that a Conviction and Attainder of Mr. *Ireland* may be read.

Mr. Att. Gen. It has been read already.

Oates. My Lord, I will not take up the Court's time any more than is necessary for my Defence.

L. C. J. Nay, do as you will, as long as you offer things pertinent and decent, the Court will hear you with all Patience, and you may take what time is necessary for you.

Oates. I thank your Lordship: I design'd nothing at all of Reflection upon the Court, but a Reflection on the Witnesses that came in against me.

Cl. of Cr. This is a Copy of the same Record that was before read.

Oates. Well, if that be allowed for Evidence for me, I am contented to spare the time of the Court, not to read it again; but, my Lord, I offer this, and desire to have Counsel assign'd me to argue this Point in Law; that is, Whether or no the Convictions and Attainders of *Ireland*, *Whitebread*, and the rest of them, of a Treasonable Consult of the 24th of *April* 78, where it was resolved to murder the late King, ought not to be taken as a sufficient Legal Proof of the Fact, so long as those Attainders remain of force? And whether the Averment of that being false, is to be received against those Records?

L. C. J. There is no difficulty in that at all in the World, Mr. *Oates*.

Oates. My Lord, I do not know the Law, and therefore I pray I may have Counsel assign'd to argue that Point.

L. C. J. There is no question in it. God forbid, if a Verdict be obtain'd by Perjury, that that Verdict should protect the perjur'd Party from being prosecuted for his false Oath. There were no Justice in that; nor is it an Averment against a Record, for this is not a Writ of Error in Fact that will reverse it, but the Record remains a good Record and unimpeached still: But tho' it be a good Record, yet it is lawful to say this Verdict was obtain'd upon the Testimony of such an one, that forswore himself in that Testimony, and for that particular Perjury he may surely be prosecuted.

Oates. Is not that Attainder an uncontroulable Evidence of the Fact, till it be revers'd?

L. C. J. Yes, it is againſt the Party attainted; but if that Attainder was founded upon a Verdict that was obtained by Perjury, God forbid but he ſhould be told ſo that did perjure himſelf.

Oates. Well, my Lord, if your Lordſhip rules that for Law, then I will go on; and I muſt now obſerve to the Jury in the opening the Evidence two Things. Firſt, That the Indictment upon which *Ireland* was tried, was found the 16th of *December* 78, and on the 17th of *December*, the next Day, *Ireland* was tried at the *Old-Bailey*; and then I find this Indictment brought againſt me for Perjury, is found at the *Old-Bailey* ſix Years after the Fact, by ſpecial Commiſſion. Now, I ſubmit it to your Lordſhip's and the Jury's Conſideration, why the Preſentment and the finding of this Bill for Perjury has been ſo long delay'd, ſince it appears by the Evidence, that the Witneſſes that have been produced to prove the Perjury, were either at the Trial of the five Jeſuits, or might have been produced then; and tho' they are not all the ſame Perſons, yet they all bear the ſame Teſtimony that was then offered, but were not credited; and I hope when my Evidence is heard, they will have the ſame Reputation with this Jury that they had with thoſe others. My Lord, I muſt acquaint your Lordſhip and this Court, That in this Indictment for which Mr. *Ireland* was convicted, Mr. *Whitebread* and Mr. *Fenwick* did undergo part of the Trial, and did hear the whole Body of the Evidence that the Witneſſes teſtified againſt them; but there being but one Witneſs againſt them two at that time, which was myſelf, (Mr. *Bedloe* being then upon an Intrigue, as your Lordſhip may remember) my Lord Chief Juſtice *Scroggs*, who was then the Mouth of the Court, did diſcharge the Jury of Mr. *Whitebread* and Mr. *Fenwick*, and remanded them to Priſon, which Mr. *Whitebread* ſix Months after did remark to the Court, and urg'd it as a Plea for himſelf to be diſcharged; but that being over-ruled by the Court, he was tried. Now, he had ſix Months time to provide himſelf with new freſh Evidence to aſperſe me, and to endeavour to falſify that Teſtimony I gave in againſt *Whitebread* and *Fenwick*, when *Ireland* was tried, and ſo he knew what it was. I muſt further obſerve to you, my Lord, and Gentlemen of the Jury, That my Caſe is very hard, that ſince the Subſtance of my Teſtimony was with Credit received, and the Jury upon convicting them were acquainted, "That they had found an unexceptionable Verdict; That "all the Objections againſt the Evidence were then fully anſwer'd; "That there was nothing that the Priſoners had been wanting in to ob- "ject, which could be objected; and that the thing was as clear as the "Sun:" And yet after ſix Years time, I muſt come to be called to an Account for Perjury in my Teſtimony of that part of the Popiſh Plot, with which the King and Kingdom, four ſucceſſive Parliaments, all the Judges of the Land, and three Juries, were ſo well ſatisfied. I ſhall therefore offer to your Lordſhip and the Jury's Conſideration the unanimous Votes of three Houſes of Commons; I ſhall offer the Proceedings of the Houſe of Lords, that is the higheſt Judicature in the Kingdom; I ſhall prove what I have open'd by the Teſtimony of ſeveral Noblemen that are here, who will teſtify this for me. My Lord, I ſhall prove, that ſeveral attempts have been made to baffle this Teſtimony, as that of the Murder of Sir *Edmundbury Godfrey*, who took my Depoſitions, the Contrivance of *Paine*, *Farewell*, and *Thompſon*, made in the Year 81 or 82, I forget which; I ſhall then produce Evidence that I was actually here in Town at the Time in queſtion; and then upon the whole I ſhall ſubmit it to your Lordſhip and the Jury. But to prepare your Lordſhip and the Jury the better for my Evidence, I would again urge the ſtrangeneſs of this Proſecution, and the Hardſhip that is put upon me, to be tried for Perjury in an Evidence given ſix Years ago, and formerly very induſtriouſly, tho' not ſucceſsfully, endeavoured to be falſified by ſixteen *St. Omers* Youths, that were produced and examined before all the Judges in the Kingdom, and that not only once at *Whitebread*'s Trial, but a ſecond time at *Langhorn*'s Trial; in neither of which would the Jury believe them, becauſe of their Religion and Education, and the Perſons under whom they were educated, who were Men of known artifice. Then, my Lord, I would argue thus: If at that time my evidence were true, it muſt be true ſtill, for Truth is always the ſame; and if it were then true, and I can prove it to be true, it will be thought a hard thing without all doubt, that this ſhould be put upon me. Then, my Lord, I would fain know from my Proſecutors, why this Indictment of Perjury has been deferred ſo long? Why theſe Witneſſes that come now to teſtify this Matter, and could then have been brought, did not come before, to juſtify at the Trials of theſe Perſons what they now ſay, which might have ſav'd their Lives, if true, and had it been credited. Then I ſhall offer to your Lordſhip what I deſire you and the Jury would pleaſe to obſerve, That tho' the King's Counſel are now againſt me, yet they are alſo againſt themſelves, for they were of Counſel for the King in thoſe Caſes; particularly Mr. *Sollicitor* at *Langhorn*'s Trial, Sir *Robert Sawyer* at Sir *George Wakeman*'s Trial; they were of Counſel before for the Truth of my Teſtimony; they are now againſt it. I only mention that, and paſs it over. But this is not the firſt Attempt that has been made to diſcredit the Teſtimony of the *Popiſh Plot*, as I told you before. Now, can it be ſuppoſed that the Love and Deſire of Publick Juſtice can be the Cauſe of this Attempt to falſify my Evidence after ſo many Trials, in which it has been credited and confirmed? Can any thing, my Lord, more plainly tend to deſtroy and ſubvert the Methods of Juſtice, to frighten all Witneſſes from henceforth from ever appearing to diſcover any Conſpiracies? And does it not tend to expoſe and vilify the known Underſtanding and Juſtice of the late King of Ever-bleſſed Memory, to arraign the Wiſdom of his Privy-Council, his great and noble Peers, his Loyal Commons in three ſucceſſive Parliaments, his twelve Judges, and all thoſe ſeveral Juries that were upon thoſe Trials? Had not thoſe Juries Senſe? Had they not Honeſty? Had they no Conſciences? And the Judges before whom thoſe Conſpirators were tried, were they Men of no Juſtice, nor Honour, nor Integrity, nor Conſcience, nor Underſtanding? Shall thoſe Juries be ſaid to have drawn the innocent Blood of theſe Men upon their own Heads and the Nation? as, if I were perjur'd, it muſt be innocent Blood that was ſhed upon it.

L. C. J. No, no, that goes a great deal too far, Mr. *Oates*: The Jury have no ſhare, nor the Judges neither, in that Blood which was ſhed by your Oath.

Mr. Juſt. *Withins.* No, that is your own moſt certainty, and not theirs.

Oates. But this, I ſay, makes it moſt plain: The Evidence was then true, and I hope I ſhall make it as evidently plain, 'tis as true now; and I do not queſtion, but upon the Evidence I ſhall now give, both poſitive and collateral, the Jury will believe me, and acquit me of this foul Accuſation. Pray, my Lord, be pleas'd to conſider, that when the Jury brought in *Ireland* guilty of the High-Treaſon, of which he was accuſed, and convicted him, *Pickering*, and *Grove*; ſays my Lord Chief Juſtice *Scroggs* (that then was) to them: *Gentlemen, you have done like very good Subjects, and very good Chriſtians, that is, like very good Proteſtants; and now much good may do them with their thirty thouſand Maſſes*; as I ſhall prove he did ſay. Then I inſiſt, in the ſecond place, that *Whitebread*'s Conviction does re-inforce the Conviction of *Ireland*, becauſe of the Attempt by the *St. Omers* Witneſſes to have overthrown my Evidence: But ſince I am attack'd again in the ſame kind, by the violence of the Popiſh intereſt, and by the Malice of my Popiſh Adverſaries, I am contented to ſtand the Teſt with all my Heart. And then, to conclude all, I ſhall ſhew the Court, that 'tis in vain for the Popiſh Party to expect and think to wipe their Mouths, with *Solomon*'s Whore, and ſay, *they have done no wickedneſs*. No, I queſtion not but thouſands of Proteſtants in this Kingdom are fully ſatisfied and convinced of the Truth of the Popiſh Plot, all and every Part of it. Now, my Lord, if you pleaſe to give me leave to proceed on in my Evidence, I ſhall beg that theſe Records of Conviction may be read, which are my firſt Proof of the Conſult; and I ſhall then bring Witneſſes, *vivâ voce*, and ſhall make it appear, that what I did ſwear at thoſe Trials was true.

L. C. J. Not to interrupt you in your Defence, or the Method you will take for it, I would put you upon that which is proper for you to apply yourſelf to, becauſe the Queſtion now is not, whether there was a Conſult or Congregation of the Jeſuits here upon the 24th of *April* 78? but the Queſtion that toucheth you is, whether you were preſent at any ſuch Conſult here in *London* the 24th of *April* 78? Theſe Gentlemen, ſome of them, do ſay, there was a Conſult, and others that they heard of it, and believe there was ſuch a one, becauſe it was uſual to have a Triennial Congregation for ſome particular Purpoſes: But the Queſtion is, whether you have ſufficient Proof to prove yourſelf to be here on the 24th of *April* 78, at which time it is agreed on all hands there was a Conſult?

Oates. But will your Lordſhip be pleas'd to take notice of the drift of the Evidence, how they are conſiſtent one with another? Theſe Gentlemen that have now been ſworn to prove that I was not at this Conſult, do attempt to prove that I was at *St. Omers*: Now, to anſwer this, I ſhall not go about to prove that I was not then at *St. Omers*, but that I was actually then, and about that time, here in *London*; and then all that Proof that Mr. Attorney-General has brought, muſt be laid aſide.

L. C. J. You ſay well; prove that.

Oates. Now, my Lord, to introduce and prepare the Jury for this, it will be neceſſary, I humbly conceive, to read the Records of the Conviction of *Whitebread* and *Ireland*.

L. C. J. Well, go your own way; we are not to direct you: I only tell you where the Queſtion lies.

Oates. Sir *Samuel Aſtrey*, pray be pleas'd to read them in *Engliſh*, that the Jury may underſtand them. Firſt read *Ireland*'s Record. [*Which was done.*]

Oates. Now read *Whitebread*'s Record: Read but the Attainder, I will not trouble the Court with the whole Record.

Cl. of Cr. "*Thomas White*, alias *Whitebread*, *William Harcourt* alias *Harriſon*, *John Fenwick*, *John Gaven*, and *Anthony Turner*, were found guilty "of High-Treaſon, and attainted, and Execution awarded againſt them "upon that Attainder."

Oates. Does not the Record ſay, the Jurors ſay upon their Oaths they are guilty?

L. C. J. Yes, I'll warrant you.

Cl. of the Cr. It is *dicunt ſuper ſacramentum ſuum.*

Oates. Very well. Theſe, my Lord, I do produce as my firſt Evidence, to prove that there was a traitorous Conſult held upon the 24th of *April* 78, at the *White-Horſe* Tavern, in the *Strand*, it having been believed and affirmed by two Verdicts. Now give me leave to offer but this to the Court, that at the Trial of Mr. *Ireland* I gave ſo full and ample a Teſtimony againſt *Whitebread* and *Fenwick*, accompanied with all the Circumſtances of Time and Place, that my Lord Chief Juſtice *Scroggs* ſaid, *The Evidence might be ſufficient to have ſatisfied a private Conſcience, tho' it was not a legal Proof then to convict them, there being but one Witneſs againſt them:* And for this I call Mr. *Robert Blayney*.

Oates. Pray ſwear Mr. *Blayney*. [*Which was done.*]

L. C. J. What do you ask Mr. *Blayney*?

Oates. Mr. *Blayney*, have you your Notes of *Ireland*'s Trial here?

Mr. *Blayney.* Yes, Sir, I have.

Oates. Pray will you look into what my Lord Chief Juſtice *Scroggs* ſaid when he diſcharg'd the Jury of *Whitebread* and *Fenwick*.

Mr *Blayney.* Whereabouts is it, Sir, in the printed Trial?

Oates. It is Page 55.

Mr. *Blayney.* I have found the Place, what is it you would ask me about it?

Oates. Whether my Lord Chief Juſtice *Scroggs* did not uſe theſe Words to the Jury? *I do acknowledge that Mr.* Oates *has given a very full and ample Teſtimony, accompanied with all the Circumſtances of Time and Place, againſt them all; that may go far with you, all things conſider'd, to believe there is a Plot: Yet I do not think they have proved it againſt* Whitebread *and* Fenwick *by two Witneſſes; tho' the Teſtimony be ſo full as to ſatisfy a private Conſcience, yet we muſt go according to Law too. It will be convenient from what is already proved, to have them ſtay till more Proof come in; 'tis a great Evidence that is againſt them, but it not being ſufficient in point of Law, we diſcharge you of them. It is not a legal Proof to convict them by, whatſoever it may be to ſatisfy your Conſciences.*

Mr. *Blayney.* I have look'd upon my Notes, and I cannot find exactly thoſe Words.

L. C. J. He ſays he cannot find that Paſſage as it is there.

Mr. *Blayney.* There is ſomething to that Purpoſe, my Lord.

Oates. Pray, Sir, will you look into your Notes in the very ſame Place, what my Lord Chief Baron ſaid: *You muſt* (ſpeaking to the Jailor) *underſtand they are no way acquitted: The Evidence is ſo full againſt them by Mr.* Oates's *Teſtimony that there is no Reaſon to acquit them; it is as flat as by one Witneſs can be.*

Mr. *Blayney.* There is ſuch a Paſſage, I find, in my Notes.

L. C. J.

L. C. J. He says there is such a Passage.

Oates. Then I desire Mr. *Blayney* would look into his Notes, what my Lord Chief Justice *Scroggs* said in his summing up the Evidence against *Ireland.* He mentions the Evidence of Sir *Dennis Asthurnham*, who was produced to discredit me, and then he adds, *When the Matter is so accompanied with so many other Circumstances which are material things, and cannot be evaded or deny'd, it is almost impossible for any Man either to make such a Story, or not to believe it when it is told*——It is *Ireland*'s Trial, Page 72.

Mr. *Blayney.* My Lord, I do find such a Passage in my Notes.

L. C. J. He says there is such a Passage in his Notes.

Oates. Then I would ask Mr. *Blayney* another Question: At the bringing in the Verdict of the Jury against *Ireland*, *Pickering*, and *Grove*, my Lord Chief Justice *Scroggs* (that then was) had this Expression: *You have done, Gentlemen, like very good Subjects, and very good Christians, that is to say, like very good Protestants; and now much good may their* 30,000 *Masses do them.*

Mr. *Blayney.* Yes, my Lord, there is in my Notes such an Expression of my Lord Chief Justice *Scroggs.*

Oates. Pray you, Mr. *Blayney*, have you *Whitebread*'s Trial? the Trial of the five Jesuits, I mean.

Mr. *Blayney.* My Lord, when I receiv'd a Subpœna from Mr. *Oates* to be here this Day, and to bring my Notes of *Ireland*, *Whitebread*, and *Langhorn*'s Trials, I did (as I did before upon another occasion) make a Search for all my Notes, but could not find any but those of the Trial of *Ireland* and *Langhorn*, and those I have brought here, but have not *Whitebread*'s.

L. C. J. He says he has not the Notes of *Whitebread*'s Trial; he cannot find them.

Oates. Then I must desire, my Lord, that the Printed Trials may be read.

L. C. J. No, they are no Evidence: If you can prove what was said at any of them, you may by Witnesses, but not by the Printed Books.

Oates. Then will your Lordship be pleas'd to give me leave to mention what was said by your Lordship at that time, when you were Recorder of *London*, about your Satisfaction with the Evidence.

L. C. J. Ay, with all my heart; and whatever I said, I will own, if I can remember it.

Oates. Will your Lordship be pleas'd to be sworn then?

L. C. J. No, there will be no need for that; I will acknowledge any thing I said then.

Oates. Then, if your Lordship pleases, I will read those Passages out of the Books.

L. C. J. Ay, do so.

Oates. Says Mr. Recorder of *London*, (in particular to that Part of the Prisoners Defence, at the Trial of the five Jesuits, and the full Scope given them of making Objections to the Evidence) when he gave Judgement of Death upon these five Jesuits and *Langhorn* (for I now speak of your Lordship in the third Person,) *Your several Crimes have been proved against you; you have been fully heard, and stand convicted of those Crimes you have been indicted for.*

L. C. J. I believe I might say something to the same purpose as you have read now.

Oates. I thank your Lordship for that Acknowledgment.

L. C. J. Ay, I'll own any thing I did say.

Oates. My Lord, I have one Passage more to urge, and that was, my Lord, after the Jesuits had been convicted, when the Jury brought in their Verdict, and found *Whitebread*, *Fenwick*, *Harcourt*, *Gaven*, and *Turner* guilty, your Lordship, applying yourself to the Jury, said thus to them: *Gentlemen, you of the Jury, there has been a long Evidence given against the Prisoners at the Bar; they were all indicted, arraigned, and tried for High Treason, depending upon several Circumstances: They can none of them say the Court refus'd to hear any thing they could say for themselves; but upon a long Evidence, and a patient Hearing of the Defence they made, they are found guilty; and for any thing appears to us, it is a just Verdict you have given.*

L. C. J. I believe I might say something to that purpose too at that time; and no doubt the Jury did (as the Case then stood) find an unexceptionable Verdict.

Oates. There is another place, my Lord, that I would instance in, for your Lordship's Opinion of the Evidence of the Popish Plot, and that is this: Now, my Lord, I bring your Lordship as you were of Counsel for the King at Mr. *Colledge*'s Trial at *Oxford*, the 17th of *August* 81. There you, my now Lord Chief Justice, directing yourself to the Jury, had this Expression; *We come not here to trip up the heels of the Popish Plot, by saying that any of them who suffer'd for it did die contrary to Law; for if Mr.* Dugdale *was not a Person fit to be believ'd, or if the rest of the Judges who try'd* Gaven *were out in the Law, then that Man died wrongfully; for he had as much right to be try'd according to Law, as any other Person whatsoever.* This was your Lordship's Opinion of the Matter then, and your Lordship, as Counsel for the King, did there deliver the Law as well as Fact to the Jury. If then they went against Law, that would go to trip up the heels of the Popish Plot———

Mr. Just. *Withins.* We are got into an endless Wood of Sayings of People, I know not where and when; and when all is done, it is to no purpose.

Oates. My Lord, it is a Part, and a great Part, of my Defence, to shew what credit has been given to the Evidence of the Popish Plot.

L. C. J. Ay, but what Counsel says at the Bar, or what Judges say in the Court of their Opinion, is no Evidence of a Fact, of which the Jury are Judges only.

Oates. My Lord, every Judge is upon his Oath, and delivers his Judgment according to his Oath.

L. C. J. Not as to the Fact, but only in Points of Law, so as to tell the Jury what the Law is, if the Fact be so and so.

Oates. My Lord, it goes a great way with the Jury to have the Judge's Opinion.

L. C. J. Mr. *Oates*, deceive not yourself; all this you have insisted on hitherto, has not been to the purpose, nor is any sort of Evidence in this Case; and therefore do not run away with an Opinion of this as Evidence; a Judge's Opinion is of value in Points of Law that arise upon Facts found by Juries, but are no Evidence of the Fact: for Judges only do presume the Fact to be true, as it is found by the Jury; and therefore say they, out of that Fact so found, the Point of Law arising is thus or thus. Then in case, after a Jury has given a Verdict of the Fact, a Judge's Opinion of the Fact (which may be perhaps contrary to the Verdict) should be an Evidence as to that Fact, that would be to overthrow and nullify the Jury's Verdict: No, that is not the Judge's Province. Surely you would not have a Judge's private Opinion, that twelve Men have found a Verdict against the Fact, to be an Evidence as to that Fact: No; but admit the Fact to be so or so, then the Person convicted of the Fact ought to suffer so or so. And by the same reason as this, a Jury of honest Gentlemen here, when I tell them here is a plain Fact either to convict you, or to acquit you upon this Indictment, are not bound to go by what I say in point of Fact, but they are to go according to their own Oaths, and according to the Evidence and Testimony of the Witnesses: It is not my Opinion that is to weigh at all with them, whether you are guilty of this Perjury, or are innocent, but the Evidence that is given here in Court. Therefore, what my Lord Chief Justice *Scroggs* said at any of those Trials, or what I said, or any other Person, that either was of Counsel, or a Judge on the Bench, said as our Opinions, is but our Opinions on the Fact as it occurr'd to our present Apprehensions, but is no Evidence nor binding to this Jury. I must tell you, there is no doubt, but that those Juries did every one of them believe the Evidence you gave, or they would not have convicted the Prisoners. Do you think they would have found a Verdict against their own Belief, and being upon their Oaths to make true Deliverance between the King and the Prisoners, have perjured themselves to hang others? If they had so done, they had committed wilful Murder, and the worst of Murders too, being under Colour of the Process of Law; but yet all this is no Evidence. I do not discommend you for insinuating these things, as introductive and preparative to what Evidence you have to offer; but it is no Evidence one way or other. Alack-a-day! how many times have we Causes here in *Westminster-Hall*, wherein we have Verdict against Verdict? and yet no Imputation to either of the Juries, which might give different Verdicts upon different Grounds. There was a notable Case lately of my Lady *Ives* at this Bar: We all thought upon the first Trial, that she had as good a Title to the Land as could be; all the Judges and the Counsel went away (I believe) satisfied with the Jury's Verdict for her: But when the Cause came to be heard again, we found all the Witnesses to prove her Title, were guilty of notorious Perjury, and the same Persons which did believe before that she was in the right, and the Jury had done well; when they heard the second Trial, did believe she was in the wrong, and accordingly the second Jury found it so; and we believe that last Verdict to be good, without any Reflection on the Credit of the first Jury, because the Evidence was as strong on her side then, as it was afterwards against her. In these Cases we give our Opinions always according to the present Testimony that is before us.

Oates. Then, my Lord, I offer this to your Consideration, that those Men that were thus charged by me with High-Treason, were Priests and Jesuits most of them, and particularly Mr. *Ireland*, in whose Trial I am said to have committed this Perjury; and you shall find him to have been by others proved a Priest and a Jesuit, and actually engaged in a Design against the Life of the King. If I then do prove, that *Ireland* was engaged in a Design against the late King's Life, and was a Priest and a Jesuit, I desire to know, whether this be not a Collateral Evidence to render me of Credit sufficient, and support my Testimony?

L. C. J. By no means upon this Indictment. It's true, it may give some Credit to your Testimony, but it is not of itself sufficient: Nay, I'll go a great way further than that; I will suppose that there was a Consult of the Jesuits upon the 24th of *April* 78, at the *White-Horse* Tavern in the *Strand*, where those you say were present; were all present; *Ireland* and *Whitebread*, and *Pickering*, *Grove* and *Fenwick*, were all there, and that they did there come to a Resolution to destroy the late King: Suppose all this to be true, and yet you all this time are not innocent of the Fact imputed to you, because you swore directly, *That you were there at that Consult too*, which you were not, if these Men swear true, for then you were at *St. Omers* at that time; and therefore give us some sort of Testimony to satisfy us that you were here, and then you will set all right again. If the Jesuits and Priests did plot, that is nothing to make your Evidence true, if you swore that which you did not know of your own Knowledge.

Oates. Shall it be allow'd then, that *Ireland* was a Jesuit and a Papist?

L. C. J. If it should, that will be to very little purpose for your Turn.

Oates. There is the Evidence of a Record for it, my Lord; but if that be not sufficient, I can call Witnesses to prove it. Pray, call Mr. *Miles Prance.*

[*Which was done, but he did not appear.*

Cryer. He is not here.

Oates. He was *subpœna'd*, my Lord, to come hither.

L. C. J. I can't help it, if he will not come; but I'll tell you, for method's sake, not to prescribe to you, but to tell you what I think may be more for your advantage than any of these Inferences that you are making. If you did call two or three Witnesses to prove that you were in Town the 22d, 23d, or 24th of *April*, it would be the best Defence you can make, and would give the best Answer to all that is objected against you.

Oates. I will do that, my Lord, then, and follow your Directions.

L. C. J. Do so, that's the best way.

Oates. Cryer, call *Cecilia Mayo.*

Cryer. Here she is.

Oates. Swear her. [*Which was done.*

L. C. J. Well, what do you ask this Witness?

Oates. Pray, Mrs. *Mayo*, give my Lord and the Jury an account, whether you did see me in *London* the latter part of *April*, or the beginning of *May* 78? for that is the Question now before the Court.

L. C. J. Ay, what say you? When did you see him in 78?

Mrs. *Mayo.* My Lord, I saw him the latter end of *April*: He came to Sir *Richard Barker*'s House, where I did then live, and afterwards he came again thither within a few days. By this Circumstance I remember it; Sir *Richard Barker*, my Master, was sick all the Month of *April*, and in the Country, only he came now and then home for a little while, and went again: Now Mr. *Oates* came there when he was absent, and a young Man that lived in the House came to me, and told me, there was one Mr. *Oates* in the strangest Disguise that ever was. Says he, I think he is turn'd Quaker. No, said I, he is no Quaker, for they wear no Perriwigs, and I rebuked the young Man for saying so. As for Mr. *Oates*, I never saw his Face before that time, that I know of.

L. C. J. How do you know that to be Mr. *Oates* then?

Mrs. *Mayo.* The Family knew him, and they told me it was he:

That

That is the Gentleman there. I ſpeak now nothing but that which I teſtified ſeven Years ago, and it is all Truth, and nothing but the Truth.

L. C. J. Ay, no doubt of it; thou ſweareſt nothing but the Truth.

Mrs. *Mayo.* My Lord, he came three or four Days afterwards again to the Houſe, and then the Young-man came to me, and told me, that Parſon *Oates* was turn'd Jeſuit; and thereupon I ſaid to him, Good Lord! Why doſt thou concern thyſelf with him? Can'ſt not let him alone? I look'd upon him, and I ſaw him at that time: And when he came that time, he went to Sir *Richard*'s Lady's Siſter, who is now in *Wales*, and coming to her, ſaid ſhe, Mr. *Oates*, *I hear you are turn'd* Jeſuit, *and we can have no Society with you now:* At laſt, he ſtaid to Dinner with them, and ſtaid moſt of the Day there. Then he comes the latter end of *May*; *Whitſuntide* was in *May* that Year, and I know he came before *Whitſuntide* by this Token; I ſpeak of the ſecond time of his coming: Our Cuſtom in the Houſe was to waſh and ſcour before the time, and I was ſending for a Woman to come and help to waſh and ſcour, and then he was walking in the Garden; and the Young-man came and told me *Oates* was there: He came into the Pantry to me, Look, ſaid he, he is come again, and he is turn'd Jeſuit by his Diſguiſe. Why, *Benjamin*, ſaid I, what haſt thou to do with the Man? Can'ſt not let him alone?

L. C. J. What was the Name of that Young-man you ſpeak of?

Mrs. *Mayo.* Truly, my Lord, he is dead, or he would have teſtified the ſame thing.

L. C. J. But what was his Name?

Mrs. *Mayo*; *Benjamin*; I can't tell his other Name.

L. C. J. Well, go on.

Mrs. *Mayo.* Said I to him, Why doſt thou ſcorn this Man? Prithee get out of the Room, I am not able to hear it: So he walk'd the ſpace of an Hour in the Garden.

L. C. J. Is Sir *Richard Barker* living?

Mrs. *Mayo.* Yes, my Lord, he is; but he is not well.

L. C. J. Was he at home when *Oates* was there?

Mrs. *Mayo.* No, my Lord, I think not.

L. C. J. Who din'd with him, do you ſay, when he din'd there?

Mrs. *Mayo.* My Lady's Siſter.

L. C. J. What is her Name?—Mrs. *Mayo.* Madam *Thurrel.*

L. C. J. And who elſe?—Mrs. *Mayo.* And her Sons.

L. C. J. Where are they?—Mrs. *Mayo.* They are both dead.

L. C. J. And who elſe was there?—Mrs. *Mayo.* One Dr. *Cocket.*

L. C. J. Where is he?—Mrs. *Mayo.* He is in *Wales* too, my Lord.

L. C. J. 'Tis a great Misfortune to have ſo many dead, or ſo far remote.

Oates. My Lord, ſix Years time makes a great Alteration in a Family.

L. C. J. Was there any body elſe there?

Mrs. *Mayo.* There were two of the Daughters, and they could all come and teſtify the ſame thing.

L. C. J. Where are they, and what is become of them? Why are they not here?

Mrs. *Mayo.* They are living in *Lincolnſhire*, my Lord, I think.

L. C. J. What elſe have you more to ſay?

Mr. Att. Gen. Pray, Mrs. *Mayo*, let me ask you a Queſtion: What coloured Clothes had he on when you ſaw him firſt?

Mrs *Mayo.* He had a whitiſh Hat, and coloured Clothes.

Mr. Sol. Gen. What time of the Day was it you ſaw him?

Mrs. *Mayo.* In the Morning.

L. C. J. Did he go publickly?—Mrs. *Mayo.* Yes, he went publickly.

Mr. Sol. Gen. Did he come often to the Houſe?

Mrs. *Mayo.* He was there frequently, my Lord.

Mr. Sol. Gen. Then it ſeems he was ſo diſguis'd that he could walk publickly in the Streets of *London* at Noon-Day, and was frequently in the Family?—Mrs. *Mayo.* Yes, my Lord.

L. C. J. Now tell me who was in the Family?

Mr. Att. Gen. Mrs. *Mayo*, ———

L. C. J. Pray, give me leave to ask her the Queſtion: Who was there at that time?

Mrs. *Mayo.* Sir *Richard Barker*'s Lady's Siſter, Madam *Thurrel*, and his two Daughters, and two of his Kinſmen, and two of the Servants, one is here a Witneſs now.

L. C. J. Who is that, that is a Witneſs now?

Mrs. *Mayo.* One that belongs to Sir *Richard Barker*, and the other is now dead, and thoſe two Kinſmen are dead.

L. C. J. What is become of the two Daughters, ſay you?

Mrs. *Mayo.* They are in *Lincolnſhire*, as I take it, my Lord.

L. C. J. When did you hear from them?

Mr. Att. Gen. My Lord, it is half a Year ago almoſt ſince Mr. *Oates* had notice of this Trial.

L. C. J. Where is Sir *Richard Barker* himſelf?

Mrs. *Mayo.* I was with Sir *Richard Barker*, and he purpoſed to have come hither; but being a crazy Man, and antient, it ſeems he could not, and deſired to be excuſed, for he had a bad Night, and was not well; but he deſired that the Court ſhould know, if he were well, he would be there.

Mr Att. Gen. Were you ſworn at a former Trial about this Matter, Mrs. *Mayo?*—Mrs *Mayo.* Yes, Sir, I was.

Mr. Att. Gen. Do you remember what you ſwore then?

Mrs. *Mayo.* The ſame I do now.

Mr. Att. Gen. Then I ask you this Queſtion, How long before *Whitſuntide* was it that you ſaw Mr. *Oates* at Sir *Richard Barker*'s?

Mrs. *Mayo.* A pretty while before, twice.

Oates. Mrs. *Mayo*, I'll put you a fair Queſtion, Whether or no it might not be a Fortnight before *Whitſuntide*, you think?

Mrs. *Mayo.* The laſt time I ſaw you was a Week before *Whitſuntide.*

L. C. J. How can you tell it was but a Week?

Mrs. *Mayo.* 'Twas but a Week, becauſe at that time I had ſent the Boy for the Woman to ſcour and wath there.

L. C. J. Was that the laſt time you ſaw him?

Mrs. *Mayo.* Yes; I ſaw him ſeveral times before, and it was all before *Whitſuntide.*

L. C. J. How long before that, was the firſt time that you ſaw him?

Mrs. *Mayo.* He would be away for three or four Days, and come again.

L. C. J. But how long before the laſt time, was the firſt time you ſaw him?—Mrs. *Mayo.* He came ſtill to and again.

L. C. J. When was the time that you ſaw him next before the Week before *Whitſuntide*, which, as you ſay, was the laſt time you ſaw him?

Mrs. *Mayo.* I am not able to ſay that.

L. C. J. Did you believe it was within the Compaſs of a Week before?

Mrs. *Mayo.* To the beſt of my remembrance it was.

L. C. J. When was the firſt time you ſaw him?

Mrs. *Mayo.* 'Twas in the beginning of *May.*

L. C. J. You ſaid at firſt it was at the latter end of *April.*

Mrs *Mayo.* Pray, my Lord, let me a little think; I am unwilling to be miſtaken, I would ſay nothing but the Truth.

L. C. J. No, I would not have thee; but for God's ſake, let us have the Truth, that is that we look for.

Mrs. *Mayo.* I ſay, the Coach-man ſaw him there as well as I, and he can tell you better than I.

L. C. J. But I ask you this Queſtion poſitively, Was it in *May* or *April?*

Mrs. *Mayo.* To the beſt of my remembrance it was the beginning of *May.*

L. C. J. Was it within a Week of *May?*

Mrs. *Mayo.* I believe it was, I cannot tell exactly to a Day.

Mr. Sol. Gen. Was it ſo, or not?

Mrs. *Mayo.* I cannot be poſitive to a Day; it is now ſix Years time ſince I was firſt examined about it.

Mr. Att. Gen. But you can remember what you ſwore then, can't you?

Mrs. *Mayo.* I declare it, I ſpeak not a Syllable, but I will aver to be true, before the great God.

Mr. Sol. Gen. Can you ſwear it was within the firſt ſeven Days of *May?*

L. C. J. You ſee, Mr. *Sollicitor*, ſhe ſays ſhe cannot.

Mr. Att. Gen. Did not you ſay at that Trial, that you did never ſee his Face till a Week before *Whitſuntide*, or a little after?

Mrs. *Mayo.* I did ſwear the ſame that I do now, to the beſt of my remembrance, and that is the Truth.

Mr. Att. Gen. But did not you ſwear ſo?

Mrs. *Mayo.* I never ſaw him before that firſt time he came to Sir *Richard Barker*'s, and after the laſt time that he came, I ſaw him not till after the Plot was diſcovered.

Mr. Sol. Gen. How long was that after he had been at your Maſter's Houſe?

Mrs. *Mayo.* It was a good while, I cannot tell how long.

L. C. J. Was it within a Month, or two Months?

Mrs. *Mayo.* It was more, my Lord.

L. C. J. Where was Sir *Richard Barker* at that time?

Mrs. *Mayo.* He was at *Putney.*

L. C. J. Then he did not ſee him?—Mrs. *Mayo.* Not then he did not.

L. C. J. Did he afterwards?—Mrs. *Mayo.* Yes, he did ſee him afterwards.

L. C. J. How long afterwards was it?

Mrs. *Mayo.* I can't tell how long afterwards it was, my Lord.

L. C. J. About what time was it?

Mrs. *Mayo.* After the Plot was diſcovered, he was up and down in the Family.

L. C. J. You never knew Mr. *Oates* before that time he came in Diſguiſe, and you did not know him then, but as they told you it was he?

Mrs. *Mayo.* No, I did not, but as they told me then; and this is the Man, I'll ſwear it.

Oates. Call *John Butler.*—*Cryer.* Here is *John Butler.*

Oates. Swear him. [*Which was done.*]

My Lord, if you pleaſe, I will propoſe my Queſtions to your Lordſhip; and my firſt Queſtion is this, I pray your Lordſhip would aſk him, Whether he gave in any Evidence at the five Jeſuits Trial, or *Langhorn*'s Trial, about my being in Town in *April* or *May* 78?

L. C. J. Did you give any Evidence at the five Jeſuits Trial?

Butler. Yes, I did.

L. C. J. Did you give any Evidence at *Langhorn*'s Trial?

Butler. Yes, my Lord, I was a Witneſs there.

Oates. My Lord, it is ſo long ago, that ignorant People that come innocently without deſign, may not be ſo ready in their remembrance, as thoſe that conn'd their Leſſon for ſo long time together.

L. C. J. Well, well; what do you aſk him next, Whether he will ſtand by that Evidence he gave then?

Butler. That is all I have to ſay, my Lord: I did teſtify the Truth then, and will abide by it.

L. C. J. But he muſt give the ſame over again here, or it will ſignify nothing.

Oates. My Lord, it is now ſix Years ſince, and this Queſtion was not thought to be ſtirr'd ſo long after: Therefore I beg ſo much Favour, that the Evidence he did give at Mr. *Langhorn*'s Trial may be read to him.

L. C. J. O! by no means.

Oates. My Lord, it is ſuch a diſtance of time—

L. C. J. Look ye, if he has any Notes himſelf, he may look on them to refreſh him.

Oates. My Lord, he comes raw hither, without any Inſtruction at all.

L. C. J. So ſhould every Witneſs: God forbid we ſhould countenance the inſtructing of Witneſſes what they ſhould ſwear.

Oates. I beg your pardon, my Lord, I did hope this Favour might be granted: I will then aſk him ſome Queſtions.

L. C. J. Ay, ay, do, refreſh his Memory by Queſtions as much as you can. Come, I'll aſk him ſome Queſtions for you: Do you remember you ſaw Mr. *Oates* at any time in the Year 78?

Butler. If it pleaſe your Lordſhip, as near as I can remember, I ſaw him in *May* before the Plot was diſcovered.

L. C. J. That was the Year 78?

Butler. I am ſure I did ſee him about that time.

L. C. J. Where did you ſee him?

Butler. I was a Servant to Sir *Richard Barker*, and Mr. *Oates* and I had been acquainted before he went to Sea; he uſed to come to my Maſter's Houſe frequently, and divers times he din'd at the Table, and I waited upon my Maſter there.

L. C. J. When was it that he din'd there at the Table?

Butler. A Year before that Time in *May* that I ſpoke of before: It was before he went to Sea.

L. C. J. When did you ſee him again?

Butler. After he came from Sea, I ſaw him at my Maſter's Houſe.

L. C. J. When was it that he went to Sea?

Butler. It was a Year or two before the *May* that I ſaw him diſguis'd coming to my Maſter's Houſe.

Mr. Att. Gen. Ay, what Diſguiſe did he come in?

Butler.

Butler. His Hair was cut off, close cropt to his Ears, and an old white Hat over his Head, and a short grey Coat over like a Horseman's Coat.

L. C. J. How came you to take such notice of him at that time, as to be able to swear when this was?

Butler. I was call'd presently after for a Witness.

L. C. J. How long after this was it, that you were called to be a Witness?—*Butler.* It was when the Trials were at the *Old-Bailey*.

L. C. J. Was this the first time you had recollected these Circumstances?—*Butler.* Yes, my Lord, that was the first time.

L. C. J. Then how came you a Year and an half's time afterwards to remember the precise Month of *May*, when you did not know you should be call'd to question about it, and yet you cannot remember the time particularly when *Oates* went to Sea, but take the compass of a Year or two?

Butler. I guess it was a Year before, I cannot exactly tell.

L. C. J. When you can but guess at the time of such a remarkable Passage, within the Compass of a Year or two, how can you pitch upon the very Month for such a thing as this is, a Year and a half's time after?

Oates. No, my Lord, it was not so long as a Year and a half.

L. C. J. Pray, Sir, have Patience.

Oates. My Lord, the Records shew, that *Ireland*'s Trial was the 17th of *December* 78, and the five Jesuits Trial was the 15th of *June* 79.

L. C. J. Then it is a full twelve-month's time and more from the *May* that he says he saw you at Sir *Richard Barker*'s to *Whitebread*'s Trial, in which he was examin'd the first time. Now that which I desire of him, is, to give me a reason why he remembers it was in the *May* was twelve-month before?

Butler. My Lord, the Lady whom I did serve, died in *February* before, that Year.

L. C. J. But give me some reason of your Remembrance so long after.

Butler. My Lord, I do as well as I can.

L. C. J. Well, what is it?

Butler. My Lady was buried in *February*, and he comes into the Yard where I was cleaning my Coach, in *May* following that *February*, which was *May* before the Discovery of the Plot. He ask'd me what Alteration was in the Family? I told him my Lady was dead, and the Escutcheon was over the Door for her. He ask'd for Dr. *Tongue* when he came first in the House.

L. C. J. Why should he ask for Dr. *Tongue*?

Butler. My Lord, Dr. *Tongue* lodged there; and he did ask for him: I come to justify the Truth; upon my Salvation, what I say is true.

L. C. J. Well, when he ask'd whether Dr. *Tongue* was within, what said you?

Butler. I told him, no; but he went into the Room where Dr. *Tongue* us'd to lie, but found him not there: so he went out again. That was the same time Mrs. *Mayo* saw him.

L. C. J. But, Friend, prithee mind what I ask thee, because thou must give me satisfaction how thou com'st to remember this, so as to be able to swear it; for his going to ask for *Tongue*, or the Escutcheon being over the Door, neither of those can be a Reason for you to remember that this was in *May*, for the Escutcheon may be up in *June*, or *July*, or in *August*, or in any other Month after the time you speak of: But how came you to take notice of this Business that it was in *May*?

Butler. Sir *Richard Barker*, my Master, was then sick at *Putney*, which was in *May*, tho' I cannot speak to a Day or a Week particularly.

L. C. J. Then prithee let me ask thee this Question, How long had your Master been sick before that?

Butler. He had never been well since my Lady died.

L. C. J. When was it that your Lady died?

Butler. In *February* before.

L. C. J. How long after that did your Master, Sir *Richard Barker*, continue sick?——*Butler.* Half a Year, I believe.

L. C. J. Why then, suppose your Master fell sick immediately after your Lady died, and he continued sick half a Year after, yet all this while *Oates* might come during his Sickness even in the Month of *June* or *July*, when 'tis acknowledg'd he was in Town, and not be here in *February*, which is testified by a great many Witnesses.

Butler. My Lord, I tell your Lordship the Truth, it was in *May*.

L. C. J. But how dost thou come to take notice it was in the Month of *May*, so as to be able to swear it?

Butler. My Lord, I tell your Lordship my Lady was dead, and the Escutcheon was over the Door.

L. C. J. So it might be, tho' he came in *June* or *July*, I tell ye.

Butler. My Master was sick at *Putney* at that time.

L. C. J. How long did he lie sick at *Putney*?

Butler. He was sick there a Fortnight, my Lord.

L. C. J. Then prithee when did thy Master go to *Putney*?

Butler. I cannot tell to a Day.

L. C. J. In what Month was it that he went?

Butler. It was the latter end of *April*, my Lord, as I remember.

L. C. J. How long continued he sick at *Putney*?

Butler. The matter of a Fortnight.

L. C. J. Was not your Master sick, when your Lady died, at *Putney*?

Butler. No, he was not there then.

L. C. J. When did he go to *Putney*, say ye?

Butler. He went not thither till the latter end of *April*, my Lord.

L. C. J. And did he continue at *Putney* but a Fortnight?

Butler. Not at a time, but he continued going and coming a quarter of a Year.---*L. C. J.* But this was the first time of his going, was it?

Butler. Yes, as I do remember.

Oates. My Lord, he is my Witness, and I desire I may examine him.

L. C. J. Hold there, Mr. *Oates*; he is mine too. All the Witnesses are mine to satisfy me in the Truth of the Fact.

Oates. And to satisfy the Jury too, my Lord.

L. C. J. Yes, and to satisfy the Jury too, but I must and will sift out the Truth, for both our Satisfactions.

Oates. My Lord, it is now, come the next Month, six Years ago since the Evidence of this Matter was first given by these Witnesses.

L. C. J. Then, Mr. *Oates*, I'll come a little rounder to you, and I'll put you into a certain way of clearing this Business. I'll tell you what you shall do; you had a Lodging in Town, as well as Diet, and as well as you did eat at Dr. *Barker*'s sometimes, so you eat and lay sometimes elsewhere. You were here in Town a great while together, if your own Assertions be true; for you were from *April* till *June* in Town: Now come and give us account by some Witnesses, if you can, where did you lodge at that time, and where did you diet? for it seems you had but one Meal at Sir *Richard Barker*'s.—*Oates.* Is that the Question, Sir, here in hand?

L. C. J. Ay indeed is it, and the main one too.

Oates. I beg your Lordship's pardon if I mistake, but I think that is not now in question; for these *St. Omers* Men do swear, That I was all *April* and *May* at *St. Omers*: Then if I do prove that in *April* and *May* I was not at *St. Omers*, but here in *London*, it is Argument good enough against them that their Evidence is false. And indeed, can your Lordship or the Jury expect, that I being then engag'd among and for the Papists, and afterwards an Evidence against them to discover their Treasons, can bring any of them to testify for me now? No, they will as certainly forswear themselves, as these young Fellows have all done.

L. C. J. Let me ask you a shorter Question: Did you always lie in a Papist House all the two Months you say you were here?

Oates. My Lord, I lay at several Houses.

L. C. J. Tell me the Names of those Houses, or any of them.

Oates. It is not to the Point in question here, my Lord.

L. C. J. Yes, it is very much; but I perceive it is a Secret, and let any body judge why.

Oates. My Lord, they that have by the Principles of their Religion, Liberty to affirm or deny any thing, and can have Dispensations for the Violations of Oaths and Sacraments, certainly are not to be admitted as Witnesses in such a Case as this.

L. C. J. Talk not to me of Dispensations, and I know not what; I speak from a plain demonstrative Proof: Can it be believed that you should be here in *England* so long, and as they say, publickly, and no Person living see you that we can hear of, but an old Woman that never saw you, nor knew you before, and a Coachman that tells a wild Story without Reason? If you will not tell me where you lay, can you tell me where you did eat all that time?---*Oates.* I can tell where I did lie that time.

L. C. J. Do so then. Let us hear it, that will be your best Defence.

Oates. Is that the Point, my Lord, in question?

L. C. J. Ay, upon my Word is it the main Point in this Case.

Oates. If it should go upon that foot, my Lord, it is impossible for me now to prove it; for 'tis well known, I lay sometimes with Mr. *Whitebread*, and sometimes with Mr. *Mico*, neither of which can I have to testify for me; and besides, I must insist upon it, these things were in question at *Whitebread*'s Trial, nor do I believe that Mr. *Whitebread*, if ask'd at his Death, would have justified, and stood by it, that I was not here then.

L. C. J. Well, this I must certainly say, I cannot help it, but it will stick with me till better answered. I can never be satisfied, that if you were here so long, there should no better Evidence be produced to prove you here.

Oates. My Lord, nor can I help your Dissatisfaction, but I am to satisfy all that hear me this Day, that is a very hard Case that is put upon me; I have taken the most effectual Course that I could, to provide for Evidence to make my Defence; and I think, by your Lordship's good Leave, those that I have produc'd do prove me here in Town in *April* and *May* 78. And if your Lordship has done with this Witness, I'll call another.

L. C. J. Well, go on as you will. I tell you what sticks with me.

Oates. Pray call Mr. *Philip Page*.

Mr. Sol. Gen. Hold, Sir, a little; I would ask these Witnesses a few Questions before they go away. You *Butler*, let me ask you, pray, the first time you saw Mr. *Oates* at the time you speak of, was it in *April* or *May*?

L. C. J. He swore it was the beginning of *May*.

Butler. To the best of my knowledge it was the beginning of *May*.

Mr. Sol. Gen. Who did you tell first, that there was Mr. *Oates*, at that time?---*Butler.* I told it Mrs. *Mayo*.

Mr. Sol. Gen. Consider, Friend, what you say now, you are upon your Oath, and consider what you said at the former Trial, when you were upon your Oath too.

Oates. Pray, my Lord, I desire my Witnesses may be examined without Threatenings.

L. C. J. It is not a Threatening, it is an Admonition not to go beyond the Truth.

Mr. Sol. Gen. Be sure you be in the right in what you say, and now I ask you upon your Oath, when was the first time you saw Mr. *Oates* when he came in that Disguise you speak of?

Butler. I told you it was in *May*, Sir.

Mr. Sol. Gen. How far in *May*? Consider well what you say.

Butler. To the best of my Remembrance, it was the beginning of *May*.

Mr. Sol. Gen. Do you think it was within a Week, or the first ten Days of *May*?

Butler. I cannot tell that; as well as I remember, it was the beginning of *May*.

Mr. Sol. Gen. When you saw him first in *May*, who else, as you remember, was by?----*Butler.* Mrs. *Mayo*.

Mr. Sol. Gen. And no body else?

Butler. Yes, one *Benjamin Turbet*, who is since dead.

Mr. Sol. Gen. But consider your Oath, Friend, once more, and recollect yourself; Do you swear positively Mrs. *Mayo* was by, and did see him at the same time?

Butler. I saw her look out of the Window into the Yard, and I believe she did see him.

Mr. Sol. Gen. Well then, let us examine her Evidence and your's together, and see how they agree.

Oates. My Lord, these are not Questions tending to satisfy the Jury at all, as to the Point in question.

L. C. J. Are they not? methinks they are, whatsoever you think.

Oates. After six Years time, to ask such poor ignorant People such trifling Questions!

L. C. J. Pray, Sir, be contented, and let the King's Counsel examine the Witnesses.

Oates. My Lord, he says I was here in *May*, that's enough.

L. C. J. Well, Sir, I know what he says.

Mr. Sol. Gen. And you shall hear, Mr. *Oates*, how your Witnesses agree.

L. C. J. Go on, Mr. *Sollicitor*, and do you ſit ſtill and be quiet.

Mr. Sol. Gen. Then, my Lord, I would aſk him this Queſtion more; the firſt time you ſaw *Oates* come to Sir *Richard Barker*'s, what Habit, pray you, was he in?---*Butler.* He was in a Diſguiſe.

Mr. Sol. Gen. Ay, what Diſguiſe?

Butler. He had a white Hat flapping over his Ears; his Hair cut ſhort, cloſe to his Ears, and a grey ſhort Coat.

Mr. Sol. Gen. Had he never a Perriwig on?

Butler. No, his Hair was cut ſhort to his Ears.

Mr. *Hanſes.* Was he in ſuch a Diſguiſe, that a Man might not ordinarily know him, that had not known him before?

Butler. Truly, my Lord, I did not know him when he firſt came in, 'till he ſpoke to me, and aſked me, How do you, *John?* and then I recollected who he was, that it was Mr. *Oates.*

Mr. Sol. Gen. Was he always in the ſame Habit, when he came thither?

Butler. The next time he came he had a Cinnamon-coloured Suit, and a long black Perriwig that was curl'd down thus far, and a black Hat, with a green Ribbon and green Cuff-ſtrings about his Wriſts.

L. C. J. Did you ever ſee *Oates* dine there?----*Butler.* Yes, I did.

L. C. J. When was that?

Butler. After my Maſter came home from *Putney.*

L. C. J. Who was there beſides?

Butler. One Sir *William Thurrel* and Madam *Thurrel.*

L. C. J. How often did he dine there?----*Butler.* Several times.

L. C. J. Who elſe was there?

Butler. My Maſter and his Daughter.

L. C. J. And who elſe?----*Butler.* Mrs. *Mayo.*

L. C. J. What is become of your Maſter's Daughter?

Butler. I beg your pardon for that, my Lord.

L. C. J. Where is ſhe, Man?——*Butler.* She is at home, I ſuppoſe.

L. C. J. What doſt thou beg my Pardon for then?

Butler. My Lord, I call to mind ſhe did not dine with them.

L. C. J. Did ſhe dine at any time with him there?

Butler. Yes, I remember ſeveral times; but not then.

L. C. J. When did you ſee your Maſter's Daughter laſt?

Butler. I have not ſeen her this Quarter of a Year.

L. C. J. Where is ſhe now?

Butler. At home at *Putney*, my Lord, I believe.

L. C. J. And ſhe was ſeveral times there when he din'd there?

Butler. Yes, ſhe was at home.

L. C. J. Did Mrs. *Mayo* ſee him at Dinner there?

Butler. Yes, I believe ſhe did.

L. C. J. How often did he dine there about this time you ſpeak of?

Butler. Several times.

L. C. J. Do you think ſeven times?

Butler. I do think he might have din'd there ſeven times.

L. C. J. Did he more than ſeven times, do you think?

Butler. I cannot number how many times it was.

L. C. J. Now come in, Mrs. *Mayo*, again.

Mrs. *Mayo.* Here I am, my Lord.

L. C. J. Mrs. *Mayo*, give me leave to aſk you a Queſtion or two.

Mrs. *Mayo.* Yes, my Lord, what you pleaſe.

L. C. J. You ſay (if I do not miſ-remember; if I do, I beg your Pardon, and you'll correct me) a Week in *May* was the firſt time you ſaw Mr. *Oates*, and that was at Sir *Richard Barker*'s?

Mrs. *Mayo.* I think it might be about the beginning of *May.*

L. C. J. Had he been in the Houſe before?

Mrs. *Mayo.* Not at that time that I know of, but as they told me.

L. C. J. Who told you?

Mrs. *Mayo.* That Coachman there, *John Butler*, and one *Benjamin* who liv'd in the Houſe.

L. C. J. Then you did not ſee him the firſt time he came? What ſay you, *Butler?*

Butler. She did ſee him out of the Window in the Yard.

L. C. J. Well, let that paſs then: come, I'll aſk you another Queſtion upon your Oath, How often have you ſeen him dine there?

Mrs. *Mayo.* I ſaw him dine at that time that I ſpoke of.

L. C. J. Did not he dine there above once?

Mrs. *Mayo.* No, he did not.

L. C. J. What ſay you, *Butler?*

Butler. He did dine there ſeveral times with them.

L. C. J. Then one of you two muſt be miſtaken, I am ſure.

Oates. My Lord, if your Lordſhip would pleaſe to give me leave to ſpeak, I would ſet it right.

L. C. J. Good Sir, let them ſet themſelves right if they can, we need none of your Inſtructions.

Oates. My Lord, I deſire——

L. C. J. Why, how now? Pray, Sir, be at quiet. Mrs. *Mayo*, pray what Habit had *Oates* when you ſaw him firſt?

Mrs. *Mayo.* He was in a grey Hat and a grey Coat.

L. C. J. Was his Hair ſhort or long?

Mrs. *Mayo.* He had on a kind of a ſhort Wigg.

Mr. Sol. Gen. Are you ſure it was a Wigg?

Mrs. *Mayo.* Yes, a kind of a brown Perriwig.

L. C. J. And he ſays his Hair was cut ſhort to his Ears?

Oates. Theſe things are very lean ſtuff to perjure a Witneſs upon.

Mr. Sol. Gen. When he came the ſecond time, what Clothes had he on?

Mrs. *Mayo.* Afterwards he came in black Clothes and a long Perriwig.

Mr. *Hanſes.* What coloured Perriwig was that, a black or a white one?

Mrs. *Mayo.* Not a black, but a brown.

Mr. Sol. Gen. You ſay it was long?

Mrs. *Mayo.* Longer than his other, yet not very long neither.

L. C. J. Here are I know not how many Contradictions in theſe Witneſſes Teſtimonies.

Oates. Truly, my Lord, I do not find in the Examination of the *St. Omers* Witneſſes, you were ſo ſtrict, or bore half ſo hard upon them, as you do upon my Witneſſes; what does it ſignify, my Lord, whether the Wigg were long or ſhort, black or brown?

L. C. J. We have no other way to detect Perjuries, but by theſe Circumſtances; and 'tis the Duty of a Judge to enquire into all Particulars; as in a Controverſy about Words, were they ſpoken in *Latin* or in *Engliſh*, and ſo to all Places and Poſtures of ſitting, riding, or the like; as you know the Perjury of the Elders in the Caſe of *Suſanna*, was by their different Teſtimony in particular Circumſtances diſcovered.

Oates. My Lord, I will aſk her but one ſhort Queſtion. By the Oath you have taken, Mrs. *Mayo*, to ſpeak the Truth, the whole Truth, and nothing but the Truth, as you expect the Face of God with Comfort in another World; did you ſee me at Sir *Richard Barker*'s at any time in *May* 78; the *May* before the Plot was diſcovered, for that is the main Queſtion?

Mrs. *Mayo.* Yes, I did, and I ſpeak nothing here, but what I ſpeak as in the Preſence of the Lord.

L. C. J. Prithee, Woman, doſt thou think we aſk thee any thing that we think thou doſt not ſpeak in the Preſence of the Lord? We are all of us in the Preſence of the Lord always.

Mrs. *Mayo.* And ſhall anſwer before him for all that we have done and ſaid, all of us, the proudeſt and the greateſt here.

L. C. J. But I would not have ſo much to anſwer for, as thou haſt in this Buſineſs, for all the World.

Mr. Sol. Gen. Well, we have done with her now, ſhe may go away.

L. C. J. Where does ſhe live now?

Cryer. Mrs. *Mayo*, where do you live now?

Mrs. *Mayo.* In *Leaden-hall-ſtreet*, my Lord.

L. C. J. When did you ſee Sir *Richard Barker*'s Daughter?

Mrs. *Mayo.* About a Fortnight ago.

L. C. J. Where?------Mrs. *Mayo.* In *Barbican*, in *London.*

L. C. J. Do you live with Sir *Richard Barker* now?

Mrs. *Mayo.* I do not live with him now.

L. C. J. Did his Daughter uſe to be at the Table at Dinner?

Mrs. *Mayo.* She was often in the Country, my Lord.

L. C. J. Did ſhe eat at his Table at that time when *Oates* was there?

Mrs. *Mayo.* I am not able to ſay whether ſhe did or not; ſhe uſed to be in *Wales* at Sir *Thomas Middleton*'s ſometimes, and with Madam *Thurrel* her Aunt, who was her Mother's Siſter, and her two Daughters.

L. C. J. In *Wales*, doſt thou ſay? Where?

Mrs. *Mayo.* My Lord, in your own Country, at one Dr. *Cocket*'s; I know your Lordſhip, tho' your Lordſhip does not know me.

L. C. J. I am very glad of it, good Woman; but prithee did ever Sir *Richard Barker* dine with Mr. *Oates?*

Mrs. *Mayo.* I cannot ſay he did, he went to and fro.

L. C. J. Well, have you any more Witneſſes?

Oates. Crier, call *Phillip Page.*

Cryer. Here he is, Sir.

Oates. Pray, ſwear him. [*Which was done.*] Pray, be pleas'd to give my Lord and the Jury the beſt account you can of my being in Town. But, Mr. *Page*, the Queſtion that I firſt aſk you, is, whether I was here in *April* or *May*, and in what Year it was that you did ſee meat your Maſter's Houſe?

L. C. J. When did you ſee Mr *Oates* at your Maſter's Houſe? You mean Sir *Richard Barker* to be his Maſter, I ſuppoſe?

Oates. Yes, my Lord.

L. C. J. What do you ſay to it?

Page. Truly I cannot be poſitive to the Year; but to the beſt of my Remembrance it was 78.

Oates. Pray tell my Lord and the Jury ſome Circumſtances in that Year that did happen to you, that makes you believe it was 78.

Page. Sir, I'll give you the beſt Satisfaction I can to the beſt of my knowledge; he came to Sir *Richard Barker*'s one Evening, and there he enquired for Dr. *Tongue:* He was in a Diſguiſe, in a light-colour'd Coat, ſomething like a Frize, but it was not Frize; the Term that they give it, I cannot ſo readily tell. He had his Hair cut ſhort, almoſt to his Ears, and he had a broad-brimm'd Hat on, and a ſmall ſtick in his Hand, walking melancholy about the Hall: I happening to be the firſt body he met with, as I ſuppoſe, he aſk'd me if Dr. *Tongue* was within. I told him no, I had not ſeen him of a conſiderable time. He then aſk'd me where Sir *Richard Barker* was? I told him he was ill now at *Putney.* Says he, When will he be here? I told him I could not tell.

L. C. J. Did he ſee any body there but you?

Page. That I cannot tell, my Lord; not that I know of.

L. C. J. What time of the Year was it?

Mr. Att. Gen. And what Month?

Page. What Year and what Month it was, I am not able to ſay, my Lord.

L. C. J. What became of him after that?

Page. He went out of our Gates then, Sir; he was walking up and down melancholy, and not finding any one, as I ſuppoſe, to anſwer him, he continued walking in the Patients Hall, where they uſed to wait on Sir *Richard Barker*, that came to diſcourſe with him about Phyſick; and upon my Anſwer to his Queſtion, he went away.

L. C. J. Did you ever ſee him any other time near to that time?

Page. No, I did not.

L. C. J. Did you uſe to wait at Table?——*Page.* No, I did not.

L. C. J. What Service were you then engag'd in at Sir *Richard Barker*'s?

Page. I made up the Phyſick, my Lord.

L. C. J. Did you not acquaint the Coachman, nor Mrs. *Mayo*, nor Sir *Richard Barker* with it?

Page. I think Sir *Richard Barker* was in Town ſoon after, and I did acquaint him with it.

Oates. But can't you tell what time this is, Sir?

Page. I can ſay no other than I have ſaid; I believe it was in 78.

L. C. J. Was this in *June*, *July*, or *May*, or when?

Page. I cannot ſay punctually what Month it was, my Lord; but to the beſt of my Knowledge and Remembrance, it was in the Beginning of *May.*

Oates. Had not your Maſter a Patient at *Iſlington* at that time, that was ſick of a Fever?----*Page.* Yes, he had.

Mr. Juſt. *Withins.* Why, would Mr. *Oates* have given the Patient Phyſick?

Page. No, my Lord, but 'twas about that time that the Patient was under my Maſter's Cure.

Oates. Indeed the *St. Omers* Men do ſwear thorough-ſtitch; but my honeſt Witneſſes are cautious, it being ſo long ago; and he that is a Mi-

niſter

niſter of the Church of *England* (as they ſay) ſpeaks to a very Day, upon a much ſlighter Circumſtance. Pray call Mr. *William Walker*.

Cryer. Here he is.

Oates. Swear him. (*Which was done.*) Be pleas'd, *Walker*, to give my Lord to underſtand, when 'twas you ſaw me here in *London* in Diſguiſe, and when it was you ſwore ſix Years agone at the *Old-Bailey*, that you ſaw me here in *London*. Sir, the time in Controverſy is this: I came here to diſcover a Plot of the Papiſts againſt the King's Life and the Religion, and I ſwore———

L. C. J. You muſt not aſk Queſtions in that manner. It is propereſt for you to propoſe your Queſtions to the Court, and they will aſk the Witneſſes.

Oates. Then I will not aſk him, but propoſe it to your Lordſhip.

L. C. J. Ay, propoſe what Queſtions you pleaſe, and if they are fair, I'll aſk them.

Oates. Then, my Lord, I would aſk Mr. *Walker* this Queſtion; When 'twas he met me with a Diſguiſe, in what Year and what Month?

Mr. *Walker*. My Lord, I have been interrogated in former Times upon this Point, ſix or ſeven Years ago; and I do confeſs I did ſee the Man, and met him between *St. Martin's-Lane* and *Leiceſter-fields*; and truly, my Lord, I think I may ſay it was my Unhappineſs to meet with him; for I have had a great deal of Trouble by it ſince, Subpœna upon Subpœna, Trouble after Trouble, that I am even weary of it; for I am an old Man. But I do ſay I did meet him at that end of the Town, between *St. Martin's-Lane* and *Leiceſter-fields* in a ſtrange Diſguiſe; he was juſt like a Vagrant, a very Raſcal, and that's true, I believe, my Lord.

Mr. Att. Gen. Did you know him before?

Mr. *Walker*. Yes, or I had not known him then.

L. C. J. When was this?

Mr. *Walker*. My Lord, I'll tell you; my Lord Chief Juſtice *Scroggs*, when I was at the *Old-Bailey*, aſk'd me if I knew what time I ſaw him thus? Said I, My Lord, 'tis almoſt a Year and an Half ſince I ſaw him; and I being an old Man, little thought it worth the while to lay up the particular time in my Memory: but I'll caſt about in my Thoughts to make the beſt Conjecture I can; for now I will not be upon my Oath, it being but Conjecture.

L. C. J. But now you are upon your Oath, remember that, Man.

Mr. *Walker*. My Lord, I am ſpeaking what I ſaid to the Court at that time.

L. C. J. Pray do not tell us an old tedious Story of the Queſtions and Anſwers in the *Old-Bailey*, but mind what is ſaid to you here; my Queſtion is now, what time you ſaw *Oates* diſguiſed between *St. Martin's-Lane* and *Leiceſter-fields*, as you ſay you did.

Mr. *Walker*. My Lord, I cannot preſcribe the time; but I'll gueſs as near as I can with the beſt probability, and that is, upon this Circumſtance; when I went forward into *Leiceſter-fields*, in the Court before the Houſe, I ſaw the Elm-Trees budded forth as big as an Hazle-Nut; ſo that I did conjecture by that Token, it might be between *Lady-Day* and the latter end of *April*; that was the time, as near as I could gueſs.

L. C. J. In what Year was it?

Mr. *Walker*. I cannot very well tell what Year it was.

L. C. J. Was it in 77 or 78?

Mr. *Walker*. Truly, my Lord, I never thought it worth ſo much taking notice of, to fix the particular time in my Memory.

Oates. Whether was it that Year the Plot was diſcovered, or the *Michaelmas* following?----------Mr. *Walker*. I cannot tell when the Plot was diſcover'd, or whether it be found out yet or no?

Oates. But was it the Year before you were examined?

Mr. *Walker*. To anſwer you, Mr. *Oates*, when it was exactly, I cannot ſay; truly I would give you the beſt Satisfaction I could, and do you as much Right as I would do myſelf. I think if that time when I was examined were in 77 or 78, it was near a Year and a Quarter before I did ſee you.

L. C. J. Well, what can you make of this?

Oates. 'Tis not to be ſuppoſed he is a very willing Witneſs; but yet he ſays, 'twas a Year and a Quarter before the Trial in which he was examin'd, which muſt be in *April* 78.

L. C. J. I would know this Queſtion of you: Were you preſent at the *Old-Bailey*, when the five Jeſuits were tried?

Mr. *Walker*. I was there, my Lord.

L. C. J. Were you at any Trial but one?

Mr. *Walker*. I was not examined at any time but one.

L. C. J. Have you any more Queſtions to aſk him?

Mr. *Walker*. My Lord Chief Juſtice that then was, did aſk me, If I knew any of the Priſoners at the Bar; and I looked upon all of them, and ſaid I knew not either of them.

Oates. Pray, my Lord, aſk him, whether he was not produced, when the *St. Omers* Men were produced, and gave his Evidence as to my being in Town at that time.

L. C. J. He hears the Queſtion, let him anſwer it.

Mr. *Walker*. I am not able to anſwer you, becauſe you put ſeveral Queſtions together; but this I ſay, I was never examined but once, though I have been ſubpœna'd often, to my great Torment and Trouble.

Oates. Did you give Evidence at that Trial, that you ſaw me in *April* 78?

Mr. *Walker*. I teſtified that I ſaw you, and by ſuch Circumſtances, it muſt be about ſuch a time as well as I could ſuggeſt; but I could not, nor cannot ſpeak poſitively.

Oates. Now, my Lord, I ſhall go on to another part of my Evidence, and call ſome other Witneſſes; and firſt of all, I come to Mr. Serjeant *Maynard*, and I deſire he may be ſworn. [*Which was done.*

L. C. J. What do you aſk my Brother *Maynard?*

Oates. I call Mr. Serjeant *Maynard* to give an account of the Proceedings of the Houſe of Commons upon my Diſcovery of the Popiſh Plot.

L. C. J. We will not admit that to be any Evidence at all; nor can it be by Law.

Oates. My Lord, Mr. Serjeant *Maynard* was one of the Committee of the Houſe of Commons that managed the Impeachment, and can give an account of the Evidence and Records that were produced at the Trial of the late Viſcount *Stafford*.

Mr. Serj. *Maynard*. I know nothing truly, nor can I remember any thing of it now.

L. C. J. He ſays he remembers nothing.

Mr. Serj. *Maynard*. If Mr. *Oates* had told me before-hand, when he ſubpœna'd me, what time, and what particular things he would have examin'd me to, probably if I was there, I have Notes that I then took; but I can never ſwear to my Memory, for any Cauſe ſo long ago.

Oates. My Lord, I am very ſorry Mr. Serjeant *Maynard*'s Age ſhould ſo impair his Memory.

L. C. J. I dare ſay, you are not more ſorry than he is for his Age.

Oates. Well, my Lord, I cannot help it: Then I deſire Mr. *Blayney* may be aſk'd, whether he has his Notes of my Lord *Stafford*'s Trial.

Mr. *Blayney*. No, my Lord, I have them not here; Mr. *Oates*, by his Ticket of his Subpœna, deſir'd only the Notes of *Ireland*, *Whitebread*, and *Langhorn*'s Trial.

L. C. J. But I muſt tell you, Mr. *Oates*, if thoſe Notes were here, they could be of no uſe to you, without the Record of my Lord *Stafford*'s Attainder; if you aſk any thing upon another Trial, you muſt produce firſt the Record of that Trial, and then you may examine to what was given in Evidence at the Trial.

Oates. My Lord, it is of Record in the Houſe of Lords.

L. C. J. But that we are not to take notice of, without the Record be brought in Evidence before us: We muſt go according to the Courſe of Law in all Caſes.

Oates. Then, my Lord, I muſt betake myſelf to another Part of my Defence; and that is, to prove the frequent Attempts made to baffle the Diſcovery of this Popiſh Plot, and to ſtifle the Murder of Sir *Edmundbury Godfrey*, and to fling it upon a Proteſtant Peer.

L. C. J. But that is no Evidence neither.

Mr. Juſt. *Holloway*. Surely that is very collateral Evidence.

L. C. J. Nay, it is no Evidence at all in this Caſe; we muſt not admit of any ſuch Evidence to be given.

Oates. Good my Lord, if this had not been true, which was ſworn by Witneſſes that had diſcovered the Plot, why ſhould theſe Men appear to ſuborn Witneſſes (and they have been convicted of Subornation, and endeavouring) to baffle the Diſcovery, particularly as to Juſtice *Godfrey*'s Death?

L. C. J. Mr. *Oates*, I muſt keep you to Evidence that is proper; we are upon our Oaths to go according to Law, and the Jury are upon their Oaths to try this Cauſe according to the Evidence; and we are bound to give them this Advice in Point of Law, that nothing muſt weigh, or have any Conſideration with them, that you offer, if it be not legal and proper Evidence. If you can ſay and prove, that any of the Witneſſes that have been produced this Day againſt you have been tampered with; or that they have tampered with any of the former Evidence, that is a good Evidence againſt them; but it muſt not be by any means admitted, that the Time of the Court be taken up, or the Jury inveigled by that which has not a natural Tendency to the Buſineſs before us.

Oates. But if your Lordſhip pleaſe, this Conſult in *April* 78, was diſcover'd to the Houſe of Commons, among the other parts of the Diſcovery of the Treaſons of ſeveral Noblemen and Gentlemen: Now upon the Diſcovery of the Plot, I deſire that I might give in Proof the Proceedings of the Houſe of Commons.

L. C. J. No, no, you cannot.

Oates. Pray, my Lord, is not the Journal of the Houſe of Commons Evidence?----------*L. C. J.* No, we ſay it is not at all.

Oates. Is that the Opinion of the whole Court, my Lord?

L. C. J. Yes, undoubtedly, there is no Queſtion of it.

Oates. Is any Record of the Houſe of Lords Evidence?

L. C. J. Yes, I tell you it is, and that becauſe it is a Record; but there is a vaſt Difference between the Records of the Houſe of Lords, and the Journals of the Houſe of Commons.

Oates. The Journals have been deliver'd in as Evidence before now.

L. C. J. I cannot tell what they have been, but I am ſure they ought not to be, and whatever they have been elſewhere, they cannot be here; and I'll tell you a plain Reaſon for it, becauſe they have not ſo much Power in the Houſe of Commons, as to give an Oath: But the Houſe of Peers is a Court of Record, and therefore their Proceedings are Evidence, as the Proceedings of the *King's-Bench* here, or any Court of Record are.

Oates. Then, my Lord, if that part of my Evidence be over-rul'd, before I come to ſum up my Evidence, I deſire to offer this thing: My Lord, I can produce ſeveral Members of the Houſe of Commons in the ſeveral Parliaments, that can remember how they proceeded againſt the Lords in the Tower, and the Popiſh Traitors, upon my Diſcovery, and what Credit I had in the Houſe of Commons; Will that be Evidence, pray my Lord?

L. C. J. No, it will not; if you will produce any one that you told this to before the publick Diſcovery, that may be Evidence ſuch as it is, and is often allow'd; but what the Houſe of Commons did upon the Diſcovery, that's not any Evidence at all.

Oates. Then, my Lord, ſuppoſe I can prove, that I gave an early and timely Account to any of the Houſe of Lords of this Conſpiracy, and did acquaint them with the Conſult in *April* as Part of it; I deſire to know whether in producing any of thoſe Lords, I ſhall give that which is Evidence?

L. C. J. Call whom you will that you told any thing to, that is a ſort of Evidence, I tell you.

Oates. Then I call my Lord of *Devonſhire*.

L. C. J. Here is my Lord of *Devonſhire*.

Oates. My Lord, I beg your pardon for the trouble I put your Lordſhip to; but your Lordſhip ſees the Neceſſity of it: It is for the Juſtification of the Truth, to which I will give my Blood for a Seal, if I be called to it.

L. C. J. My Lord of *Devonſhire*, your Lordſhip muſt be ſworn.

[*Which was done.*

Oates. Will your Lordſhip pleaſe to acquaint the Court and the Jury (your Lordſhip being at that time a Member of the Commons Houſe) what Account I gave there of this particular Conſult (to keep to that Point that is here in queſtion) before the Court this Day, and with what Credit I was received in all theſe Parliaments; for my Credit and the Credit of the Parliament is now in queſtion.

Earl of *Devonſhire*. My Lord, all I can ſay to it is this; you, Mr. *Oates*, gave a long Account of a Conſult and Conſpiracy among the Jeſuits: But I cannot remember any Particular, it is ſo long ago.

L. C. J. Every body knows this, you gave a long Narrative in to the Houſe of Commons and Houſe of Lords too.

Oates. Ay, and it was a true one; but my Lord of *Devonſhire*, I deſire your Lordſhip would be pleaſed to give the Court and the Jury an Account, with

with what Credit I was received in thoſe three Parliaments your Lordſhip ſat as Member in.

Earl of *Devonſhire.* I remember that the two *Weſtminſter* Parliaments after the Long Parliament, were ſo ſatisfied with the Diſcovery, that they paſſed a Vote in the Houſe of Commons——

L. C. J. The Votes of the Houſe of Commons are no Evidence at all.

Oates. They ſhew what Opinion the Parliament was of.

L. C. J. Many Votes that have been made of late, I hope will neither be Evidence for, nor put in practice again.

Earl of *Devonſhire.* My Lord, it is well known to all the World the Vote I ſpeak of.

L. C. J. Nay, my Lord, I ſpeak not to your Lordſhip; for we all know thoſe Votes that I ſpeak of were not according to your Lordſhip's Mind: But we only ſay thus in general, that becauſe the Houſe of Commons cannot give an Oath, therefore what is done there, is not an Evidence here, or in any Court of Record.

Oates. But, my Lord, that I muſt urge; I do perceive that in the time of Parliament, and during the Sitting of the Houſe of Commons, Votes have been brought in as Bars to the Proceedings of Inferior Courts; and this Court does not look upon itſelf as ſuperior to the great Court of Parliament: and then if they may be brought——

L. C. J. Which they cannot be, nor never were, nor I am ſure ought to be; nor I hope never will be as long as there is any Juſtice in the Nation.

Oates. But, my Lord, you will allow the Records of the Houſe of Lords to be Evidence?

L. C. J. Yes, I tell you, I will, and for that reaſon, becauſe they are Records out of a Court of Record: An Order of Court-Baron is no Evidence, becauſe it is no Court of Record; but a Judgment of a Court-Leet is Evidence, becauſe it is a Court of Record; and there's the difference.

Oates. My Lord, I call in the next place my Lord of *Angleſey*, if he be in Court.----------*L. C. J.* No, he is not here.

Oates. Pray, will you give me leave to call my Lord Keeper then?

L. C. J. See in the Court of Chancery, whether my Lord Keeper be there.

Cryer. No, my Lord, he is not; he's gone.

Oates. He was *ſubpœna'd*, my Lord, and I can have Affidavit made of it: He was a material Witneſs for me.

L. C. J. I cannot help it; he is not here.

Oates. Pray call my Lord Chief Baron.

L. C. J. Go one of you into the Exchequer, and ſee if my Lord Chief Baron be there, and tell him, Mr. *Oates* calls for him as a Witneſs.

Oates. And Mr. Juſtice *Levinz.*

Cryer. The Courts are both up; and they are all gone.

Oates. They were *ſubpœna'd*, I am ſure, to be here; well, go and ſee, whether they are or no.

L. C. J. In the mean time do you call ſome other Witneſſes.

Oates. I call my Lord Chief Juſtice *Jones.*

L. C. J. The Cryer is gone to look for the Judges.

Oates. Then I call my Lord of *Clare.*

L. C. J. Here is my Lord of *Clare.*

Earl of *Clare.* My Lord, I can remember nothing, it is ſo long time ago.

L. C. J. My Lord of *Clare* ſays, he can remember nothing.

Oates. I only call my Lord of *Clare* to aſk him one Queſtion, which I hope his Lordſhip will remember.

L. C. J. Swear my Lord of *Clare.* [*Which was done.*
Well, what is it you aſk my Lord?

Oates. My Lord of *Clare*, the Queſtion I would aſk your Lordſhip is, with what Credit I was received in the Houſe of Lords upon my Diſcovery; and that you will to the beſt of your Memory, give my Lord and the Jury an Account, how the Houſe of Peers proceeded upon my Evidence?----------Earl of *Clare.* Truly, my Lord, I cannot give any Account, it is of ſo long ſtanding.

Oates. It is a great while ago, my Lord, and therefore it is hard meaſure, that I muſt be brought to this Trial ſo long after.

L. C. J. If it be a long time, we cannot help it: We cannot force People to proſecute ſooner than they will do.

Oates. I deſire Mr. Baron *Gregory* may be called.

L. C J. He is not here, but ſee and call my Brother *Gregory*; I hear they are all together in the Treaſury.

Oates. Then I call Mr. *Williams*, that was Speaker of the Houſe of Commons.----------*L. C. J.* Here is Mr. *Williams.* [*He was ſworn.*

Oates. I deſire, Mr. *Williams*, becauſe you were then Speaker of the Commons Houſe of Parliament, you would be pleaſed to tell what you remember concerning the Credit I received in that Parliament, in which you were Speaker, upon the Diſcovery I made of the Popiſh Plot; and particularly as to the Conſult of Jeſuits to kill the late King in the Month of *April* 78.

Mr. *Williams.* My Lord, my Memory is never very good; but eſpecially in a Caſe that is at ſuch a diſtance of time, and which conſiſts of ſo many Particulars as this, I mean Mr. *Oates*'s Diſcovery. But this, my Lord, I do remember; he was examined at the Bar of the Houſe of Commons, and gave a long account: But it is more than any Man can do, to tell every Particular that is ſaid in that Houſe.

L. C. J. Was he upon his Oath, Mr. *Williams*, at the Bar of the Houſe of Commons?----------Mr. *Williams.* My Lord, he was as other Men are, that are examined in the Houſe of Commons.

L. C. J. We all know it could not be upon Oath, they have not Power to give an Oath.

Mr. *Williams.* What Reputation he was of, I cannot ſay ſo well, as what their Proceedings did teſtify.

L. C. J. Nor in caſe they did believe him never ſo much, is it any thing to this Queſtion; which is, whether he ſwore true or falſe at *Ireland*'s Trial?

Mr. *Williams.* My Lord, when a Perſon is brought to the Bar, there to be a Witneſs in any Cauſe, every body is ſilent, and the Witneſs is heard what he has to ſay; and ſo was Mr. *Oates.* When he had done, he withdrew; but what the Opinion of the Houſe was upon it, I muſt ſubmit to their Votes and Reſolutions.

L. C. J. Which, you know, Mr. *Williams*, are no Evidence.

Mr. *Williams.* That I muſt ſubmit to the Court.

Oates. I deſire my Lord of *Clare* would be pleaſed to tell, if he remembers, what Credit the Houſe of Lords gave me upon my Diſcovery.

Earl of *Clare.* My Lord, I do not well hear Mr. *Oates*'s Queſtion.

Oates. My Lord, my Queſtion is this, When I was brought to the Bar of the Lords Houſe, whether I did not receive the Thanks of the Lords Houſe for my Diſcovery?

Earl of *Clare.* Truly, Sir, at the beginning of the Diſcovery of the Popiſh Plot I was not in Town, nor in the Houſe.

L. C. J. But now, Mr. *Oates*, I hope you are ſatisfied by the Anſwer that is given by your own Witneſs, that what is done in the Houſe of Commons is no Evidence; and I would have you remember that is the Reaſon of it, becauſe they are no Court of Record, and becauſe they cannot ſo much as give an Oath.

Oates. My Lord, I ſee my Lord of *Huntingdon* is here; and though I did not ſubpœna his Lordſhip, nor deſign'd to have troubled him, yet being here, I deſire his Lordſhip would give an account what Credit I had in the Houſe of Lords upon my Diſcovery.

L. C. J. Swear my Lord of *Huntingdon.* [*Which was done.*

Earl of *Huntingdon.* I do believe, my Lord, Mr. *Oates*'s Diſcovery found a good reception in the Houſe of Lords; but it was grounded upon the Opinion, that what he ſaid was true, and that he was an honeſt Man; for ſo the Houſe then accounted him to be: and upon this it was their Lordſhips gave credit to his Teſtimony. And indeed had the matter been true, it was of high importance to have it throughly examin'd: But ſince that time it being apparent there were ſo many and great Contradictions, Falſities, and Perjuries in his Evidence, upon which ſo much innocent Blood hath been ſhed; I believe a great many Perſons who were concerned in the Trials of thoſe unfortunate Men, are heartily afflicted and ſorry for their ſhare in it: And I do believe moſt of the Houſe of Peers have altered their Opinion, as to this Man's Credit; and look upon his Evidence as I do, to be very falſe.

L. C. J. Do you hear him, Mr. *Oates?*

Oates. No, my Lord, I do not very well.

L. C. J. Then, my Lord of *Huntingdon*, turn your Face to the Jury; and ſay what you ſaid to us over again.

[*Which his Lordſhip did to the ſame effect.*]

Oates. Very well, my Lord.

Mr. Juſt. *Withins.* There's your Credit with the Houſe of Lords, Mr. *Oates.*

Oates. My Lord, I call'd you in to anſwer my Queſtion, as to ſomewhat that is paſt, and not to give your Judgment how you are inclined to believe now.

L. C. J. Nay, but with your Favour, it was to declare what Opinion the Houſe of Lords had of you; and he ſays very well, and that this is in truth the ſame Anſwer that muſt be given for the Judges and the Juries that tried the People upon your Evidence. Says my Lord of *Huntingdon*, At firſt truly I did believe Mr. *Oates* did ſwear true, and he had Credit with me, and ſo he had with others; but now upon further Examination into things, and in proceſs of time Diſcoveries have been made of the Truth, and that what he ſwore is falſe; ſo that now I believe in my Conſcience he is actually forſworn, and has drawn innocent Blood upon the Nation; and no body will believe a Word he ſays.

Oates. Well, my Lord, I have done with my Lord of *Huntingdon.*

Mr. Juſt. *Witkins.* And he has done with you, as I perceive.

L. C. J. Yes, truly, methinks ye ſhake hands, and part very fairly.

Mr. Juſt. *Holloway.* There's my Lord Chief Baron; what ſay you to him, Mr. *Oates?*

L. C. J. Is my Lord Chief Baron ſworn?--*Cryer.* Yes, my Lord, he is.

L. C. J. Then what do you aſk him?

Oates. My Lord, I call'd your Lordſhip, becauſe your Lordſhip ſat as a Commiſſioner of *Oyer* and *Terminer* in the *Old-Bailey*, at *Ireland*, *Whitebread* and *Langhern*'s Trials; and that which I call your Lordſhip for, is to give an account to my Lord and the Jury, of the Satisfaction your Lordſhip received concerning the Fulneſs and Fairneſs of the Evidence then deliver'd by me in thoſe Trials.

L. C. Baron. My Lord, I cannot charge my Memory with it.

L. C. J. He ſays he cannot remember.

L. C. Baron. No, not in particular; but in general I remember there were a great many Perſons that gave Evidence in thoſe Trials on the one ſide and the other: There were a great many Perſons that came from *St. Omers*, that gave Evidence there of Mr. *Oates* being at *St. Omers*, when he ſaid he was in Town.

Oates. And what Credit were they of, at that time, pray, my Lord?

L. C. Baron. I think they were Perſons of very good Credit; they were Gentlemen of good Families, many of them.

Oates. Did the Jury believe them at that time?

L. C. Baron. I cannot tell what the Jury did.

L. C. J. Nor is it any matter at all what they did: But I aſk you, my Lord, but one Queſtion: Have you heard this Evidence that has been given here to-day?----------*L. C. Baron.* No, my Lord, I have not.

L. C. J. If you had, I would then have aſked you, whether you believe him now or not?----------*L. C. Baron.* Truly, my Lord, I never had any great Faith in him, I do aſſure you, as to myſelf.

Mr. Juſt. *Withins.* You hear what he ſays, Mr. *Oates*; you had never any great Credit with him.

Oates. My Lord, I am not at all concerned at this; I value myſelf more upon my own Innocency and Integrity, than any Man's good or bad Opinion whatſoever.

L. C. J. Ay, your Innocency is very great!

Oates. Then, my Lord, I will conclude my Evidence.

Mr. Att. Gen. My Lord, before Mr. *Oates* goes to ſum up his Evidence, we have ſome other Evidence to give.

L. C. J. What ſay you, Mr. *Oates?* Will you call any other Witneſſes to this Point?——*Oates.* My Lord, if they bring any other Evidence, I hope I may have my turn to anſwer it.

L. C. J. Ay, truly, if they bring any new Evidence that you have not applied to already, God forbid that you ſhould not be heard; but if it only gives an Anſwer to the Evidence that has been given, then you muſt not retort on them; for they are to have the laſt Word: but it is not fit withal, that you ſhould be denied any thing that is neceſſary or really of advantage to you.---------- *Oates.* If they offer any new Evidence to my Diſreputation, the Queſtion is, whether I may have a time allotted me to make my Defence againſt that Evidence?

L. C. J. Ay, ay, in God's name, by all means.

Mr. Att. Gen. This is the uſual Method of Proceedings; but I would know if Mr *Oates* has any more Witneſſes to examine to this Point, that he has examin'd to already?—*Oates.* My Lord, I think I have no further Evidence at preſent, till I hear what they further ſay.

Mr. Att. Gen. Then may it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Oates. I hope when your Lordſhip ſums up the Evidence, you'll remember what has been ſaid by the Witneſſes.

L. C. J. You may aſſure yourſelf, I will remember whatſoever has been ſaid on the one ſide and t'other, as near as I can: The Gentlemen of the Jury are Men of Underſtanding, and I ſee they take Notes, and I'll give them all the Aſſiſtance I can.

Oates. Truly, my Lord, I have ſome more Witneſſes to the ſame purpoſe, if your Lordſhip pleaſe to ſpare time to hear them.

L. C. J. Ay, ay, we ſit here to hear the Witneſſes, call whom you will.

Oates. Is my Lord *Lovelace* here?

L. C. J. I cannot tell, I do not ſee him here; but you did call my Brother *Gregory*, there he is, what ſay you to him?

Oates. Mr. Baron *Gregory* was Speaker of the Houſe of Commons in one of the *Weſtminſter* Parliaments.

L. C. J. Swear my Brother *Gregory*. [*Which was done.*

Oates. I deſire your Honour would be pleaſed to give this Court and the Jury an account, you being Speaker of the Houſe of Commons, what Credit I received there in that Houſe upon my Diſcovery of the Popiſh Plot?

Mr. Bar. *Gregory.* My Lord, that is a pretty general Queſtion, it is not poſſible for me to remember the Proceedings in the Houſe of Commons ſo long ago.

L. C. J. But, Brother, I tell you what he means by it: He would have you to anſwer this Queſtion, whether he was of good Credit in the Houſe of Commons, or not?

Mr. Bar. *Gregory.* I know not what Anſwer to make about the Credit he there had; any Member of the Houſe of Commons may give as good and better an account in that matter than I; and truly I do not remember that Mr. *Oates* was before the Bar of the Houſe when I was Speaker: I believe it was before I was Speaker, that he was examined at the Commons Bar.

L. C. J. Well, he can remember nothing of it.

Oates. Is my Lord *Lovelace* there?

Cryer. He has been called, but he is not here.

Oates. Call my Lord of *Stamford.*—*Cryer.* He is not here.

Oates. Call Sir *Francis Winnington.*---*Cryer.* He is not here.

Oates. Call *Silas Titus*, Eſq.—*Cryer.* He is not here.

Oates. Call Sir *George Treby.*—*Cryer.* He is not here.

Oates. Call Sir *Francis Pemberton:* Theſe have been all ſubpœna'd.

Cryer. He is not here.

Oates. Is my Lord Biſhop of *London?*—*L. C. J.* Here is my Lord Biſhop of *London*, pray ſwear my Lord Biſhop of *London*. [*Which was done.*

Oates. I beg your Lordſhip, if you can, would give an account of your Remembrance in this matter: Your Lordſhip was often in Committees of the Houſe of Peers about this Buſineſs, and from firſt to laſt you were in the Committee for further Examination of the Popiſh Plot; and you were not only of the Committee, but you alſo ſat as a Baron in the Houſe. I humbly beg your Lordſhip would pleaſe to tell, as far as you can charge your Memory, what Reputation I had in the Houſe of Lords, where I was upon my Oath; and in particular, whether your Lordſhip remembers that I received the Thanks of the Houſe for the Service I had done for the King and Kingdom in the Diſcovery.

Mr. Juſt. *Holloway.* It is a long Queſtion, my Lord.

L. B. of London. It is ſo, my Lord; but my Anſwer will be very ſhort: For it is a very little I can remember after ſo great a diſtance of Time, and the Tranſactions have been publick; nor can I acquaint the Court with any thing, but what is known already; and that is this, I remember that the Plot was diſcovered by him, and his Diſcovery was receiv'd as Evidence at the Bar of the Houſe of Lords, and believ'd, and the Thanks of the Houſe were given him at that time for it.

L. C. J. There's Sir *George Treby*; what do you aſk him? But firſt let him be ſworn. [*Which was done.*

Oates. Pray be pleas'd to aſk Sir *George Treby*, who was Chairman of the Committee of Secrecy, and was Manager in the Trial of the Lord Viſcount *Stafford*, that he will be pleas'd to tell what Credit I had in both Houſes upon that Trial.

L. C. J. I told you before, you muſt urge nothing of that Trial, unleſs you have the Record here.

Oates. Then, my Lord, I deſire Sir *George* may give an account what he knows of the Correſpondencies between Mr. *Coleman* and the *See of Rome.*

L. C. J. No, that will not be any Evidence at all in this Caſe; for that is not at all here in queſtion.

Oates. Then, my Lord, I deſire Sir *George Treby* may ſpeak what he knows of my Credit in the Houſe of Commons.

L. C. J. Ay, what ſays he to that?

Sir *George Treby.* My Lord, I can anſwer for nothing but my own Judgment; I cannot tell what Credit he had with any particular Member of the Houſe of Commons; I do remember, indeed, he was there ſeveral times at the Bar, but not upon Oath, but as others uſually are there: and concerning the Diſcovery, there was a Vote all the Kingdom knows of, that they were ſatisfied there was a Plot, but whether that Vote was grounded altogether upon his Evidence, or how far upon his Evidence, I cannot tell, nor what any Man thought of it beſides myſelf.

Oates. I deſire Mr. Serj. *Pemberton* might be call'd again.

Cryer. He is not here.

Oates. Then pray call Sir *William Dolben.*---*Cryer.* He is not here neither.

Oates. Then I call Sir *Edward Atkins.*---*Cryer.* He is not here.

Oates. Call Mr. *Richard White.*---*Cryer.* He is not here.

Oates. My Lord, theſe were all ſubpœna'd, but they will not come; they are frighted away.

L. C. J. We know nothing of that, they may come if they will.

Oates. Call Mr. *Thomas Cox.*

Cryer. He is not here; but here is Mr. *White.*

Oates. I pray he may be ſworn. [*Which was done.*] I deſire to know of him, whether he were not a Jury-man upon the Trials of *Ireland* and *Whitebread?*—Mr. *White.* No, I was not.

Oates. Then I am miſtaken; I beg your pardon for this trouble.

L. C. J. Well, there's my Brother *Dolben* come now. What ſay you to him? Swear my Brother *Dolben.* [*Which was done.*

Oates. May it pleaſe you, Sir *William Dolben*, you ſat as a Judge upon the Trials of Mr. *Ireland*, Mr. *Whitebread*, and Mr. *Langhorn*; and I call you, Sir *William Dolben*, to give an account to my Lord and the Jury, what Credit my Evidence had at thoſe Trials, and how the Jury was ſatisfied with it.

L. C. J. There is the Verdict, Man, that finds the Perſons you ſpeak of, guilty.

Oates. If that be Evidence enough, I am ſatisfied, my Lord.

L. C. J. Is not that better than his Opinion to ſhew how the Jury was ſatisfied? Ay, certainly; better than the Opinion of all the Twelve Judges for that point; they would not have convicted them except they had been ſatisfied with the Evidence.

Sir *William Dolben.* Have you done with me, Sir?—*Oates.* I have, Sir.

L. C. J. Have you called all your Witneſſes, or will you call any more?

Oates. No, my Lord, I will call no more at preſent.

Mr. Att. Gen. Then, my Lord, we'll go on with another part of our Evidence. Gentlemen, you ſee Dr. *Oates*, to ſupport his Credit, has given two ſorts of Evidence; the one is, ſome Records of Trials at the *Old-Bailey*, wherein he had the good hap to be believed; the other is, ſeveral noble Perſons, and other Gentlemen, as to the Credit he has had given to his Evidence before. What they have ſaid I ſhall not meddle with at all at this time, but leave the Obſervations that are to be made thereupon, till we come to ſum up the Evidence for the King. But as to the firſt part of his Evidence, that is, as to the Records produced, and the Verdicts therein given, and the Opinions of the Judges, we have this to ſay in point of Evidence as an Anſwer. Firſt, we ſhall produce to you ſeveral Records, wherein he has not been believed; at that of Sir *George Wakeman*, and my Lord *Caſtlemain:* and not only ſo, but we ſhall actually prove that he was perjur'd in them; that what he ſwore againſt them was utterly falſe, and you will hear this was not the firſt time that he had ſworn falſe; for in an Accuſation that he gave at a Trial at *Haſtings*, we ſhall prove he ſwore Buggery upon a Perſon, which was prov'd falſe.

Oates. Can you produce any ſuch Record, Mr. *Attorney?*

Mr. Att. Gen. Yes, we ſhall.

L. C. J. Do not interrupt the King's Counſel; let them go on; you ſhall be heard quietly in your time.

Mr. *Hanſes.* Nay, Mr. *Oates* need not be ſo haſty as to aſk for the Records, by degrees we ſhall produce Records enough againſt him.

Mr. Att. Gen. We ſhall prove alſo by the Journals of the Lords Houſe, that he did forſwear himſelf; for after he had there made a long Narrative of the Plot, being aſk'd, whether he had any more to accuſe than thoſe Perſons that he had nam'd, and this upon his Oath; he did there ſwear that he had no more Perſons to accuſe.

Oates. That were Members of that Houſe, it was.

L. C. J. Sir, you muſt be quiet till they have done.

Mr. Att. Gen. But ſoon after he bethought himſelf, and accuſes the Queen and his Royal Highneſs the Duke, our now preſent Sovereign, of being in the Plot.

Oates. What Plot did I accuſe them of?

L. C. J. Nay, you muſt ſit down and be quiet; how now, will you not let the King's Counſel ſpeak? You were heard quietly, and ſo ſhall they be too.

Oates. Well, my Lord, I will be quiet.

Mr. Att. Gen. Theſe things, my Lord, will ſhew what Credit he was of at that time. Another thing we ſay to theſe Records, is this; There were two other Witneſſes, Mr. *Clay* and Mr. *Smith*, beſides thoſe that were now produced, which were the Home-Witneſſes, that did poſitively ſwear, that in *April* and *May* 78, *Oates* was here in Town; he did then indeed make uſe of thoſe other canting Witneſſes, for I cannot call them any otherwiſe, that beat ſo about the buſh, and ſpeak of Uncertainties, and contradict one another; but thoſe that I name, *Clay* and *Smith*, were Home-Witneſſes; and there lay the Credit of his being in town, when the Witneſſes, which came from *St. Omers*, ſay he was beyond Sea.

Oates. My Lord, I beg I may aſk one thing; whether my Lord Biſhop of *London* be there ſtill?—*L. C. J.* No, my Lord of *London* is gone.

Oates. I am ſorry for it, becauſe he could have given an account of this *Smith*, for he knows him.

L. C. J. I cannot help it, you ſhould have deſired him to ſtay while he was here; go on, Mr. *Attorney.*

Mr. Att. Gen. I will, my Lord; and this which I am going to ſay, as an Anſwer to his Evidence, will give a full Anſwer to that other Objection which he made; which was, what was the Reaſon, when he had given ſuch an Evidence ſo long ago, it ſhould be delay'd ſo long ere it was proſecuted. I'll give your Lordſhip a Reaſon, and a ſatisfactory one: 'Till thoſe Diſcoveries were made that have lately been made, the Evidence theſe Witneſſes gave, carried a Probability of Truth in it; and Sir *Richard Barker* himſelf added his Teſtimony to it, tho' he does not think fit now to come and confirm it: I ſay hitherto it had ſome ſemblance of Truth, and ſo did balance the other Teſtimony of them that came from *St. Omers.* But when we had diſcover'd that it could be teſtified by twenty Perſons, that had not been at any of the former Trials, that he was certainly all that time at *St. Omers*; and when we had diſcover'd the Tampering and Practices of Mr. *Oates*, in ſuborning theſe Witneſſes to ſwear as corruptly as he ſwore at firſt, which we ſhall ſhew you palpably to be true that he did ſo; that gave us Encouragement to go on to make Enquiry into the Matter: but this was not diſcover'd till half a Year ago, or thereabouts. Now as to one of thoſe Witneſſes, that is, Mr. *Clay*, the Caſe ſtands thus: indeed I expected he would have brought the ſame Witneſſes he did then, for I preſume they are all about Town, but he has not thought fit to do that: This *Clay* was then a Prieſt, and a Priſoner in the Gate-Houſe for that very reaſon, as being accuſed for being a *Romiſh* Prieſt. While he was there a Priſoner, Mr. *Oates* comes and threatens him, and ſollicits him to ſwear that he was here in town in *May* 78, that he might be provided with Proof againſt what the Boys of *St. Omers* (as he call'd them) would come to teſtify; and threaten'd him, if he did not, he would hang him, for he could ſwear him to be a Prieſt;

a Prieſt; and this was about three or four Days before the Trial of the five Jeſuits: At length they came to a Bargain and Agreement, as you will hear, that he ſhould come and ſwear this; when Mr. *Oates* cannot pretend that the Evidence of *Clay* was known at all by any of the Committees that were concern'd in the Management of his Diſcovery; or that he was ſo much as thought of for a Witneſs. But we ſhall prove how it came to paſs; and I believe, if Mr. *Oates* would call him now, (as I do not queſtion he knows where to have him) *Clay* would not be ſo hardy now as to affirm his former Teſtimony. Then as for Mr. *Smith*, his Caſe ſtands thus: Mr. *Oates* had ſworn him into the Plot, as you will find in his Narrative that he gave in upon Oath, which is upon Record, and enter'd in the Journal of the Lords Houſe. He was a Schoolmaſter in *Iſlington*, and *Oates* ſwears High-Treaſon againſt him, and thereupon Warrants went out to take this *Smith*, and Mr. *Oates* was very violent in the purſuit of him but two or three Days before the Trial: and then, when all theſe Witneſſes from *St. Omers* were come, as he knew very well, he was in ſome doubt his Deſign would have fail'd, and then does he prevail with *Smith* to become a Witneſs for him. And 'tis evident he did tamper with him, for that which was done by him at that time: For now he gives him under his Hand (to ſhew the Impudence as well as Villany of the Man, as it has been evident enough in all his Carriage) a Paper that ſhould give him authority to go free from all Proceſs and Arreſts upon any Warrants; and this Protection under Mr. *Oates*'s Hand, is directed to all the King's Officers, thereby commanding them to take notice that this Mr. *Smith*, whom before he had accus'd of being in the Plot, was an honeſt Man, and employed in great Service for the King at that time. This Paper, when produc'd, will ſhew the Time when it was made; and then it will appear, that two Days after *Smith* comes and ſwears, that he din'd with him the firſt *Monday* in *May* 78. This was what *Smith* ſwore then; and upon my mentioning of this Practice, if he have any ſhame in him, it muſt put him in ſome confuſion; for we are prepared to prove by undeniable Teſtimony, that Mr. *Oates* did not dine with this Mr. *Smith* that Day; we ſhall prove it by the whole Family: but the firſt time ever Mr. *Oates* came there, was in *July* after, when he came into *England* from *St. Omers*, which theſe Witneſſes ſay, was the latter end of *June*. Then it was that he was with Mr. *Smith*, and came to his Houſe, and not before. And we ſhall prove by ſeveral Witneſſes, that upon the Queſtion being asked of Mr. *Smith*, how he came to teſtify ſuch a thing? his Anſwer was, I muſt have died for it, if I had not done it; 'twas only a Miſtake in point of time: But he threatened me, and ſo did ſome others too, that he wou'd have me hang'd for being in the Plot, if I did not comply with him, and ſwear this for him. My Lord, I ſhall offer this Evidence that I have open'd, and then I hope we ſhall ſatisfy the Jury, and all that hear his Trial, that he is one of the moſt notorious Villains that lives upon the Earth; to be ſure that ever was known in this Kingdom.

Mr. Sol. Gen. Firſt, my Lord, we'll produce our Records: Where is the Record of Sir *George Wakeman?*

Mr. *Swift.* This is the Record of Sir *George Wakeman*, and this is a true Copy; I examin'd it.

Mr. Sol. Gen. Pray, Sir *Samuel Aſtry*, read a Word or two of it.

Cl. of Cr. Here is an Indictment againſt Sir *George Wakeman* for High-Treaſon; he pleaded not guilty; and here is an Acquittal by the Jury.

Mr. Att. Gen. He being acquitted, I deſire he may be ſworn.

[*Which was done.*]

Mr. Sol. Gen. Pray, Sir *George Wakeman*, was Mr. *Oates* ſworn againſt you at the Trial?—Sir *George Wakeman.* Yes, Mr. *Sollicitor*, he was.

Mr. Sol. Gen. Do you remember what he ſwore againſt you at that Trial?

Sir *George Wakeman.* Yes, I do, Sir.

Mr Sol. Gen. Was that true that he ſwore, by the Oath you have taken?

Oates. Is that a fair Queſtion? I deſire the Opinion of the Court?

L. C. J. Ay! why not?

Oates. He was legally accus'd; he cannot ſwear himſelf off.

L. C. J. But he is legally acquitted too; we have a Record for that here.

Oates. Ay, my Lord, he was acquitted; 'tis well known how.

Mr. Sol. Gen. Come, Sir, was that he ſwore againſt you at your Trial true?

L. C. J. What do you ſay, Sir?

Sir *George Wakeman.* 'Twas falſe upon my Oath, my Lord.

Mr. Sol. Gen. What Particulars did he ſwear againſt you?

Mr. *Pollexfen.* Ay, pray tell the Particulars as near as you can, what he ſwore againſt you.

Sir *George Wakeman.* My Lord, if your Lordſhip pleaſe, I will give a little Account what he ſwore againſt me before the King and Council.

Mr. Sol. Gen. That will not do, Sir *George Wakeman*; we do not ask you that.

L. C. J. No, it muſt be only the Evidence that was given upon this Acquittal, which is the Record here produc'd before us; what did he ſwear againſt you then?

Sir *George Wakeman.* He ſwore at that Trial, as near as I can remember, that I undertook for a certain Sum of Money, 15,000 *l.* as I think it was, to poiſon the King, and I was to do it by the means of the Queen. I was to provide this Poiſon for her, and ſhe was to give it to the King. This he ſwore at my Trial, which God forbid it ſhould be true; nothing can be more falſe.

L. C. J. I ask you by the Oath you have taken, you are now acquitted, and ſo in no danger; and being upon your Oath, ought to ſpeak the Truth, without Malice or Ill-will to him that did accuſe you; was that he ſwore true or falſe?

Sir *George Wakeman.* Falſe, falſe, upon my Oath; I ſpeak it without any Malice againſt the Man in the World.

Mr. Att. Gen. Then ſwear my Lord *Caſtlemain.* [*Which was done.*]

Sir *George Wakeman.* My Lord, I'll be bound to make it appear, that all he ſwore againſt me was falſe.

Mr. Att. Gen. And ſo was it he ſwore againſt my Lord *Caſtlemain*, and others that were acquitted, at the ſame time with Sir *George Wakeman.*

Mr. Sol. Gen. Firſt, read the Record of my Lord *Caſtlemain*'s Acquittal.

Cl. of Cr. Here is the very Record itſelf: it was in this Court my Lord *Caſtlemain* was indicted of High-Treaſon, and tried and acquitted.

Mr. Att. Gen. My Lord *Caſtlemain*, pray what did *Oates* ſwear againſt you at your Trial? And pray tell the Court, whether that was true or falſe.

Earl of *Caſtlemain.* My Lord, as near as I remember, Mr. *Oates* did ſwear at my Trial, that he met me in *Lincolns-Inn-Fields*, and that he went with me ſomewhere to Mr. *Fenwick*'s Chamber in *Duke-ſtreet* in *Covent-Garden*, where he ſaid I did talk a great deal of Treaſon, and a great Diſcourſe of that kind he ſaid there was, and he ſwore that I was in ſeveral Cabals in relation to the King's Death. I was afterwards acquitted by the Jury that tried me, as appears by the Record; and here I do declare, as in the Preſence of God, and with all the Imprecations of Divine Vengeance to fall upon me, if I ſpeak any thing but the Truth, that not only that which he ſwore was falſe, but that I never had any Thoughts in my Heart, much leſs did ever declare in my Words, of any injury or hurt againſt the late King. And beſides, that I never ſaw the Face of *Oates* in my Life, till after I was put in Priſon upon his Accuſation of me.

Oates. My Lord, I deſire to know what Religion that noble Lord is of?

Earl of *Caſtlemain.* I am a *Roman* Catholick, my Lord.

L. C. J. We all know what Religion my Lord is of, you need not aſk that Queſtion.

Oates. That's not the Point, my Lord, I muſt have it declared in Evidence.

L. C. J. I wonder to ſee any Man that has the Face of a Man, carry it at this rate, when he hears ſuch an Evidence brought in againſt him.

Oates. I wonder that Mr. *Attorney* will offer to bring this Evidence, Men that muſt have Malice againſt me———

L. C. J. Hold your Tongue; you are a ſhame to Mankind.

Oates. No, my Lord, I am neither a ſhame to myſelf or Mankind: What I have ſworn is true, and I will ſtand by it to my laſt Breath, and ſeal it, if occaſion be, with my Blood.

L. C. J. 'Twere pity but that it were to be done by thy Blood.

Oates. Ah! Ah! my Lord, I know why all this is, and ſo may the World very eaſily too.

L. C. J. Such Impudence and Impiety was never known in any Chriſtian Nation.

Oates. But this will not do the Work to make the Plot to be diſbelieved; Things are not to be done by great Noiſes: I will ſtand by the Truth.

L. C. J. Can you think to out-face ſuch Evidence as this with your Impudence?

Oates. But I hope you'll give me leave to make my Defence.

L. C. J. Then carry yourſelf as becomes you in the Court.

Oates. My Lord, I will do ſo.

L. C. J. If you do not, we know how to make you do it, you ſhall not think to domineer here.

Oates. My Lord, I hope I do behave myſelf as I ought.

L. C. J. No, you do not.

Oates. Ill Language may provoke any Man's Paſſion, my Lord.

L. C. J. Keep yourſelf within Bounds, and you ſhall be heard; but we'll ſuffer none of your Extravagancies.

Oates. My Lord, if I had been aware of this, I could have produc'd Evidence that would have ſupported my Teſtimony in theſe Matters.

L. C. J. Go on with your Proofs, Mr. *Attorney.*

Mr. *Attorney.* We will do ſo, my Lord.

Earl of *Caſtlemain.* Have you done with me, Sir?

L. C. J. Have you any other Queſtions to aſk my Lord *Caſtlemain?*

Mr. Att. Gen. No, my Lord.

L. C. J. Then your Lordſhip may ſit down again where you were.

Mr. Att. Gen. Now, my Lord, we ſhall ſhow the Lords Journal where it is recorded, that he ſwore he could accuſe no body elſe but thoſe that he nam'd, and then we ſhall give an Account, that ſoon after, he accus'd our preſent Sovereign, and the Queen Dowager.

Mr. Sol. Gen. Where is the Clerk of the Parliament?

Mr. *Swift.* Here he is; Mr. *Walker?*

Mr. Att. Gen. Swear him. [*Which was done.*]

Mr. Sol. Gen. Mr. *Walker*, is that the Journal of the Houſe of Lords?

Mr. *Walker.* Yes, my Lord, it is.

Mr. Sol. Gen. Deliver it in to the Clerk, and let him read it.

L. C. J. Then you muſt direct to the time, or elſe it will be to no purpoſe.

Mr. *Swift.* Sir *Samuel Aſtry*, pray turn to *Friday* the 19th of *November* 78.

Cl. of Cr. Reads. *Die veneris decimo nono Novembris* 1678. *Titus Oates* being call'd in at the Bar, deſired to be heard a few Words before he was ſworn—

L. C. J. Mr. *Attorney*, I doubt this will not be Evidence: It is only a Paper of what he ſaid, taken before the Lords; but now, whether that was upon Oath or no, is the Queſtion; nay it appears it was not upon Oath; but ſays, it was before he was ſworn.

Mr. Att. Gen. My Lord, I deſire it my be read all out.

Cl. of Cr. Reads. *Titus Oates* being call'd in at the Bar, deſired he might be heard a few Words before he was ſworn to ſpeak to the main Buſineſs: which being granted to him, he complained of the Reſtraint he is under, and being debarr'd of the liberty of his Friends coming to him, and of converſing with any body in private, and that no *Engliſhman* ought to be reſtrained, unleſs accuſed by one or more Witneſſes; and pray'd that the Reſtraint might be taken off, that he might be enabled to give his Evidence more cheerfully, and that the Houſe would be pleaſed to addreſs the King for that Purpoſe, and that his Pardon may be renewed, becauſe he is under Miſpriſion of Treaſon. To which the Lord Chancellor told him, that the Houſe would take his Condition into Conſideration: And then being ſworn, he was told by the Lord Chancellor, that the Lords have received an Addreſs from the Houſe of Commons in part upon Evidence by him given there, and that the Houſe expects he ſhould give an Account what that is, which has begot ſuch Aſtoniſhment in the Houſe of Commons as is expreſſed in the Addreſs. Upon which, *Titus Oates* ſaid, that in *July* laſt, he ſaw a Letter from Sir *George Wakeman*———

L. C. J. Is this Evidence, Mr. *Attorney?*

Mr. Att. Gen. My Lord, the uſe we make of it is to prove that he did accuſe the Queen.

L. C. J. What is the Accuſation of the Queen to this Purpoſe?

Mr. Att. Gen. My Lord, we ſay he had ſworn ſeveral Days before, that he had no other Perſons to accuſe.

L. C. J. You ſhould produce that firſt, that he ſwore ſo.

Mr.

Mr. Att. Gen. My Lord, we ſhould ſo, I think, and I thought it had been ſo done.

L. C. J. This is no Evidence, for it is not upon Oath; it does not ſay ſo.

Mr. Att. Gen. Yes, it does, my Lord; but we will go on in order.

L. C. J. Come then, let us ſee what was ſworn about his having no more Perſons to accuſe.

Mr. Att. Gen. Pray, Sir *Samuel Aſtry*, look the 30*th* of *October* 78.

Cl. of Cr. Reads. *Die Mercurii* 30 *Octobris* 1678, *Titus Oates*, being called in, was ſworn at the Bar, and required to anſwer to what he is now called in for, concerning his Diſcourſe with the Lord *Anneſley* laſt Night about the Duke of *York*.

L. C. J. I doubt this will not be Evidence neither; for we are now ſpeaking only about what ſhall be Evidence: We are not now meddling with the methods of the Houſe in their Examination of Witneſſes, but what is Evidence here; ſuppoſe an Oath be adminiſtred to me for a particular purpoſe in the Houſe of Lords, that I ſhall anſwer to what is asked me concerning a Diſcourſe that I had with a third Perſon.

Mr. Att. Gen. Pray, Sir *Samuel Aſtry*, look the next Day; for there, my Lord, he is examin'd upon the general.

Sir *Samuel Aſtry* Reads. *Die Jovis* 31 *Octobris* 1678.

Mr. att. Gen. But firſt read the latter end of the former Day's Proceedings, beginning at thoſe Words, *Upon Conſideration*.

Cl. of Cr. Reads. Upon conſideration of what *Titus Oates* had ſaid, he was call'd in again, and told by the Lord Chancellor, that the Houſe has directed he ſhall be heard again to-morrow at Nine a-clock, and the Lords do expect that by the Oath he hath now taken, he ſhould go thorow with what he hath to ſay, and therefore he ſhould prepare himſelf to deliver the whole Truth of what he knows concerning the Deſign againſt the King's Perſon, and the Government of this Kingdom.

L. C. J. But ſtill, Mr. *Attorney*, we are but where we were; for ſuppoſing upon my Examination upon Oath given me in the Houſe of Lords to a particular purpoſe, that my Lord Chancellor ſhould tell me here, my Lords intend to-morrow, that you, by virtue of the Oath now given you, ſhould come and give them Satisfaction as to other Queſtions, I doubt that would not be Evidence in *Weſtminſter-Hall*: Let us not ſtretch any thing further than it ſhould be upon any account whatſoever. For ſuppoſe I give you an Oath to make true Anſwer to ſuch Queſtions as I ſhall ask you concerning what was ſaid at the Seſſions-houſe at ſuch a Trial, and then I come after and ask you upon the Oath you have taken what do you ſay concerning ſuch a Buſineſs ſeven Years ago, would that be Evidence?

Mr. Att. Gen. With Submiſſion, my Lord, if a Man be told he is upon his Oath, to ſay all he knows of ſuch a Deſign, what he ſays upon that Oath is Evidence.

L. C. J. You ſay very true, Mr. *Attorney*, if I give him a general Oath; but what he ſays concerning any other Matter than that particular Thing which he was ſworn to give an Account of, can never be Evidence.

Mr. Sol. Gen. Truly, my Lord, I think we need not labour in ſuch a thing as this is.

L. C. J. Truly, Mr. *Sollicitor*, I think it is no Evidence at all; if you can prove he was ſworn to his whole Narrative, and can bring any thing out of that, you ſay ſomething.

Mr. Att. Gen. We deſire that my Lord of *Berkeley* may be ſworn.

[*Which was done.*

L. C. J. What do you ask him?

Mr. Att. Gen. Pray, my Lord, will you give the Court and the Jury an Account, whether Mr. *Oates* was not ſworn to his Narrative, and delivered in his Evidence at your Lordſhips Bar upon Oath?

L. C. J. My Lord of *Berkeley*, let me ask you this Queſtion, Was every thing that he gave an Account of at the Bar of the Lords Houſe given in upon Oath?--E. of *Berkeley*. I cannot remember that, my Lord.

L. C. J. It is impoſſible that he ſhould.

Earl of *Berkeley*. All I can teſtify is but what I anſwered to the Queſtion which was asked me at my Lord *Stafford*'s Trial.

L. C. J. But that is not material now, my Lord, becauſe the Record of that Trial is not here.

Earl of *Berkeley*. The ſame thing is entered here particularly.

Mr. Att. Gen. My Lord, we deſire it may be read again.

L. C. J. Read it again with all my heart.

L. C. J. This is a particular Oath to a particular purpoſe; and ſhall I help it by intendment, that he was afterwards ſworn to the general Matter? No, I will not: Suppoſe any thing had happened afterwards that it ſhould have been thought fit to proſecute *Oates*; could the Man have been convicted of Perjury for this? Certainly he never could.

Mr. Sol. Gen. Well, my Lord, we ſubmit it to you; but we will now go on to prove that which Mr. *Attorney* opened, that *Oates* did ſuborn theſe Witneſſes to ſwear what they did ſwear: You have had one part of the Evidence that was then given; now we ſhall prove that *Clay* was ſworn at *Whitebread*'s Trial, and what he did there teſtify about *Oates*'s being in Town.——*Oates*. I own it, he was ſwore then.

Mr. Att. Gen. Do you own that you ſuborned him?

Oates. No, I think not, Mr. *Attorney*.

Mr. Sol. Gen. Then we will prove that you did tamper with him, and by threatenings prevail'd with him to ſwear for you.

Mr. Att. Gen. Nay, we will prove that he was miſtaken in what he did ſwear a whole Year. Pray call Mr. *Charles Howard*.

Oates. My Lord, I deſire I may have leave to aſk the Court a Queſtion, and I beg the Opinion of the Court in it, whether a Popiſh Recuſant convicted, may be a good Witneſs?

L. C. J. We are not bound to anſwer your Queſtion; for we ſee no ground why you ſhould ask it: If you have any occaſion to object againſt any Witneſs, and can produce any Record againſt him; then we will tell you more of our Minds.

Oates. Pray then let me ask you another Queſtion, my Lord.

L. C. J. Prithee do not trouble us with thy Queſtions, let them go on with their Evidence.

Oates. My Lord, I deſire to know, whether a Man confeſſing himſelf a Popiſh Prieſt——

L. C. J. We do not ſit to anſwer every idle Queſtion; 'tis nothing at all to the purpoſe: When you ask a proper Queſtion, we will anſwer it.

Oates. Yes, it is my Lord, and you are of my Counſel in Matter of Law.

L. C. J. I am not ſo.

Oates. Yes, my Lord, the Court is always of Counſel for the Priſoner.

L. C. J. That were well, indeed, if we were bound to give Advice in every Caſe, where a Man is proſecuted at the King's Suit: indeed in thoſe Caſes where a Man can have no Counſel allowed him, the Court is of Counſel for him; but where he may have Counſel, the Judges are not of Counſel for him.

Mr. Juſt. *Holloway*. Beſides, we are not here putting of Caſes, but trying of a Cauſe.

Mr. Sol. Gen. Here is Mr. *Charles Howard*, ſwear him. [*Which was done.*

Mr. Att. Gen. My Lord, we bring this Gentleman Mr. *Charles Howard* only to this part of our Evidence, to prove that Mr. *Clay* was miſtaken a whole Year; miſtook 78, for 77.

L. C. J. But, Mr. *Sollicitor*, if you take this confuſed Method, we ſhall never be at an end, and for my part I cannot make any thing of it; it is impoſſible for me to retain theſe things in Memory, ſo as to give any Direction to the Jury, if there be not a Method uſed: for do you think that it is poſſible for a Man to retain in his Head a hundred things huddled up and down without any Order?

Mr. Sol. Gen. We beg your Lordſhip's Patience but a little while, and we ſhall have it in very good Order. Swear *Higgins*. [*Which was done.*

L. C. J. Pray what do you aſk him?

Mr. Att. Gen. The Matter we examine him to, is this; for I would open to you the Nature of our Evidence: firſt he ſwore *Smith* into the Plot, and then gave him a Certificate, that he was an honeſt Man.

L. C. J. Is that *Oates*'s Hand?

Mr. Att. Gen. We ſhall prove it to be ſo.

L. C. J. You muſt firſt prove what he ſwore of *Smith*.

Mr. Att. Gen. My Lord, we deſire that we may read his Narrative.

L. C. J. But firſt prove it, Mr. *Attorney*.

Mr. Att. Gen. It is upon Record in the Houſe of Lords.

L. C. J. Was that delivered in upon Oath to the Houſe of Lords? Or elſe we ſhall be but where we were.

Mr. Att. Gen. For Proof of that, we call my Lord *Bridgwater*.

L. C. J. Here he is. Swear my Lord. [*Which was done.*

Mr. Att. Gen. My Lord *Bridgwater*, do you remember the Narrative that *Oates* gave in to the Houſe of Lords, and was it upon Oath? But firſt of all, if you pleaſe, I deſire my Lord may ſee the Book, whether any thing be there under his Hand, and then, whether it be enter'd to be upon Oath, and whether this be the Journal agreeing with the Paper deliver'd him?

L. C. J. This is a Narrative, my Lord, that he himſelf deliver'd in, and I would ask my Lord *Bridgwater* this one Queſtion: Was not this Journal compared with the Narrative given in upon Oath by Order of the Lords Houſe?

Earl of *Bridgwater*. Yes, I muſt ſay I was one of the Committee appointed to take care of the Journal, and here is my Hand to it among other Lords, and that is a Copy of what Mr. *Oates* did deliver in as his Narrative, which was inſerted upon a Report of the Committee into the Journal Book by order of the Lords, and we did examine the Narrative with the Book.

L. C. J. But what is all this to our purpoſe now? Do not miſtake me, my Lord *Bridgwater*, I do not ſpeak to you now, but to Mr. Attorney: What does this prove as to the Matter in hand?

Mr. Att. Gen. Pray, my Lord *Bridgwater*, did you ſee the Narrative brought in by *Oates*?

Earl of *Bridgwater*. That Narrative was deliver'd to us by the Clerk of the Parliament.

L. C. J. But, my Lord, do you know that Narrative was given in upon Oath?

Earl of *Bridgwater*. I know no other, but that the Clerk of the Parliament brought it to us.

Mr. Att. Gen. Here is the Clerk of the Parliament will tell you that *Oates* was ſworn to it.

L. C. J. Prove it if you can; but hitherto I ſee nothing that looks like Evidence.

Mr. Att. Gen. Really, my Lord, I ſhould take it to be as much Evidence as any that was ever offer'd in the World.

L. C. J. Pray, Mr. Attorney, let us reaſon the Point a little: Suppoſe you bring an Anſwer in Chancery, except the Man be ſworn to it, can you read his Anſwer? and yet I ever look'd upon an Anſwer in Chancery as Evidence.

Mr. Att. Gen. In that Caſe the Record proves itſelf, and ſo it ſhould here; and therefore we deſire it may be read.

L. C. J. But ſurely you would not allow an Anſwer to be Evidence, unleſs you prove it to be ſworn.

Mr. Att. Gen. Truly, my Lord, I always took it, that we need not come to prove a Man was actually ſworn to his Anſwer; but if it be once enter'd upon Record in Chancery, it proves itſelf.

L. C. J. It is true, Mr. Attorney, if it appears upon Record that the Anſwer was ſworn.

Mr. Att. Gen. My Lord, if this Journal of the Houſe of Lords is a Record, then that which is enter'd into it, is a Record; 'tis a thing recorded as a Deed enrolled is, and proves itſelf.

L. C. J. Mr. Attorney, either we miſtake one another, or we do not differ in Opinion. If you could make it appear that *Oates* brought this thing in the Houſe of Lords, and deliver'd it upon Oath, that were Evidence; otherwiſe I cannot ſee how you can make Evidence of it.

Mr. Att. Gen. I always thought, my Lord, that a Record out of a Court of Record, would have that Credit in another Court of Record as to be read.

L. C. J. My Lord *Bridgwater* tells you, it was deliver'd to them by the Clerk of the Parliament.

Mr. Att. Gen. Pray, my Lord, let the Clerk read what is at the end thereof.

Cl. of Cr. Reads. Hitherto examined the 3d of *December*, 1678. The Narrative and Examination of *Titus Oates* being firſt inſerted, according to the Order of the Houſe, of the 21ſt of *Nov.* laſt, by us *Angleſey*, &c.

Mr. Att. Gen. Pray read the Order of the 21ſt of *November*.

Cl. of Cr. Reads. *Die Jovis* 21ſt of *November*, 1678. Upon Report made by the Earl of *Bridgwater*, from the Lords Sub-Committees for the examining the Journal of this Houſe, That upon Examination thereof, their Lordſhips find, that the Narrative made upon Oath by *Titus Oates*, at the

the Bar on the 31ſt of *October* laſt, of the horrid Deſign againſt his Majeſty's Perſon and Government, is only mention'd in the Journal, but not enter'd at large in ſuch manner as he then related it; and that therefore their Lordſhips deſire the Direction of the Houſe concerning this Matter: It is thereupon ordered, that the ſaid Narrative made by *Titus Oates* on the ſaid 31ſt of *October* ſhall be entered at large, and inſerted in the Journal, as Part of the Buſineſs of that Day.

L. C. J. Now you make it Evidence; for it appears that he was ſworn, and gave his Narrative upon Oath.

Mr. Att. Gen. Then now, my Lord, I hope we may read it.

L. C. J. Ay, read it.

Mr. Att. Gen. Read the 54th Article.

Cl. of Cr. Reads. This is the Narrative of *Titus Oates*, the 54th Article. That one *Matthew Medborne*, a Player in the Duke's Theatre; one Mr. *Penny*, Mr. *Mannock*, Mr. *Sharpe*, and Mr. *Sedden*; and one *William Smith*, a School-Maſter at *Iſlington*; and one *Edward Everard*, and others, meet in a Club on *Thurſday* Nights and *Sunday* Nights, with one *Jones* a Prieſt, and one *Keymaſh* within-mentioned: And all theſe Perſons are employ'd by the Jeſuits, to vilify the Houſe of Commons, and to go about the City to incenſe the People againſt them, and againſt the Biſhops of the Nation; and they deliver this Treaſonable Poſition, That the Commons aſſembled in Parliament are the Devil's Repreſentatives, and not the Nation's; which treaſonable and deteſtable Words the Deponent did hear at the ſaid Club, which is kept at *Fuller*'s-*Rents*, near *Gray*'s-*Inn*. And in the Month of *Auguſt* the Deponent was order'd by the Jeſuits in *London*, to give the ſaid Perſons great Reſpects; and in their Names to thank the Club for their Faithfulneſs to them in that Particular.

Mr. Att. Gen. Thus you ſee what he had ſworn againſt him; now we ſhall ſhew how he dealt with him. Is that Mr. *Oates*'s Hand?

Witneſs. It is; yes, I believe it is.

Mr. Att. Gen. I believe he will hardly deny it himſelf.

Oates. Let me ſee it, I pray you, Mr. *Attorney*.

Mr. Att. Gen. Shew it him. [*Which was done.*] Is that your Hand?

Oates. I cannot ſay it is my Hand, nor do I believe it to be ſo.

L. C. J. He does not own it to be his Hand.

Oates. I do not ſay it is not my Hand; but I do not remember any thing of it.

Mr. Att. Gen. Read it, Sir, pray you.

L. C. J. What is it you would read?

Mr. Att. Gen. A Certificate under *Oates*'s Hand of Mr. *Smith*'s Honeſty, not three Days before the Trial of the five Jeſuits.

L. C. J. Read it, let us hear what it is.

Theſe are to certify that William Smith *is no Papiſt; and that he is upon good Service at this time for his King and Country; of which, I hope, thoſe that are Inquirers after Recuſants, will take notice.*

Witneſs my Hand this 3d Day of June, 1679. Titus Oates.

L. C. J. What Harm is there in all this? I muſt needs ſay, I cannot comprehend what you would make of it.

Mr. Att. Gen. This Protection was given Mr. *Smith* by Mr. *Oates*, three Days before the Trial; but after he had ſworn him into the Plot in his Narrative.

L. C. J. I ſee not any Plot, for my part, that he ſwore him into, unleſs you mean Treaſon againſt the Houſe of Commons: For that is the Accuſation he made, that he ſpoke ſuch Words of the Houſe of Commons. Pray read it again. [*Which was done.*]

L. C. J. Well, and what is all this?

Mr. Att. Gen. Is not this a ſwearing him into the Plot?

L. C. J. No, not that I ſee; it only gives an ill Character of him.

Mr. Att. Gen. But he is accuſed as a Confederate with the Prieſts and Jeſuits.

Oates. Did I charge him, Mr. *Attorney*, with having any hand in the Plot againſt the King's Life?

Mr. Att. Gen. I only offer this as an Evidence that there was tampering.

L. C. J. You call it a being in the Plot; I ſee no ſuch thing.

Mr. Att. Gen. And then he comes and gives him an Acquittal under his hand, and then produces him as a Witneſs.

L. C. J. There can be no great matter in this, Mr. *Attorney*.

Mr. Att. Gen. Then, my Lord, we'll call Mr. *Smith* himſelf, and he will tell you how *Oates* drew him in: Swear Mr. *Smith*. [*Which was done.*) Pray acquaint my Lord and the Jury, how you came to ſwear at the former Trial, by whom you were perſuaded, and how you varied from the Truth.

L. C. J. That is very nauſeous and fulſome, Mr. *Attorney*, methinks, in a Court of Juſtice.

Mr. Att. Gen. What did you ſwear at the former Trial? and was that true you did ſwear then?

L. C. J. I tell you truly, Mr. *Attorney*, it looks rank and fulſome; if he did forſwear himſelf, why ſhould he ever be a Witneſs again?

Mr. Att. Gen. 'Tis not the firſt time by twenty that ſuch Evidences have been given.

L. C. J. I hate ſuch Precedents in all times; let it be done never ſo often. Shall I believe a Villain one Word he ſays, when he owns that he forſwore himſelf?

Mr. Att. Gen. Pray, my Lord, give me leave; I muſt purſue my Maſter's Intereſt.

Mr. Sol. Gen. My Lord, it was ever Teſtimony allow'd to be given, to detect a Subornation.

L. C. J. I am ſure 'tis not fit to be allow'd at any time: If he did forſwear himſelf in a Court of Record, in my Opinion he is not to be receiv'd as a Witneſs any more.

Mr. Sol. Gen. We do only make this uſe of him, to prove that *Oates* did ſuborn him.

L. C. J. Pray call ſome other Witneſſes, if you have them to contradict him; but do not offer to bring a Man to ſwear, that he did forſwear himſelf before.

Mr. Sol. Gen. My Lord, we give Evidence here of a Man's being produced by *Oates*, to ſwear he was here in *May* 78, and he did make ſuch an Oath: Now I hope, with Submiſſion, my Lord, it is Evidence to contradict that Oath, if we can prove that he has confeſs'd he was forſworn, and miſtaken in his Oath; ſuch Evidence perhaps will be of little value, yet Evidence it is.

L. C. J. Make it what you will, Mr. *Sollicitor*; I think it is of no value at all, nor to be admitted, for the Man to come and ſwear it himſelf: Prove what you can by others.

Mr. Sol. Gen. Surely, my Lord, this Confeſſion of his to others, is of leſs value than when we bring the Man himſelf to confeſs his Fault; that Man himſelf coming and owning the thing, that he was miſtaken, with great Sorrow for it, ſure is a good Evidence.

L. C. J. Argue the matter as long as you will, Mr. *Sollicitor*, you will never convince me, but he that has once forſworn himſelf, ought not to be a Witneſs after that in any Cauſe whatſoever. If any Man tell me otherwiſe till Doomſday, I cannot be convinced of it.

Mr. Sol. Gen. I go but to aſk him this Queſtion, whether or no what he ſwore were true?

L. C. J. Mr. *Sollicitor*, we are all of another Opinion, that it is not Evidence fit to be given.

Mr. Sol. Gen. My Lord, I muſt ſubmit it to you.

L. C. J. I tell you, Mr. *Sollicitor*, if you ſhould call him to know what it was he ſwore, and it does appear by any Evidence, or by his own Confeſſion, that it was falſe, you ought not to believe what he ſays, even in that matter. And I think truly, for Example's ſake, it ought not by any means to be admitted.

Mr. Sol. Gen. My Lord, I muſt ſubmit it to you; but then I humbly conceive it will be in very many Caſes impoſſible to detect a Perjury or Subornation, if the Party ſuborn'd cannot be admitted to be a Witneſs.

L. C. J. What good will the admitting him to be a Witneſs do? For either what he ſwore then, or what he ſwears now, is falſe; and if he once ſwears falſe, can you ſay he is to be believ'd?

Mr. *North.* My Lord, if a Man come and ſwear——

L. C. J. Look ye, Sir, you have our Opinion; it has been always the Practice heretofore, that when the Court have deliver'd their Opinion, the Counſel ſhould ſit down, and not diſpute it any further.

Mr. Att. Gen. Then we will go about the Buſineſs of *Clay*, and for that we will call *Lawrence Davenport*.

L. C. J. 'Tis certainly againſt the Law to admit a Man that has once forſworn himſelf to be a Witneſs again in any Cauſe.

Mr. Att. Gen. Swear *Lawrence Davenport*. [*Which was done.*] Pray give my Lord and the Jury an account how *Clay* came to be a Witneſs, and by whom he was wrought upon to be ſo.

Davenport. May it pleaſe you, my Lords, and Gentlemen of the Jury, Mr. *Oates* came to the Priſon, I being then a Priſoner at that time in the *Gate-houſe* at *Weſtminſter* myſelf; and having no other Employment, I had the Government and Care of ſome of the Priſoners for a Livelihood, being in Cuſtody; and at that time Mr. *Oates*, as I ſaid, when old *Clay* was in Priſon, did come there to viſit this *Clay* at ſeveral times. And coming there to viſit this *Clay*, up ſtairs he went to his Chamber, and deſired to ſpeak with him; and I did deſire your Worſhip, Mr. *Oates*, that you would go in to him, and you did go into his Chamber, and there theſe Words you did ſpeak to him before the Trial of the five Jeſuits; That if he did not ſwear what you put to him, he ſhould be proſecuted as a Prieſt, which you did believe he would die for.

L. C. J. What is this Man's Name?—*Mr. Att. Gen. Lawrence Davenport.*

L. C. J. Did you hear him ſay ſo?

Davenport. Yes, my Lord, upon my Oath I did hear him ſay ſo, and Sir *William Waller* was with him; and then he replied, and ſaid, with a Proviſo that you would give him his Gold and Silver that was taken from him, being then a Priſoner under my keeping in the Gate-houſe, and wanting his Money; if you would do that, he ſaid, he had been a Rogue before, and he could not ſay what he might do.

L. C. J. Now make it appear that this *Clay* was ſworn at the Trial.

Davenport. My Lord, afterwards I was Keeper to him under the other Keeper, and he had a Keeper to wait on him to *Newgate* Seſſions at the *Old Bailey*; wherefore this Gentleman that is ſtanding there, Mr. *Oates*, comes to us; ſays he, Do not you trouble yourſelf about this Priſoner; let him alone with me, I'll ſee him at home again; and then the Jeſuits there did take their Trials; how it was I cannot tell, for we could not come into the Court. Afterwards they went to the *Fountain-Tavern* by *Newgate* to Dinner, and Mr. *Oates* and he went to Dinner together; we were below in the Houſe waiting there till it was Night, and ſtill thinking that he ſhould come down again: but away went he home, and left us in the lurch; but indeed he did come home to the Priſon very honeſtly and civilly, becauſe he was civilly guarded.

Mr Att. Gen. Now, my Lord, we'll give you an account, that the next Morning after this Diſcourſe betwixt *Oates* and *Clay*, at the *Gate-houſe*, this Witneſs told it to another that was a Priſoner there then too.

Oates. My Lord, I would aſk this Man a Queſtion, whether he had the ſole keeping of *Clay*, without any other Keeper with him?

Davenport. There was no Keeper in the Houſe but myſelf, where he lay, which was in *Margaret*'s-*lane*, not in the Priſon, but in the Houſe.

Oates. Pray ask this Gentleman, why he did not come in and teſtify his Diſcourſe he ſpeaks of, when *Clay* was a Witneſs?

Davenport. I was not by when he was ſworn.

Oates. Did he not know he was a Witneſs?

L. C. J. No, he ſays he did not go into the Court with you, he was not ſuffered to go in.

Davenport. My Lord, I am a poor Tradeſman, and know nothing what belongs to the Law.

Mr. Att. Gen. Come, pray ſwear this Man, Mr. — [*Which was done.*]

Mr. Sol. Gen. Pray tell what *Davenport* told you, and when?

Mr. ——. He came and told me the next Day in the Priſon, where I was then, what Mr. *Oates* and Sir *William Waller* had been tampering with *Clay* about, to make him ſwear for Mr. *Oates*.

L. C. J. What were the Words he told you they ſaid to him?

Mr. ——. It was, that he muſt ſwear that Mr. *Oates* dined at Mr. *Howard*'s Houſe ſuch a Day of the Month, and Mr. *Clay* did ſay he knew nothing of the matter; but then Sir *William Waller* and Mr. *Oates* did reply to him again, Here's your Choice; if you will not ſwear this we will try you for a Prieſt, and hang you; and ſo *Clay* agreed, if he might have his Money reſtored that was taken from him; he had been a Rogue before, and did not know what he might do.

Oates. Is this Evidence, my Lord?

L. C. J. Yes, doubtleſs, very good Evidence.

Oates. It is only upon Hear-ſay that he ſpeaks.

L. C. J. But that eſtabliſhes the other Man's Teſtimony, this being told the very next Morning; for he would not conceal it, it ſeems.

Mr. Att. Gen. Now that *Clay* was ſworn at the Trial, you admit, Mr. *Oates*.

Oates. Yes, I do, he was ſo.

Mr. Att. Gen. Then I think here's a plain Proof of a Subornation.

L. C. J.

L. C. J. You must observe how they apply this Evidence: They say you are an ill Man, not only as to swearing false yourself, but as to suborning others to swear more than they knew; and particularly as to this *Clay*, that you and Sir *William Waller* did threaten him, you would hang him up for a Priest, if he would not swear as you would have him; and by your Threatnings he was prevailed with to swear.

Oates. Is Mr. *Clay* in Court, my Lord?

L. C. J. Nay, I cannot tell where he is.

Mr. Att. Gen. He was your Witness, Mr. *Oates*; we expected you would have brought him.

Oates. I cannot tell where to find him, my Lord, now, truly.

Mr. Att. Gen. Call Mr. *Howard*.

Cryer. Here he is, Sir; he is sworn.

L. C. J. Mr. *Attorney*, you have not proved what he swore.

Mr. Att. Gen. We are now about it, my Lord. Mr. *Howard*, pray were you at the Trial of the five Jesuits, or at *Langhorn*'s, when *Clay* was sworn as a Witness for Dr. *Oates?*

Mr. *Howard.* Yes, I was at *Langhorn*'s Trial, my Lord.

Mr. Att. Gen. What was the effect of his Testimony there?

Mr. *Howard.* He did swear that he was with me and Mr. *Oates* at Dinner at my House, in *May*, in the Year 77.

Mr. Att. Gen. 77 did he say, or 78?

Mr. *Howard.* Stay, I will look upon my Notes I took at that time.

L. C. J. Ay, do so, to refresh your Memory, Mr. *Howard*.

Mr. *Howard.* It was *May* 78, my Lord.

Mr. Sol. Gen. Pray, Sir, was he then at your House with *Oates?*

Mr. *Howard.* No, he was not there in *May*; Mr. *Clay* was with me and Mr. *Oates* both together in *July* 78, after the 4th Day of *July*.

Mr. Att. Gen. That is, after the time he came to *London* from *St. Omers*.

L. C. J. You say very well. Have you any more Witnesses?

Mr. Sol. Gen. My Lord, we must desire that the 28th Article of Mr. *Oates*'s Narrative may be read.

Cl. of Cr. Reads. *That in order to this Command on* April 24, 78, *Father* Warren, *Rector of* Liege; *Sir* Thomas Preston, *Baronet*; *Father* Marsh, *Rector of* Gaunt; *and Father* Williams, *Rector of* Watton, *and Master of the Novices*; *Sir* John Warner, *Baronet*; Richard Ashby, *Rector of the* English *Seminary at* St. Omers, *being sick of the Gout could not go. But out of the said Seminary went Sir* Robert Bret, *Baronet*; *Father* Pool, Edward Nevile. *There were in all with the Deponent nine or ten, who met in* London *in consult with* Thomas Whitebread, *Father* Harcourt *Senior, and Father* Harcourt *Junior*, John Fenwick, Basil Langworth, William Morgan, John Keimes, *Father* Lovel, *Father* Ireland, *Father* Blundel, Richard Strange, *Father* Mico, *Father* Grey, *and others to the Number of fifty Jesuits, met at the* White-Horse *Tavern in the* Strand, *where they plotted their Designs for the Society, and ordered Father* John Carey, *who was also there, to go Procurator for* Rome; *at which Consult thus held in the Month of* May, *the Deponent was present to attend the Consultors, and deliver their Concerns from Company to Company; and then a little after they left the* White-Horse *Tavern, and divided themselves into several Clubs and Companies; some met at Mr.* Saunders's *House in* Wild-street; *others at Mr.* Fenwick's, *at* Aires's *House in* Drury-Lane; *others at Mr.* Ireland's *in* Russel-street, *near* Covent-Garden; *and in other Places. All which, tho' in several Companies, five or six in a Company, did contrive the Death of the King; and in order to which, there were Papers sent from Company to Company, which the Deponent did carry, containing their Opinions of the timing their Business, and the manner how it was to be done; and within three or four Days after the Deponent went to* St. Omers, *with the Fathers that came from the other side of the Water.*

Mr. Att. Gen. My Lord, we produce this to overthrow their Witnesses, that speak of his being here a Week in *May*. Now Mr. *Oates* in his Narrative says, that the Consult ended the 24th of *April*; and that three or four Days after, he returned back to *St. Omers*.

L. C. J. Pray read that over again, where the Names are; for the Witnesses for the King swear, that Mr. *Williams* came over from *St. Omers*; but he there says he did not, I think.

It was read again.

L. C. J. I thought it had been otherwise; 'tis darkly penn'd.

Mr. Att. Gen. My Lord, I myself heard him declare in many Trials here, and at the *Old-Bailey*, that all was finished in that Day, and he went in a few Days.

Oates. Mr. *Attorney*, you are mistaken: For if you please, my Lord, the Consult was not dissolv'd in six or eight Days, tho' they were not sitting or acting every Day.

Mr. Att. Gen. 'Tis not a difference of six or eight Days that is contended for, but it is, either Mr. *Oates* or his Witnesses do not swear true. If it were as Mr. *Oates* says, that six or eight Days were allow'd after the 24th of *April*, then it must be the 5th or 6th of *May* that he went to *St. Omers*; and then his Witnesses, that say he was here the latter end of *May*, cannot swear true. And our Witnesses say he was all *April* and *May*, till the 23d of *June*, at *St. Omers*.

Oates. My Lord, Mr. *Attorney* does not apprehend the Evidence aright.

L. C. J. Well, you may make your Remarks by and by, and set him right if you can.

Mr. Att. Gen. We have done our Evidence, my Lord.

L. C. J. Have you any more Witnesses, Mr. *Oates?*

Oates. No, my Lord, I have not.

L. C. J. Then you must conclude, and say what you have to say to the Jury.

Oates. My Lord, I have one thing more, and that is, a Copy of the Record out of the House of Lords. It is in the Journal the twenty-fifth of *March*, 79.

Mr. *Walker.* My Lord, I have not the Book here, it was not spoke for.

Oates. But do you know this Hand? [*Shewing him a Copy.*

Mr. *Walker.* Yes, and I believe it is a true Copy.

L. C. J. Read it.

Cl. of Cr. Reads. *Tuesday* the 25th of *March*, 1679.

Oates. It is the last Clause in the Journal of that Day.

Cl. of Cr. Reads. *Resolved*, Nemine Contradicente, *by the Lords Spiritual and Temporal, and Commons in Parliament assembled, that they do declare that they are fully satisfied by the Proofs they have heard, that there now is, and for divers Years last past hath been a horrid and treasonable Plot and Conspiracy contrived and carried on by those of the Popish Religion, for the murthering of his Majesty's Sacred Person, and for subverting the Protestant Religion, and the ancient and established Government of this Kingdom.*

Oates. There is an Order to have that Vote printed, and inserted before the Form of Prayer for the Fast. Pray, Sir, read the next Page.

Cl. of Cr. Reads. *Die Lunæ* 25 *Oct.* 1680.

Upon Report from the Lords Committees for examining Matters relating to the Discovery of the late horrid Plot and Conspiracy, that Captain Thomas Bickley *hath lately vilified Dr.* Titus Oates *at a publick Meeting at* Chichester, *to the prejudice of his Majesty's Evidence, for the further Discovery of the said Plot: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, that the said* Thomas Bickley *be, and is hereby required to appear before their Lordships, in the Lord Privy Seal's Lodgings, near the House of Peers, on* Wednesday *the third Day of* November *next, at eight of the Clock in the Forenoon. And it is further ordered, that Alderman* Exon *and Alderman* William Bury *of* Chichester *aforesaid, who were then present at the said Meeting, do likewise attend their Lordships at the time aforesaid, to give Evidence of what they know concerning this matter.*

L. C. J. What of all this? We know hereupon *Bickley* was turned out of Commission, and now *Bickley* is in again. But it seems, as you had credit with some then, so you had not with others. Well, have you now done all?——*Mr. Att. Gen.* Yes, my Lord.

Mr. Sol. Gen. If Mr. *Oates* will sum up his Evidence, then I will do the same for the King, when he has done.

L. C. J. Well, what say you, Mr. *Oates?*

Oates. Now, my Lord, here is an Indictment preferred against me for Perjury, and the Evidence they have given for the King, is this. 1. They have called Mr. *Foster*, and he tells you, that I was produced at the Sessions-House in the *Old-Bailey*, where he was summoned as a Juryman, upon the Trial of *Ireland*; and he says, that when I was produced at the Sessions in the *Old-Bailey* as a Witness, and sworn (if I do remember Mr. *Foster* aright in what he says), he did hear me swear, that there was a treasonable Consult of Jesuits upon the twenty-fourth of *April* 78, at the *White-Horse* Tavern in the *Strand*; and he does further say, that I said those Jesuits afterwards came to a Resolution to kill the King; and that they separated themselves into lesser Clubs, the Resolution being drawn up by one *Mico*; and that I carried it from Chamber to Chamber to be signed, and did see it signed. My Lord, I did ask Mr. *Foster*, whether I in my Evidence called it a Consult, or a traitorous Consult. Now, my Lord, 'tis true I did call it a traitorous Consult; it is as true that I did swear there was such a Consult; and it is as true, that I did swear this Consult did divide itself into lesser Companies; it is as true as I did say I carried that Resolution about from Chamber to Chamber, and saw them sign that Resolution for murdering the King, I do not mean of this King, but of the late King. My Lord, the Evidence I think I, nor no honest Man shall need to be ashamed of: I am not ashamed to own, that I repeated this Evidence several times, nor that I gave that Evidence upon Oath; for it is Truth, my Lord, and nothing but Truth, and I resolve by the Grace of God to stand by it, and confirm it with my Blood, if there be occasion. My Lord, to convict me of Perjury, they have brought a parcel of *St. Omers* Witnesses, and these do swear that which they would have sworn six Years ago; but then the Court thought them not fit to be sworn, not only because the Law will not allow them, but because of their Religion, that can dispense with false Oaths, if it were for a good Cause, and that was the Remark my Lord Chief Justice *Scroggs* then made on it. I shall not insist much upon what they have sworn, for that I suppose your Lordship and the Jury do very well remember: But I have five things to object to their Evidence, and I hope the Jury will take notice of my Objections, and make their Remarks upon them; for since you have heard the Evidence that is brought against me, it will be necessary for your Lordship to weigh the nature of these Witnesses, and the value that the several Juries of *London* and *Middlesex* had for them. 'Tis true, there are several brought here now, that never were Witnesses before; there are indeed other Men, but of the same Religion and the same Interest, and therefore their Testimony must be of the same value; I think your Lordship will allow me that. Therefore I begin with their Religion, and that I take notice to be a great Objection to their Evidence, as I am advised by those that are learned in the Law. And I must appeal to the Court, whether a Papist, in case of Religion, may be believed and received as a good Witness.

L. C. J. We must not hear any of these idle Expressions.

Mr. Just. *Withins.* Do you think you are come here to preach, Mr. *Oates?*

L. C. J. I'll tell you, a Papist, except you'll prove any legal Objection against him, is as good a Witness in a Court of Record, as any other Person whatsoever.

Oates. But if 'tis your Lordship's, I'll tell you my Lord *Coke*'s Practice was not to admit them as good Witnesses.

L. C. J. Do not tell me of my Lord *Coke*'s Practice; the Law is otherwise: keep to the Business that you have here in hand, the Question before us, whether you were forsworn in *Ireland*'s Trial or not? Answer that, if you can; but you must not run out into Clamours, and idle Extravagances.

Oates. My Lord, I demand it as my right to be heard what I have to except against the Witnesses.

L. C. J. I tell you, you shall be heard when you speak properly; but are you to determine what is right, or what is wrong?

Oates. I am to determine my own Right now in this Point, and I insist upon it, and demand it.

L. C. J. It may be, presently you'll tell us we have no right to judge of it.

Oates. Yes, you, my Lord, have; but I hope I have a right to urge it.

L. C. J. Urge what you will that is to the purpose, but then you must keep to the matter in hand, and not make such idle Excursions as these are.

Oates. I will keep to the matter, my Lord, if you will hear me.

L. C. J. So you ſhall; we'll make you keep to the Matter, or we wil not hear you at all: Do not think your Impudence ſhall ſtorm us out of our Senſes.

Oates. My Lord, I do inſiſt upon it, that theſe Men's Religion is an exception to their Teſtimony, and a Papiſt is not a good Witneſs in a Cauſe of Religion; and I deſire I may have leave to argue that as a Point of Law in my own Defence.

L. C. J. No, Sir, it is no Point of Law at all.

Oates. Then I appeal to all the Hearers, whether I have Juſtice done me.

L. C. J. What's that? Why you impudent Fellow, do you know where you are? You are in a Court of Juſtice, and muſt appeal to none but the Court and the Jury.

Oates. I do appeal to the Hearers.

L. C. J. Take him away there; if you will not behave yourſelf as you ought, I can aſſure you, the Court will do what they ought to do, and ſtop your Mouth.

Oates. What you pleaſe, my Lord, I muſt make my own Defence as well as I can.

L. C. J. You are here in Judgment before us, and are to appeal to us; we'll ſuffer none of your Common-wealth Appeals to your *Mobile*; keep within the Bounds of Decency, and ſay what you can for your ſelf.

Oates. My Lord, this I move to the Court as one of my Objections to this Evidence given againſt me, That their Religion makes them no good Witneſſes; eſpecially in this Cauſe.

L. C. J. I tell you that is nothing to the purpoſe, what their Religion is.

Mr. Juſt. *Holloway.* Mr. *Oates*, we come not here to diſpute Points of Religion, we come to try a bare Matter of Fact, whether you are perjured, or no.

L. C. J. I tell you a Papiſt is a good Witneſs without a legal Exception.

Mr. Juſt. *Withins.* Pray, Mr. *Oates*, is not a Papiſt as good a Witneſs as a Diſſenter?---------- *Oates.* My Lord *Coke* would not admit a Papiſt to be a good Witneſs in any Cauſe.

Mr. Juſt. *Withins.* How, not in a Cauſe of *Meum* and *Tuum*?

Oates. No, my Lord, not in any Cauſe between Party and Party.

L. C. J. Where is that Opinion?

Oates. I'll cite you the Caſe, if you pleaſe, my Lord.

L. C. J. Pray let us hear it.

Oates. It is in *Bulſtrode*'s Reports, the Second Part, 155. A Popiſh Recuſant is not to be admitted a Witneſs between Party and Party.———

Mr. Juſt. *Withins*, May a Preſbyterian be a good Witneſs, Mr. *Oates*?

Mr. Juſt. *Holloway.* Or would Mr. *Colledge* have been a good Witneſs, Mr. *Oates*?———*Oates.* I tell you this was my Lord *Coke*'s Practice.

L. C. J. You have our Opinion, and be ſatisfied with it; that Book ſays it was my Lord *Coke*'s Practice, and we think if that was his Practice, his Practice was againſt Law.

Oates. Then another thing I object to their Teſtimony, is their Education.

L. C. J. That's no Objection at all neither.

Oates. My Lord, they are bred up in a Seminary againſt Law, and for which their Friends are to be puniſhed.

L. C. J. So is every Man living that's bred a Diſſenter, bred up againſt Law.

Oates. My Lord, I have not offered any Diſſenter as Evidence for me.

L. C. J. No, they are all no doubt of it very good People. Good-wife *Mayo*, and her Companions, excellent Proteſtants without all queſtion!

Oates. My Lord, I humbly offer a Statute to your Lordſhip: And that is Law ſure.

L. C. J. Yes, a Statute is Law. What Statute is it?

Oates. It is 27° of *Eliz. Cap.* 2. The Law ſays there---------

L. C. J. Come, we will ſee what the Law ſays. Read the Statute he ſpeaks of.

Cl. of Cr. *It is intituled, an Act againſt Jeſuits, Prieſts, and other ſuch like diſobedient Perſons.*

Oates. My Lord, I deſire that the Preamble of the Act may be read.

Cl. of Cr. *Whereas divers Perſons called and profeſſed Jeſuits, Seminary Prieſts, and other Prieſts, which have been, and from time to time are made in the Parts beyond the Seas, by or according to the Order and Rites of the* Romiſh *Church, have of late come, and have been ſent, and daily do come, and are ſent into this Realm of* England, *and others the Queen's Majeſty's Dominions*--------

L. C. J. This is nothing to this Buſineſs before us at all.

Mr. Juſt. *Withins.* Does this Statute ſay they are no good Witneſſes?

Oates. They own themſelves to be educated at *St. Omers*, and that is againſt this Law expreſsly.

L. C. J. What then! Do they own themſelves to be in Orders, Jeſuits and Prieſts, then you might ſay ſomewhat to them upon this Law; but do not ſpend our Time in ſuch Trifles.

Oates. I do not ſpend your Time in Trifles, my Lord; it is my Defence.

L. C. J. Mr. *Attorney*, do you go on; for we will not ſit here to ſpend our Time for nothing.

Oates. Pray, my Lord, let me but ſhew this, I only propoſe one Statute more to your Lordſhip's Conſideration.

L. C. J. You may propoſe to read the whole Statute-Book.

Oates. Pray, my Lord, hear me out.

L. C. J. Speak then to the Buſineſs in hand.

Oates. It is the Statute made in the 3d of King *Charles* I. *Chap.* 2.

L. C. J. It is nothing to the purpoſe.

Oates. I am adviſed 'tis very material for me.

L. C. J. I tell you it is not, and we'll not let your Importunity prevail upon us to ſpend our time for nothing: There has been a great deal of Time ſpent to no purpoſe already.

Oates. Then if you will over-rule it, my Lord———

L. C. J. We do over-rule it: For it ſignifies nothing to this purpoſe.

Oates. Pray, my Lord, be pleaſed to give me leave to offer their Judgments in Caſes of Conſcience, whereby they own they have Diſpenſations to ſwear Lyes for the promoting of the Cauſe.

L. C. J. That is no Evidence neither.

Oates. This is very hard in ſuch a Caſe as this.

L. C. J. No, it is not hard, that what is no Evidence in Law, ſhould not be ſuffered to be given in Evidence.

Oates. It is Evidence againſt the poor Diſſenters, my Lord.

L. C. J. Indeed, Sir, it is no Evidence againſt any one body in the World, if you will take my Word for it; if you will not, I cannot help it.

Oates. Then I offer you one thing more, my Lord, and that is what was ſaid and done in the Caſe of the Earl of *Shafteſbury*, when he was charged with High-Treaſon, and committed to the Tower of *London*; at ſeveral Seſſions in the *Old-Bailey* and at *Hickes's-Hall*, they did move that they might have liberty to bring in an Indictment of Perjury, againſt the Witneſſes which did accuſe him of Treaſon; but now the Court there overruled thoſe Motions, and would not ſuffer my Lord of *Shafteſbury*'s Friends to bring Indictments of Perjury againſt them, becauſe they would not have the King's Evidence indicted of Perjury, nor the Popiſh Plot called in queſtion: this is a Matter of Fact in the *Old-Bailey*.

L. C. J. And this is all idle too.

Oates. Pray, my Lord, will you hear me?---------*L. C. J.* But pray, Sir, will you hear me too? I tell you this is nothing to the purpoſe neither.

Oates. My Lord, I deſire to ſpeak but theſe few Words then, as to my own Witneſſes I have produced. And the firſt is *Cicely Mayo*; and, my Lord, though it be your Lordſhip's pleaſure, not to have that good Opinion of her, as I think the poor Woman does deſerve, yet I hope her Evidence will have its due Weight and Conſideration with your Lordſhip and the Jury. She ſays, ſhe ſaw me in Town in the Month of *May*: Now, indeed, ſhe could not be poſitive what *May* it was, but ſhe ſaid it was the *May* before the Popiſh Plot broke out, that is, before the Rumour of that Plot was ſpread abroad, and ſhe believes the Plot broke out in 78. But this ſhe ſays poſitively, ſhe ſaw me in the Month of *May* here. My Lord, ſhe comes to give this Evidence freely and voluntarily: a Man that is a Knave, is a Knave for ſomething, either out of Malice, or for Gain or Intereſt; but ſhe has no Reward given her, nor can hope for any; but in Love to Juſtice, without any By-end or particular Intereſt, ſhe came here to teſtify the Truth, about her ſeeing me in *London*, in *May* 78. The next Witneſs is Mr. *Butler*, he was then Sir *Richard Barker*'s Coachman. He lived ſome Years with him, as his Servant; but he is now ſet up for himſelf; and he ſays, that when he was about his Maſter's Buſineſs in the Coach-yard, and fitting the Coach for to fetch his Maſter home from *Putney*, I came in, and this was in the beginning of *May*, in a Diſguiſe; and he ſays, he ſaw me a ſecond time in another Diſguiſe. Then comes a third Witneſs that I called, and that is *Page*; and he came into the Hall, where the Patients uſe to wait for his Maſter, and there he met me, and ſpoke with me. Then I called *Walker*, the Miniſter, but it happens his Memory is not ſo good now, as it was heretofore; and indeed I cannot tell how to blame him, for 'tis ſo long ſince, that it is impoſſible for any body to remember the Circumſtances of Times and Places, that in ſome ſhort time after the Fact might have been remembered with far greater Eaſe. I expected Sir *Richard Barker* might have been here, being ſubpœna'd, to juſtify the Evidence of theſe People; and I did ſuſpect that Mr. *Smith* would have been examined: but I perceived the Court tender of that Point, as knowing it would then eaſily have been ſeen upon which Side it was that he was ſuborned, that is, to make ſuch a Confeſſion as Mr. *Attorney* would have hinted at.

L. C. J. Have you a mind to examine him, Mr. *Oates*? With all my heart. If you conſent to it, he ſhall be examined.

Mr. Juſt. *Withins.* If you will, he ſhall be examined, it was for your ſake he was not.

Mr. Juſt. *Holloway.* It was to do you Right, that he was refuſed to be ſworn before.

Oates. Good Mr. Juſtice *Holloway*, you are very ſharp upon me.

Mr. Juſt. *Holloway.* No, I am not ſharp upon you; I think the Court did you a great deal of Juſtice, you have no reaſon to complain.

Oates. But, my Lord, this I ſay, the Evidence upon which I am now indicted of Perjury is the ſame which was delivered ſix Years ago at the *Old-Bailey*, at *Whitebread*'s Trial firſt, and then at *Langhorn*'s Trial, where were ſixteen Witneſſes then produced and heard againſt me: But then, my Lord, what Credit did they receive at *Whitebread* and *Langhorn*'s Trials? Now if this Evidence that I gave was then to be believed, though oppoſed by ſo many Witneſſes, what new Objection does riſe againſt it, which was not then hinted, and received an Anſwer? For as to all the Records that are brought out of the Houſe of Lords, they have not amounted to a Charge ſufficient to diminiſh any Man's Evidence in the World: for as to the Narrative that is entered there in the Journal, I think I and any Man elſe, that were concerned as I was, may very well defend the Truth of it: and I do avow the Truth of the Popiſh Plot, and will ſtand by it as long as I have a Day to live; and I do not queſtion but the Jury, upon Conſideration of thoſe Proteſtant Witneſſes that I have here brought againſt theſe Popiſh Seminaries, will acquit me of this Perjury. I leave it to your Lordſhip and the Jury to judge; and I hope thoſe Paſſages of Heat, that have fallen from me in Court, ſhall not make me fare at all the worſe in your Judgment. I have called ſome noble Lords to teſtify for me; but I find, either the diſtance of time has wrought upon their Memories, or the difference of the Seaſon has changed their Opinion, ſo that now they diſbelieve that which they did believe before, and perhaps for as little Reaſon as———

L. C. J. As they believed you at firſt.

Oates. Yes, truly, my Lord, for as little reaſon as they believed me at firſt; for I cannot expect that a Man, who believes without a Principle, ſhould not recant that belief without a Reaſon.

L. C. J. What do you mean by that?———*Oates.* I name no body.

L. C. J. But the Nobility that are here, and that have been Witneſſes in this Cauſe, are all Perſons of that Honour, that the Court is bound in Juſtice to take notice of and vindicate them from your ſcandalous Reflections; but only I think that a Slander from your Mouth is very little Scandal.

Oates. Nor from ſome body's elſe neither.

L. C. J. But, Sir, you muſt be taught better Manners.

Oates. I find, my Lord, I am not to be heard in this Cauſe with Patience.

L. C. J. I think you do not deſerve to be heard at all.

Oates. I cannot tell how to help it, if you will not hear me.

L. C. J. Can't you ſay what you have to ſay for yourſelf without Reflections, and running out into ſuch Extravagances?——*Oates.* My Lord, you will ſuffer me to offer nothing that is material for my Defence.

Mr. Juſt. *Walcot.* Do you think it decent for this Court to ſuffer Perſons of Honour, that by your own Deſire were ſworn to give Teſtimony in this Cauſe, ſhould lie under the Reproach of your Tongue?

Oates.

Oates. Good Mr. Juſtice *Walcot*, was there ever any Man dealt with as I am, or had ſuch Evidence offer'd to be given againſt him? Here they offer to blacken me with the imputation of that foul, infamous Crime of Perjury; and who are the Witneſſes to prove it, but Youths out of a Seminary? Sir *George Wakeman*, and my Lord *Caſtlemain*, known Papiſts, and perhaps Popiſh Recuſants Convict too. As for my Lord *Caſtlemain*, the Record of his Acquittal is brought as a Charge againſt me, to prove that I was forſworn, and not believed at his Trial; when all the World knows, it was becauſe there was but one Witneſs againſt him, that he came off, and that was the Reaſon that was urg'd by my Lord Chief Juſtice *Scroggs* at that very time, who would not admit *Dangerfield* to be a Witneſs, and reflected not at all upon my Teſtimony, but directed the Jury, for want of another Witneſs, to acquit him. Then, my Lord, here is *Wakeman* brought, and his Acquittal too; he ſwears all I ſaid againſt him was falſe: whereas, had it not been for two diſhoneſt Perſons, one I have now in my ſight, I ſhall not name any Names, we could at that time have proved five thouſand Pounds of the Money paid to him, and that he gave a Receipt for it. But, my Lord, this I am ſure of, if I had been brought in as a Witneſs in the Caſe of thoſe that ſuffered lately for the Preſbyterian Fanatick Plot (as they call it), I had never been call'd in queſtion, if my Evidence had been falſe; but it is apparent the Papiſts have now a Turn to ſerve, and theſe Papiſts are brought in, the *St. Omers* Youths, to bear this Teſtimony on purpoſe to falſify my Evidence, and to bring off the Popiſh Lords that now ſtand impeach'd of High-Treaſon for the Popiſh Conſpiracy: but, my Lord, I hope as the Court would never admit Indictments of Perjury againſt the Witneſſes in that Caſe of my Lord *Shaftesbury*, ſo you will not admit it here; and if my Lord Chief Juſtice *Jones* were in the right, who did the ſame thing in his Circuit, I hope I ſhall have that Right done me here. My Lord, it is not me they indict, but the whole Proteſtant Intereſt is aim'd at in this Proſecution; and hereby they arraign the whole Proceedings of ſo many Parliaments, all the Courts of Juſtice, and the Verdicts of thoſe Juries that convicted the Traitors that were executed; for my own part, I care not what becomes of me, the Truth will one time or another appear.

L. C. J. I hope in God it will.--*Oates.* I do not queſtion it, my Lord.

L. C. J. And I hope we are finding it out to-day.

Oates. But, my Lord, ſince I have not the liberty to argue thoſe things that were moſt material for my Defence againſt this Indictment, I appeal to the great God of Heaven and Earth, the Judge of all; and once more in his Preſence, and before all this Auditory, I avow my Evidence of the Popiſh Plot, all and every part of it, to be nothing but true, and will expect from the Almighty God, the Vindication of my Integrity and Innocence.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Oates. My Lord, I have one thing to move to your Lordſhip; I deſire I may be brought up to-morrow by Rule of Court to hear my Trial that is then to be.

L. C. J. Ay, let him be brought up by Rule to his Trial.

Oates. My Lord, I lie under very great Affliction with the Stone and the Gout, and beſides that, I have lain in Irons theſe twenty-one Weeks; I beſeech your Lordſhip, that this Cruelty may not be inflicted upon me. My Lord, I am but hitherto a Debtor to the King upon a Civil Account; and if I ſhould be convicted upon theſe Indictments, I could then be but in Execution for a Treſpaſs: and I humbly conceive and hope the Court will ſhew me that Favour, as to acquaint my Keeper, that I ought not to be ſo handled.

L. C. J. Look you, for that, I tell you again what I have often ſaid, I expect from the Marſhal that he keep you as he ought to keep you; I have heard that there have been abundance of Attempts made for your Eſcape, and therefore the Marſhal muſt have the greater Care of you.

Oates. Let any of thoſe Complaints be made out, my Lord, and I'll be contented to be uſed how they will.

L. C. J. I repeat it again, Let the Marſhal have a care to keep you *in ſalvâ & arctâ Cuſtodiâ*, according to Law.

Mr. Juſt. *Holloway.* If the Marſhal does otherwiſe than his Duty, inform againſt him, and take the Remedy the Law allows.

Marſhal. But the laſt Night, my Lord, Ropes were brought into his Chamber, on purpoſe to give him means to eſcape, and here are the Bundle of Ropes.

Oates. I know nothing at all of them, I aſſure you, my Lord.

L. C. J. Well, you have our Rule. Go on, Mr. *Solliciter.*

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the King in this Cauſe; which is upon an Indictment of Perjury againſt *Titus Oates*, the Defendant; and the Perjury charg'd upon the Defendant, is laid to be in his Oath at the Trial of *Ireland*, at the *Old-Bailey*; and it is thus, That he in his Evidence at that Trial did ſwear, that there was a treaſonable Conſult of the Jeſuits, held at the *White-Horſe* Tavern in the *Strand*, the 24th of *April* 78, and that he was there preſent—— *Oates.* Ay, I was there.

L. C. J. You muſt be quiet, and let the Counſel go on without Interruption.

Mr. Sol. Gen. And that they ſeparated themſelves into leſſer Companies and Clubs, and that the Jeſuits came to a Reſolution to murder the late King, and that he, the Defendant *Oates*, carried this Reſolution from Chamber to Chamber, and ſaw it ſigned by them: Now all this is laid in his Indictment to be falſe; for that, in truth, he was not preſent at any ſuch Conſult of the Jeſuits at the *White-Horſe* Tavern in the *Strand* upon the 24th of *April* 78, nor did carry any ſuch Reſolution from Chamber to Chamber to be ſign'd, as he had ſworn in the *Old-Bailey* at that Trial; and ſo has committed wilful and corrupt Perjury.

Gentlemen, The Evidence that has been given to prove, that he was not preſent at any ſuch Conſult, nor did carry any ſuch Reſolution, has been by proving where he was at that very time that he ſwears this Conſult was held, that is, that he was really at *St. Omers*, in parts beyond the Seas, and not in *London*; and to make out this, we have produced no leſs than twenty Witneſſes, that ſwear poſitively, and give you very many Circumſtances to induce you to believe, that what they have taken upon them to remember, is really and effectually true.

First, You have Mr. *Hilſley*; and he ſwears that he himſelf came away from *St. Omers* the 24th of *April*, New Stile, which is the 14th of *April*, Old Stile, which was a *Sunday*; that Night he came to *Calais*, the next day he arriv'd at *Dover*, and coming up to town towards *London*, the next Day he met with Mr. *Burnaby*, who was then going to *St. Omers.* And he further ſwears, that at that very time, when he came from *St. Omers*, he left *Oates*, the Defendant, upon the Place: this, I ſay, was the 14th of *April.* And for a Confirmation of this to be true, he left him there at that time, I would mention what two other Witneſſes do teſtify, and therein do verify what he ſwears; for they tell you, that at this very time when he came over, or within a Day or two, but long before ſuch time as there was any occaſion to bring this to be a Queſtion, he told one of them, in a Diſcourſe that was between them, that he had left upon the Place from whence he came, which was the College at *St. Omers*, an *Engliſh* Miniſter, whoſe Name was *Sampſon Lucy*——

Oates. My Lord, I beg I may have leave to withdraw, for I am very weak and ill.

L. C. J. Then make room for him to go away, if he will.

Mr. Sol. Gen. And they give you an account, that the Defendant, *Oates*, went by that Name there, and it is not denied by him that he did ſo: And this is a Circumſtance greatly verifying Mr. *Hilſley*'s Evidence. Then comes Mr. *Burnaby*, who ſwears, That he met Mr. *Hilſley* when he came from *St. Omers*, about the 16th of *April*, Old Stile, and the 21ſt of *April*, Old Stile, he came to *St. Omers*; and that when he came there, he found *Oates* there upon the Place; this was the 1ſt of *May*, New Stile: and he gives you this Circumſtance to ſtrengthen his Teſtimony, That he very well remembers, that upon the 2d of *May*, New Stile, the Day after he came to *St. Omers*, *Oates* intruded into his Company, and got himſelf acquainted with him. He ſays further, that upon the 3d of *May*, New Stile, he particularly remembers *Oates* was in his Company there, and they went into the Garden and walk'd together: he alſo ſays, he ſaw him the 5th of *May*, New Stile, which is the 25th of *April*, Old Stile, the Day after this Day aſſign'd for the Conſult, with this Circumſtance, That he remembers to have ſeen him in the Rhetorick School, and ſo ſucceſſively afterwards he gives you a particular Account down to *Midſummer:* after that, *Oates* continued in the College at *St. Omers*, and then went away.

Then the next Witneſs we produce is Mr. *Pool*, and he gives you an account, that upon the 25th of *April* 1678, New Stile, which was the 15th of *April*, our Stile, he came over here, and he left behind him at *St. Omers* the Defendant *Oates*; for he particularly remembers, that he ſaw him there when he came away; ſo *Hilſley* left him the 14th of *April*, Mr. *Pool* came away the 15th of *April*, which is their 25th, and left him at *St. Omers*, and does not remember, that he uſed to be abſent out of the College; and Mr. *Burnaby* finds him there the 21ſt of *April*; ſo that particularly at the times the other two came away, and *Burnaby* came thither, there he was, and there they ſaw him.

The next witneſs is Mr. *Thornton*, and he gives you an account when *Oates* came thither firſt, and how long he ſtaid there; he ſays he came about *Chriſtmas* 77, and there he ſtaid till *Midſummer* Eve 78; and he tells you ſome particular Days he ſaw him on; he ſays he ſaw him there on the 1ſt of *May*, New Stile, and he ſaw him the 2d of *May*, New Stile, in company with Mr. *Burnaby*, the next Day after his Arrival there, wondering at their ſudden Acquaintance. And he adds a particular Circumſtance, why he remembers it was the 2d of *May*; becauſe that Day the Scholars at *St. Omers* acted a Play, at which *Oates* had a Scuffle for a Seat: and he ſays he does likewiſe remember him to have been there when Mr. *Pool* came away, which was the 25th of *April*, New Stile.

Then Mr. *Conway*, that was our next Witneſs, gives you an account likewiſe of *Oates*'s coming to *St. Omers* about *December* 77, and how long he ſtaid there, *viz.* till the latter end of *June* 78. And he does not remember, that he lay out of the College above one Night, and that was in *January.* And he remembers particularly, that he ſaw him with Mr. *Burnaby* ſuch a Day in *May.*

Then we brought another Witneſs, and that was Mr. *Haggerſtone*; and he tells you, he had good reaſon to remember Mr. *Oates*, for he was in the ſame *Claſſis* with him; and this Gentleman gives an account particularly, that he remembers him to be there the next Day after Mr. *Burnaby* came, and agrees in teſtimony with all the reſt, that from *Chriſtmas* till *Midſummer*, he was not abſent out of the College but one Night.

We have another Witneſs, Mr. *Beeſton*; and he remembers, that *Oates* was playing at Nine-pins the 1ſt of *May*; he remembers the 2d of *May* to have ſeen him with Mr. *Burnaby* after the Play was over; and that agrees with the other Witneſſes about his being in *Burnaby*'s Company the 2d of *May:* and he remembers likewiſe, that he himſelf was choſen Reader to the Sodality, but upon Mr. *Oates*'s Importunity, he ſupplied the Place in Mr. *Beeſton*'s room, only with this Reſerve and Condition, That Mr. *Beeſton* was to be Reader at any time, if *Oates* failed. And he gives you this particular account, that *Oates* did read, as he believes, every *Sunday* and Holiday, from the latter end of *March*, when he was choſen Reader, to within a Week of his going away; for that he did never read himſelf, as he ſhould have done if *Oates* had been abſent or failed to read.

We have another Witneſs, and that is Mr. *Smith*; and he ſwears his being there from *Chriſtmas* 77 to *Midſummer* 78, and he remembers particularly as to *April* and *May*, becauſe the 21ſt of *April* he himſelf fell ſick in the College, and went into the Infirmary, and remained there till the 7th of *May*; and he does remember that *Oates* viſited him very oft in that time in the Infirmary, and told him Mr. *Hilſley* was gone away, and Mr. *Pool* was gone away, and two or three other Particulars, which happened in the College at that time; ſo that there is another Evidence, that is very ſtrong with Circumſtances to confirm the Teſtimony of the reſt; and he gives you a very ſatisfactory Account of it, by ſhewing the Reaſons how he comes to remember theſe things.

Mr. *Price*, who was our next Witneſs, has given you a Relation all to the ſame purpoſe of *Oates*'s coming there at *Chriſtmas*, and of his going away at *Midſummer.* And he remembers particularly, that *Oates* was at *St. Omers* when the Jeſuits went to the Conſult at *London*; for that there was a Conſult, and at that time, is acknowledged to be true; but not ſuch as he ſays, nor was he there: but he ſays ſome of the Fathers did call

there

there in the way to *England*. And at that very time, and after, he ſaw him there. And Mr. *Doddington* gives you the ſame Account.

Then comes Mr. *Gerrard*, and he tells you a Story to the ſame purpoſe; how long *Oates* was there, and when he came. And that the 2d of *May* he remembers *Oates* was at the Play; and he remembers the 26th of *May*, *Oates* was there, which was the 16th of *May* Old Stile. And he is ſure *Oates* was there at that time, for this reaſon, that being the Day whereon he himſelf was confirmed, St. *Auguſtine*'s Day; and *Oates* was confirm'd with him: and therefore he has reaſon to remember *Oates* was at *St. Omers*.

My Lord *Gerrard* of *Bromley* was our next Witneſs, and he gives you an account to the ſame purpoſe; and to the general Evidence, in which he confirms the others, he adds this Particular, That *Oates* uſed to read with a ſingular canting Tone; ſo that he muſt needs remember him, and was ſo remarkable for other things, that he could not be abſent without being miſs'd, which he never was.

Then comes Mr. *Morgan*, who was there at that time, a Scholar; but he's now a Miniſter of the Church of *England*; and therefore not liable to Mr. *Oates*'s great Exception of Religion. He confirms what all the Witneſſes ſaid of the Time of *Oates*'s coming, and of the Time of his going away: and particularly he ſwears, that when Mr. *Hilſley* went away, he was there; when Mr. *Pool* went away, he was there; and when Mr. *Burnaby* came thither, he was there. And this is not all, for there is ſomething more remarkable in his Teſtimony; for he tells you particularly he does remember, That upon the 24th of *April*, Old Stile, the Day, Gentlemen, when *Oates* ſays he was at the Conſult in *London*, *Oates* was then at *St. Omers*. And the Occaſion of his remembering this, he gives you an account of; for he tells you, upon reading the Trial of *Ireland*, where *Oates* ſwears, That he was here at the Conſult the 24th of *April* 1678, Old Stile, all the College reflected upon it, and wondered at the Impudence of the Man, that he ſhould dare to ſwear ſuch a thing, when all the College remember'd him to be there all the while. And upon recollection of Circumſtances, he himſelf did particularly recollect his own playing at Ball that very Day, and having toſs'd his Ball over the Wall, he borrow'd *Oates*'s Key to go into the Garden to fetch it: And this was thought of whilſt things were freſh, and every Man remember'd this, or that, or the other thing to be done at ſuch a particular time.

Mr. *Arundel*, who was another Witneſs, proves the general Teſtimony of the reſt, and agrees in ſome particular things; and all he ſays is to the ſame purpoſe.

Mr. *Chriſtopher Turbervile*, he comes and ſwears *Oates*'s being at *St. Omers* the 4th or 5th of *May*, which is the 24th and 25th of *April* Old Stile. For that upon Mr. *Pool*'s going away, he changed his Chamber in the College, and ſaw *Oates* divers Days afterwards in his Chamber, and at the Door; and he knew that he conſtantly read in the Sodality, and That he left particularly the *Sunday* before he went away, which was about *Midſummer* 1678.

There was another Gentleman, and that was Mr. *Anthony Turbervile*, who gives evidence all to the ſame purpoſe; and this Circumſtance goes thorough all the Teſtimony of theſe Perſons, that there's ſcarce any body can come to, or go out of the College, but it is known to all that are there; every Man takes notice of it, 'tis the common Diſcourſe amongſt them; and therefore they give this as the Reaſon of their Belief, That he was there all this while, becauſe they did not remember any thing that ſhould give them occaſion to believe Mr. *Oates* was away from the College from *Chriſtmas* till *Midſummer*, but only one time; and the Remembrance of that does ſhew, that they do really obſerve theſe things, for they could all tell that in *January* he went to *Watton*, and ſtaid out one Night.

There is one Witneſs more that is poſitive and particular, and that is Mr. *Clavering*, and he remembers *Oates*, by a very remarkable Circumſtance, was at *St. Omers* at the very time the Congregation is ſaid to be held in *London*; for he tells you there came a Perſon to beg Money of him, and there was a Collection made in the Houſe; and this Perſon did deſire to ſpeak with *Oates*, who was then in the College, and whom it ſeems this Perſon had known in *Spain*; but *Oates* did refuſe to ſpeak with him, and did not come down to him. Thus he remembers ſuch an one came there, and when he was there, he was ſent to *Oates* to deſire him to come down to this Man, and he would not. Ay, but now how is this remember'd to be at the time when the Congregation was held here in *England?* As to that, he gives this plain and full account, That it muſt be at that very time; for the Scholars did diſcourſe among themſelves, and were reckoning up what he had gotten among them, and what he had gotten at *Watton*; and finding that it was very inconſiderable that he had gotten at *Watton*, they talk'd among themſelves what ſhould be the Reaſon; and concluded it was, becauſe the Fathers were gone over to *England* to the Congregation.

Theſe particular Circumſtances our Witneſſes give you as the Reaſons of their particular Remembrances of the particular Times: But, Gentlemen, you muſt take along with you thoſe general Conſiderations too that are offered, which do affect the whole Time, from *Chriſtmas* till *Midſummer*. Firſt, That none can come or go, without being diſcourſed of in the College: Next, that much more Mr. *Oates* muſt needs be miſſed, than any other, being ſo remarkable a Perſon, as they tell you, that ſcarce any Week paſs'd without his making it remarkable by ſome ridiculous Action or another. They ſay he ſat ſingly by himſelf, at a particular Table, that no Man could come into the Hall, but they muſt ſee him; and therefore, if abſent, muſt needs miſs him. And yet they ſwear they do not ever remember him abſent, but that one Night; and if he had been abſent, they muſt needs have obſerved it, becauſe of all thoſe Circumſtances that have been reckoned up.

Theſe are the Witneſſes, Gentlemen, that we have produced to prove this Charge upon the Defendant, two of whom are brought only to verify Mr. *Hilſley*'s Teſtimony; having heard it from him at that time that he had left *Oates* at *St. Omers*, when there was no Thoughts of this Queſtion.

Now among theſe twenty Witneſſes, there are not above two or three at moſt that were at either of the Trials before. They were never produced as Evidence, tho' indeed they proved the ſame thing that was teſtified by others then, but with many other Circumſtances and Particularities that were not before ſpoken of; ſome are now produced that were produced before, and the Reaſon is, becauſe they are themſelves concerned in thoſe Particularities which gave occaſion to the others to remember them.

Gentlemen, after the producing of ſo many Witneſſes, and ſo ſtrong a Proof, what is it that Mr. *Oates* has produced againſt it? His main Objection to their Teſtimony is, There were ſeveral that came from *St. Omers* to teſtify at thoſe former Trials what theſe now ſwear, who were not believed, but I was believed, and the Men were convicted, condemned, and executed upon my Teſtimony: But is that all he has to ſay? No, ſays he, I have likewiſe Witneſſes to offer as a Counter-proof to them, a poſitive Proof that I was here in *England* at the time they ſwear me to be at *St. Omers*. And he ſays well; if that be proved, there is an end of the Caſe. Well, what is the Proof? The Witneſſes that he has, have been theſe four, *Cicely Mayo*, Servant to Sir *Richard Barker*; *Butler*, his Coachman; *Page*, another of Sir *Richard*'s Servants; and the Parſon *Walker*.

The Evidence of *Page* and *Walker*, tho' produced laſt by Mr. *Oates*, yet I crave leave to mention firſt, and ſet them out of the way. *Page*, he remembers to have ſeen Mr. *Oates* in a Diſguiſe at Sir *Richard Barker*'s, that is, in grey Cloaths; but he is not certain as to the Time; and he cannot take upon him to ſay what time of the Year, or what Year it was, only he believes it was in *May*: and therefore that can be no ſufficient Evidence to contradict Witneſſes, that with great Particularity ſpeak to certain times. As for *Walker*, the Parſon, he ſaid he ſaw him between *St. Martin*'s-*Lane* and *Leiceſter-Fields*; but he cannot remember the time when neither: nay, the Remembrance he has of it goes rather to another time, than the time in queſtion; for being aſked what Circumſtance he knew the Time by, he ſaid, it was about a Year and a Quarter before the Plot was diſcovered, which muſt be in *April* or *May* 1677, and that will do the Doctor no ſervice at all upon this Queſtion.

Now let us conſider Mrs. *Mayo*'s Teſtimony; and the Oath that ſhe made was this, That when *Oates* came over into *England*, ſhe ſaw him at Sir *Richard Barker*'s Houſe the latter end of *April*, or the beginning of *May*, and the Week before *Whitſuntide*. The latter end of *April*, or the beginning of *May*, was the firſt time that he came, that ſhe ſaw him; but that he came before, as ſhe heard, but the Coachman only ſaw him, and told her that *Oates* had been there: but the ſecond time ſhe did ſee him, and he went in and dined there in the Houſe. Sir *Richard Barker* was not there, but my Lady's Siſter, her Sons and Daughters were there. She ſays, that ſhe ſaw him again a Week before *Whitſuntide*; that when he came the firſt time he was in grey Clothes, a white Hat, and a ſhort Perriwig. Afterwards he was in black Clothes, a pretty long Perriwig, not very long, but the Perriwig was brown: and theſe are the Circumſtances ſhe remembers to have ſeen him by.

Now let us ſee what *Butler*, the Coachman, ſays: He remembers about the beginning of *May* he ſaw *Oates* at his Maſter's Houſe in a Diſguiſe; the other ſaid it was the latter end of *April*, or the beginning of *May*; but I ſtand not upon that: but this he does ſwear, That the firſt time he ſaw him, *Cicely Mayo* ſaw him too, that he was then in grey Clothes, a white Hat, but his Hair was cut ſhort, and he had no Perriwig on; afterwards he came in a cinnamon-colour'd Coat, and green Ribbons, and a long black Perriwig. This is *Butler*'s Evidence.

Now theſe two People's Evidence are utterly impoſſible to be reconciled, they contradict one another ſo much: Firſt, they contradict one another in this; ſhe ſays, the firſt time he came ſhe did not ſee him, but the Coachman told her he had been there; but he ſwears, That ſhe did at that time look out of the Window into the Yard, and did ſee him as well as he. Another Contradiction is this: ſhe remembers the firſt time he came in grey Clothes, a white Hat, and a ſhort Perriwig; the Coachman ſwears he had no Perriwig on; but his Hair was cut ſhort to his Ears. Then again ſhe ſwears the ſecond time, he was in black Clothes, and an indifferent long Perriwig, and the Perriwig was brown: and the other ſwears he was in cinnamon-colour'd Clothes, and a long Perriwig, and it was a black one. Now thus you ſee the Witneſſes contradict themſelves, and cannot be reconciled to one another.

But take one thing more, which is very conſiderable, wherein ſhe contradicts Mr. *Gerrard*; for ſhe ſwears he was here a Week before *Whitſuntide*; that ſhe is ſure of: Now that falls upon the nineteenth Day of *May*; then upon the ſixteenth Day of *May*, was the Week before *Whitſuntide*; now, that is a moſt eminent Day, by the Teſtimony of Mr. *Gerrard*; for that happens to be the twenty-ſixth of *May*, New Stile, and that was the Day he was confirmed with Mr. *Gerrard* at *St. Omers*: And no Man ſure can doubt which of the two Witneſſes is to be believed; and it cannot but be true, that he was there at that time, becauſe ſo remarkable a Circumſtance cannot be forgotten: and yet this Woman ſwears that he was there a Week before *Whitſuntide*, and that by computation muſt be the Time of his Confirmation. But, Gentlemen, another thing that I offer upon the Teſtimony of theſe Witneſſes, is this: If you will believe it, he himſelf contradicts his own Witneſſes, or they him, and one of them is forſworn: For he has ſworn the Conſult was the twenty-fourth of *April*, and that three or four Days after that was over, he went back with the Fathers to *St. Omers*: Now this contradicts all that his Witneſſes have ſaid. But he has given himſelf, as he thought, ſome little Latitude; ſays he, The Conſult began the twenty-fourth, but it held ſix or ſeven Days longer. We will for this time admit it to be ſo, and give him the ſix Days he requires; and yet after all, it will not come up to the time that his Witneſſes ſpeak to: for to the 24th of *April*, add ſix days, and that brings us juſt to the laſt Day of *April*; and then take four Days in *May*, to make up the three or four Days after the Conſult was over, and we are yet at a great diſtance from the *Whitſun*-Week; for that was the 19th of *May*, and the Week before muſt be the 12th or 13th, and ſo it is impoſſible to be reconcil'd to Truth what he and his Witneſſes ſwear; either the Evidence that the Doctor now brings, muſt be a Contradiction to his own former Oath, or his Oath proves they are miſtaken: beſides the Contradiction that is between the Witneſſes themſelves; for they vary in a great many material Circumſtances, which I have before reckon'd up to you.

But, Gentlemen, falſe Witneſſes are very often detected by little Circumſtances, though I muſt needs ſay, theſe are not ſmall ones; for theſe are very remarkable things in themſelves, and great Contradictions to one another, and therefore 'tis impoſſible they both can ſwear true.

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There were ſome other Witneſſes that were produced by Mr. *Oates* formerly upon this Point; one of which was *Clay*, the Prieſt, and he, you hear, is contradicted by Mr. *Howard*'s Teſtimony, who not only tells you he was not at his Houſe when he ſays he was, but ſhews that *Clay* was miſtaken in point of time: It was not in *May*, but in *July*. But that's not all, we have another Evidence, Gentlemen, to ſhew how this Miſtake comes to paſs, and which will give a great light into this ſort of Practice that has been uſed in this matter; for we have two Witneſſes that give you an Account how *Oates* and Sir *William Waller* were at the *Gate-Houſe* with *Clay*, and there did threaten him, that unleſs he ſwore he dined with *Oates*, at Mr. *Howard*'s in *May*, they knew he was a Prieſt, and he ſhould be hang'd. The Man was ſomewhat cautious at firſt, for truly he knew nothing of the matter; but at laſt, upon condition he might have his Money again that was taken from him, he had been a Rogue formerly, and he did not know what he might do. Now, we find preſently after, that he was in fact brought as a Witneſs; what he ſwore, Mr. *Howard* tells you, and you have heard him contradicted in that point of Time. For Mr. *Howard* ſays, it was in *July*; and then it was agreed that *Oates* was in *England*; for our Witneſſes tell you that at *Midſummer* he came away from *St. Omers*.

So that, Gentlemen, the Evidence that was formerly produced for him, is not only taken away by poſitive Counter-proof, but there is fixed upon him, with great Infamy, the additional Crime of Subornation, by forcing People to ſwear for him under the threats of being hanged; and we all know how ſuch People lay under great Fears and Terrors at that time.

There was another Witneſs that was produced formerly for him; but I ſhall not take upon me to repeat all the particular Evidence that has been now given about that Matter. In ſhort, our Objection to the Teſtimony lies thus: That *Oates* did ſwear in his Narrative, that *Smith* was a dangerous Man, and employed by the Jeſuits to ſtir up the People againſt the Government; that appears by *Oates*'s own Oath. But it likewiſe appears, that afterwards they were reconciled, and that he gave *Smith* a Certificate under his Hand, that he was a good Proteſtant, and a good Subject, and about eminent Service for the King. Now we ſee no reaſon hitherto, why Mr. *Oates* ſhould change his Mind, after having ſworn him ſuch an ill Man, all of a ſudden to be ſo kind to give him his Protection, and ſo advantageous a Character as that was in that Seaſon. But, Gentlemen, the Myſtery is eaſily unfolded, if we go three or four Days further in time, which brings us to the Trials of *Whitebread* and *Langhorn*; it ſeems Mr. *Oates* was then aware of that, which is now an Objection to his Teſtimony; for it was made an Objection at the firſt Trial of *Ireland*, That he was not at this Conſult, for he was then actually at *St. Omers*; but no Witneſſes were there to prove it; but now he was aware that ſome were a coming over, and it concerned him to make ſome good Proof if he could, that really and in truth he was here in *London* at that time.

And I cannot omit to take notice of what my *Lord Chief Juſtice* was pleaſed to obſerve and object to him now: It is a wonder a Man ſhould be here in Town ſo long; a Man that had much Acquaintance, as it ſeems he had; a Man that went about freely and publickly, as his own Witneſſes ſay he did, ſhould be ſeen by no body, but theſe few, ſhould not be able to give an Account, by any body, where he lodged, at any one Time in this Interval. Nay, by no Circumſtances that muſt occur to his own Knowledge, to be able to ſhew where he lodged, is very ſtrange; though it ſhould be that he did lodge in the Houſes of thoſe that would not come to give Evidence, as he alledges; yet it is almoſt impoſſible, but there muſt be ſome other Circumſtances to prove his being here, beſides the Evidence of the Landlord of the Houſe where he lodged: but he gives no Account where he was lodged, and whom he converſed withal, but theſe People only; and that they ſhould ſee him, who were not his Intimates, and none elſe in the World, is to me one of the moſt ſtrange Things that can be conceived.

Now, Gentlemen, when he has given no manner of Satisfaction that he was here, and is by twenty Witneſſes ſworn not to be here; what is it that he ſays to all this? Why he doth inſiſt upon it, that his Credit muſt not be now impeached, becauſe that once he had the Fortune to be believed, and ſome Men have died and ſuffered for it; as if no Perjury were to be puniſhed, but that which is unſucceſsful; whereas the Reaſon why Perjury is taken notice of in the Temporal Courts, is only becauſe of the Miſchief that it may do. Shall it then be no Crime when a Man has done the Miſchief, when the fear of that Miſchief was the ground of making it a Crime? That is a moſt monſtrous way of arguing. And yet this would Mr. *Oates* have look like an Argument, that becauſe he has been believed in his falſe Oaths, and Men have ſuffered by his Perjury, and he has been ſucceſsful in his Crime, that Succeſs has protected his Wickedneſs from Puniſhment. This I confeſs is a new way of arguing; and ſuch as none but Mr. *Oates* could certainly have invented.

But, Gentlemen, to contradict this, we have ſhewn you, that as he has had the Fortune to be believed; ſo he has likewiſe had the Fortune to be diſbelieved. For there have been produced as many Records of Acquittals, where he was an Evidence, as there have been produced Convictions upon his Teſtimony; ſo that he has been as often diſbelieved as believed.

Whither then does he betake himſelf next? He has called a great many Witneſſes to give you, as Evidence for him, an Account what Opinions at that time the Houſes of Parliament, the Courts of Juſtice, and the Juries had of his Evidence; and then inſiſts upon it, that now to call his Credit in queſtion, is to arraign the Juſtice of the Nation, the Wiſdom of both Houſes of Parliament that believed him, the Honeſty of the Juries that convicted thoſe whom he accuſed, and the Integrity and Underſtanding of the Judges, who were learned, wiſe, and juſt Men; and with great Earneſtneſs he aſks the Queſtion, Why now at this time of Day ſhould this be call'd in queſtion, which received ſo much Credit and Approbation ſo long ago, by the good Opinion that all ſorts of Men had of it at that time? And now to queſtion this, he would have thought to be a caſting a Blot upon the Wiſdom of the Nation, and an arraigning the Juſtice of it; when, if the thing be duly conſidered, the not puniſhing this heinous Offence with the utmoſt Severity that the Law will allow of, now, that theſe Circumſtances appear to make it plain and evident, would be a greater Piece of Injuſtice and Reproach, rather to our Nation, than any ways a Reflection on the Juſtice of it.

Gentlemen, when we conſider the Circumſtances of this Caſe now, I do verily think it will appear to be a very ſtrange and wonderful thing to us, that ever any Man ſhould have believed him. And it is a ſtrange Conſideration to reflect upon, to think what Credit he had at that time. But withal, conſider, Gentlemen, could any one imagine, that it were poſſible for any Man on Earth to become ſo impudent, as to dare to expoſe himſelf before the High Court of Parliament, the great Courts of Juſtice, and there tell a moſt infamous Lye for the taking away the Lives of Men? The greatneſs of the Attempt, was a great Inducement to the Belief of it, becauſe no Man could be preſumed to dare the doing of ſuch a thing, if he had not a Foundation of Truth to build upon. And when he had thus made his Diſcovery, and that of ſuch a Nature too, a moſt horrid, bloody, and traitorous Conſpiracy to murder the King, to overturn the Government, to maſſacre all the Proteſtants in the Kingdom, and to deface the very Name of the Proteſtant Religion; what was more natural than that the Parliament ſhould take all imaginable Care to prevent the Accompliſhment of ſo great a Miſchief? And conſider too, how much eaſier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when it came to be examin'd and oppoſed by them that were accuſed, who beſt knew wherein, and by what means to prove him falſe.

Gentlemen, the Care the Parliament took to diſappoint any Deſigns of this Nature, and the Means they uſed for the Security of the King and Kingdom, and the Preſervation of our Religion and Lives, (which I cannot but obſerve, was previous to the Trial of any one Offender that was tried and convicted upon this Evidence) muſt needs put the whole Nation under great Apprehenſions of Danger, and make the Way much eaſier for him to be believed, as by ſad Experience we found it did. Under theſe Circumſtances came thoſe Men to be tried, with this further, (as we cannot now but think) that there were ill Men at work, that laboured to improve thoſe Fears and Jealouſies that had already poſſeſs'd Men's Minds; the Wonder then will be the leſs, if Men, under ſuch Diſadvantages, tried by Men under thoſe Fears and Apprehenſions, had the ill fortune to be convicted. But when Men had a little overcome their Fears, and began to conſider his Evidence more calmly, the Scene was changed, *Oates* loſt his Credit, and the Men were all acquitted. Nor is this Proſecution any Reflection on the Proteſtant Religion, whoſe Cauſe he falſly aſſumes to himſelf. No, Gentlemen, the Proteſtant Religion had no ſhare in that Invention. It needs not the Support of a Lye, no, not the moſt plauſible Lye, much leſs of one ſo infamous as this does now appear to be. It is rather a Vindication of our Religion, to puniſh ſuch Offenders as they deſerve, and the proper Way to maintain the Juſtice of the Nation, and wipe off that Reproach this Man's Perjury has brought upon it.

L. C. J. Then, Gentlemen of the Jury, the Evidence has been very long, and it cannot be expected, after ſo much time has been ſpent in this Cauſe, and ſuch a Difference of Teſtimony, and eſpecially conſidering that the Teſtimony has met with frequent interruptions, and I may ſay, ſome Part of it delivered in great Confuſion, it cannot be thought or imagin'd, I ſay, that I ſhould be able to remind you of the ſeveral Particulars that concern this Caſe, and may be neceſſary to be obſerved about it. But, Gentlemen, I am ſure, by the Knowledge I have of moſt of you, you are Perſons of great Underſtanding; ſo that what may be omitted by me, I queſtion not but your own Abilities will ſupply. I confeſs I am much ſhortned in my Labour, by the Pains that Mr. *Sollicitor* has taken to ſum up the Evidence to you, and without all doubt, has done it with all Faithfulneſs to his Maſter, and with great Right to himſelf. I could not hear much of what he did ſay; but you who were nearer and did hear all, which I could not do, your Judgments will direct you to lay that Weight upon it which it deſerves, and which the Law will allow; for, Gentlemen, I am bound to tell you, that you are to lay no Weight upon any Allegations on the one Side, or on the other, or what is obſerved to you by the Court, further than is ſupported by the Teſtimony that has been offered.

Now, Gentlemen, I think it not amiſs for me (before ſuch time as I enter upon the Conſideration of the Particulars, and reminding you what I take to be the Evidence in this Caſe, and what not) to clear one Point, that this Perſon, *Oates*, the Defendant, againſt whom this Indictment of Perjury is brought, has endeavoured to inſinuate, on purpoſe to gain himſelf a Reputation; which if he could acquire this Way, would add a greater Reproach to the Juſtice of the Nation, than it has contracted already, by giving too much Credit to ſuch profligate Wretches, as have too lately appeared among us. The Objection he makes and inſiſts ſo much upon; ſays he, I was believed very much before, I can produce you the Opinions of the Judges, that declared themſelves very well ſatisfied with my Evidence, and the Verdicts of Juries, two or three, that convicted Men upon my Teſtimony; and not only that, but here were likewiſe three or four Parliaments that did not only believe that Teſtimony (or rather Narrative, for I cannot call that Teſtimony, which was given before the Houſe of Commons) that I gave, but did declare their Satisfaction of the Truth of what I ſaid; which Satisfaction and Belief of theirs did produce Thanks from both Houſes to me for giving this Teſtimony.

But all this while, what Mr. *Sollicitor* ſaid upon this Point, is a plain and a full Anſwer to it: If in caſe upon a ſudden Information, the King, the Parliament, the Courts of Law, and Juries, were ſurpriz'd into this Belief, as not imagining there could be a Pack of ſuch Villains, that could be wound up to that height, as theſe Fellows have been; that there could be ſuch an horrid Impoſtor as this Fellow, that ſhould make ſuch Attempts, unleſs there had been ſome Truth in it.

Therefore the Surprize of the thing, at that time, might obtain a Belief; but God forbid, that that Belief, which was ſo obtained, ſhould protect the Party believed from being call'd in queſtion for the falſhood of that Teſtimony, which was the ground of that Belief. It was hardly credible that any Perſon could be ſo wicked as to declare ſuch impudent Fallities as theſe; but, God forbid, that we ſhould continue longer under the ſame blindneſs and deluſion, the whole Matter is now laid open and detected. Therefore, Gentlemen, if you are ſatisfied in your Conſciences, and do believe upon the Teſtimony and Evidence that has been given here this Day, that thoſe very things that were ſo much believed before, were credited upon the Sur-

prize of a ſudden Diſcovery, or the Boldneſs of the Undertaking, yet now do plainly appear to be falſe; then be it, I ſay, upon your Conſciences, if you let this Falſhood go unpuniſhed. It is a Charge upon us who are upon our Oaths as Judges, and who muſt anſwer to the Great Judge of all the World for our Judgments; and 'tis likewiſe a Charge upon you that are ſworn to try this Cauſe, and muſt anſwer, as well as we, for what you do in it, not to have regard to any thing that was done before upon that hurry and ſurprize, but ſeriouſly to weigh and conſider what is ſworn now, and from thence make a Concluſion, whether you are not ſatisfied that innocent Blood has been ſpilt by the means of this Fellow. Nay, in this Caſe, 'tis a contracting of much more Guilt than ordinary, as it is Murder done under the Forms of Law, and common Methods of Juſtice. That Men ſhould take away the Lives of their Fellow-Creatures, by Perjury and falſe Accuſations, is of ſuch dreadful conſequence, that if the Juſtice of the Nation ſhall be afraid to have ſuch matters detected, there would be an end of all the Security we have of our Lives, Liberties, and whatſoever is dear to us.

Gentlemen, the Juſtice of the Nation lies under a very great Reproach abroad, for this particular thing; and we muſt be, all of us, that have any Concern for the Honour and Good of our Country, uneaſy, till this matter be thoroughly ſearched into, and impartially determined; and I take it to be a Caſe of the greateſt Importance to the Settlement of the Kingdom, for the Credit of our Laws, for the Honour and Juſtice of our Kingdom, that ever came in Judgement in any of our Courts of Juſtice. And therefore, as you reſpect your own Conſciences, and the Obligation of that Oath you are now under, and as you would be thought to bear any regard to the Peace, Honour, and Good of your Country, take care to examine ſtrictly and impartially into the Merits of this Cauſe, and weigh the Evidence which has been given on all ſides: be not at all diſmayed with the Apprehenſion of Clamour or Calumny, from any ſort of People whatſoever, for doing your Duty; neither be led away by the Inſinuations of what was believed formerly; for you hear the Reaſon which might make *Oates* be believ'd then; but it is incumbent upon you to enquire, whether you have not ſufficient reaſon to be ſatisfied what the Truth now is.

And, Gentlemen, I take myſelf to be the more obliged to take ſome pains in the preſſing a ſerious and impartial Conſideration of theſe things upon you, becauſe I cannot but ſay, my Blood does curdle, and my Spirits are raiſed, that after the Diſcoveries made, I think, to the ſatisfaction of all that have attended this Day, to ſee a Fellow continue ſo impudent, as to brazen it out, as he has done this Day; and that there ſhould appear no more ſhame and confuſion than what was ſeen in the Face of that monſtrous Villain that ſtood but now at the Bar. The pretended Infirmity of his Body made him remove out of Court, but the Infirmity of his depraved Mind, the Blackneſs of his Soul, the Baſeneſs of his Actions ought to be look'd upon with ſuch Horror and Deteſtation, as to think him unworthy any longer to tread upon the Face of God's Earth. You'll pardon my warmth, I hope; for it is impoſſible that ſuch things ſhould come before any honeſt Man, and not have ſome extraordinary Influence upon him.

Gentlemen, as to the Merits of the Cauſe, you have the poſitive Proof of many Witneſſes, whoſe Teſtimony I ſhall by and by, as well as I can, repeat to you; but, pray you, firſt give me leave to obſerve ſomewhat, as to ſome Points that have been ſtarted at the Bar, as, Whether a Papiſt can be a Witneſs? Now, ſuppoſe all theſe Perſons that come here to teſtify this Matter againſt the Defendant were Papiſts, as they are not, except you can take it upon your Oaths and Conſciences, that all theſe Men are guilty of voluntary and wilful Perjury, you muſt find the Defendant guilty.

As to their Difference in Religion, which *Oates* ſo much hung upon, I muſt tell you, every Papiſt or *Roman* Catholick, call them how you will, except the contrary be made appear by a legal Exception, I mean ſuch as would take off the Teſtimony of one that were not a Papiſt, is as good a Witneſs in a Court of Juſtice, as any Proteſtant whatſoever: we are not come here to controvert Points of Religion, but to try a bare Matter of Fact; ſo that all that ſtuff that you have heard here this day from the Defendant, and thoſe Inſinuations that he made about their Religion, on purpoſe to caſt dirt and filth upon all the Teſtimony that they have brought againſt him, muſt ſignify nothing with you at all. If in caſe ſuch Doctrine happen to prevail as he has this day preached, then it is in the power of any Villain to ſwear any miſchief whatſoever againſt a *Roman* Catholick, and that *Roman* Catholick has no way to vindicate himſelf, nor to make the Truth appear. We have no ſuch Exceptions to Witneſſes in our Law; every Man, till it is made to appear that his Credit is forfeited, may and ought to be received as a Witneſs to give Teſtimony in any Cauſe: ſo that all that matter is of no import at all.

And, Gentlemen, I am the rather minded to hint this unto you, becauſe he has inſinuated ſomething out of the Trials of *Grove* and *Pickering*, and *Ireland*, which was in *December*, in the Year 1677, at which Trial *Whitebread* and *Fenwick*, who had pleaded to the ſame Indictment, were brought on to Trial; but becauſe there was but one Witneſs againſt them, the Court diſcharged them for that time, and they came not again to Trial till the Month of *June* or *July* thereafter, when they were convicted and executed. Now between that time of *Ireland*'s Trial, and the time when *Whitebread* and the reſt came on to Trial again, ſays *Oates*, they had ſufficient time to have brought all their Witneſſes from *St. Omers*, to teſtify this buſineſs of my being there, having notice by the former Trial, what Evidence was againſt them: but all the Witneſſes they did bring, which were about fifteen or ſixteen, were not ſufficient to countervail the Teſtimony that *Oates* gave of his being here in Town; and thereupon they were convicted, condemned, and afterwards (I am ſorry to ſay it) executed.

This is the Objection he makes; but at the ſame time I muſt repeat what I ſaid before, when ſuch a diſmal Story as this was told, when he had the confidence to relate it before, in the Houſes of Parliament, and there obtained Credit; no wonder if, in that hurry, all of that Perſuaſion were look'd upon with an evil Eye; and the Conviction of thoſe that were at that time accuſed were too eaſy.

We muſt remember the Apprehenſions ſome were under of our Religion being to be ſubverted, our Government to be deſtroyed, our King to be murdered, our Throats to be cut by the Papiſts, to that height, that this very Fellow, *Oates*, was ſo much credited, that all other People almoſt were below him, and greater Reſpect ſhewn to him, than to the Branches of the Royal Family. Nay, it was come to that degree of Folly, to give it no worſe Name, that in publick Societies, to the Reproach and Infamy of them be it ſpoken, this profligate Villain was careſſed, was drunk to, and ſaluted by the Name of the *Saviour of the Nation*. O prodigious Madneſs! that ſuch a Title as that was, ſhould ever be given to ſuch a proſtitute Monſter of Impiety as this is!

Good God, whither were we running, when many eaſy People were ſo ſtrangely wrought upon by this Impoſtor, and when the villainous and black Deſigns of ſome evil Inſtruments amongſt us, could prevail ſo far, as to deceive almoſt a whole Nation into the Belief of ſo horrid a Falſehood; even at the ſame time that a hidden Treaſon too deeply contriv'd was carried on amongſt us; but, God be thanked, was not too lately diſcovered? The Conſpirators had a fair Game of it whilſt this Fellow was believed, and they needed no other means to accompliſh their Deſign: But when he was found falſe, and the pretended Plot had loſt its Credit in the World, what is their next Step? Why, then they enter into that black and bloody Conſpiracy, from which it hath pleaſed God lately to deliver us.

I ſpeak this the rather, becauſe I know there are in my Eye ſeveral Perſons, whoſe Fears of Popery made them give credit to ſuch Villains as theſe before: but when it pleaſed God to open their Eyes, and the falſe Miſt vaniſh'd, they found a real Conſpiracy againſt the Perſons of that Bleſſed King, lately dead, and of our Gracious Sovereign, now living, carried on under the pretence of that falſe, but ſo much credited Diſcovery; and now, God be thanked, all our Eyes are open. And I hope, as we are ſecured from what we ſo vainly dreaded, ſo we ſhall not be afraid to have Villainy detected, and the greateſt Mark of Infamy that can be put upon it.

Yes, Gentlemen, there was a Conſult, and there was a Conſpiracy againſt the Life of our King, our Government, and our Religion: Not a Conſult at the *White-Horſe* in the *Strand*, but a Cabal and Aſſociation of perfidious Rebels and Traitors, who had a mind to embroil us in Blood and Confuſion; but, God be thanked, it had not its deſired Effect. The ſame ſort of Villains were Parties in this Conſpiracy, that had too great a hand in the late great Rebellion, which we to this day feel the ſmart of, and they had a mind to make uſe of the like Inſtruments, as they did before, to bring us into the like Miſery, as we were before involv'd in.

And is it not a prodigious thing, to have ſuch Actions as theſe to-day defended in a Court of Juſtice, with that Impudence and Unconcernedneſs, as tho' he would challenge even God Almighty to puniſh his Wickedneſs, and blaſphemouſly bleſſes God, that he has liv'd to do ſuch wonderful Service to the Proteſtant Religion; and is ſo obſtinate in his Villainy, as to declare he would venture his Blood for the Confirmation of ſo impious a Falſehood: and indeed, to ſpeak the truth, he makes no great Venture in it; for when he had pawn'd his immortal Soul, by ſo perjur'd a Teſtimony, he may very eaſily proffer the venturing of his vile Carcaſe to maintain it?

Gentlemen, Having thus ſaid, (and I could not forbear ſaying of it) give me leave to put you in mind of what lies before you now to be tried. Firſt, this Indictment takes notice, that there was an Indictment taken before the Commiſſioners of *Oyer* and *Terminer*, and Goal-delivery at *Hicks*'s-*Hall*, of High-Treaſon againſt *Whitebread*, *Fenwick*, *Ireland*, *Pickering*, and *Grove*, and that Indictment and the whole Record is proved to you by *Swift*. For I muſt tell you as I go along, what Proofs there are of all the Particulars, and you, upon conſideration of all that is alledged, are to be Judges what is ſufficient Proof to convict the Defendant of the Crime that is laid to him; which is wilful and corrupt Perjury. The Indictment, Gentlemen, ſets forth the Oath that *Oates* did make at *Ireland*'s Trial, and then avers it to be falſe: For the Oath that he did take, that ſtands thus: That he did ſwear he was preſent at a Conſult, held at the *White-Horſe* Tavern in the *Strand*, the 24th of *April* 1678: That he did ſwear, that it was there reſolved to murder the late King: How that that Reſolution was carried by him from Chamber to Chamber, that is, to *Whitebread*'s and *Fenwick*'s, and *Ireland*'s Chambers, and ſaw them ſign this Reſolution there: And the Aſſignment of the Perjury is, that he was not preſent at any Conſult, 'tis not that there was not any ſuch Conſult, tho' it appears by the Evidence that there was none ſuch, but that he was not preſent at any Conſult at all held there at that time.

Now, that he did make ſuch an Oath, is proved by a worthy Gentleman, Mr. *Foſter*; a Gentleman known to you all that live in the City of *London*; and he did truly make that Remark in the beginning of his Teſtimony, that any honeſt Man in his place would have done, that he was one of thoſe unfortunate Men that tried Mr. *Ireland*; for tho' a Man do go according to his Conſcience, as to be ſure there is no queſtion to be made of it, but all theſe Jurymen did in finding that Verdict; yet when I come to find, that the Evidence upon which I convicted thoſe Men, is detected to be falſe, and that upon my Verdict the Perſons were executed; tho' no Guilt of their Blood is really contracted by me, yet I cannot but think myſelf unfortunate, that I was, tho' innocently, an Inſtrument of their Death; and there is never an one of you, but would have thought yourſelves unfortunate, if you had convicted Men upon ſuch a Teſtimony, which tho' you believed then, yet afterwards you ſhould have reaſon to conclude was falſe. And yet *Oates* would have you think, that becauſe they believed him when he was a Villain, and not known to be ſo, you muſt believe him, notwithſtanding his Villainy is now diſcovered; for that is all the Argument this learned Doctor has a mind to impoſe upon you by.

Gentlemen, Mr. *Solliciter* has been very particular, in giving an Account of the whole Evidence, and then it comes to this, which is the natural Queſtion in the Caſe; Whether upon the Teſtimonies that have been given to you, there does remain ſo much as a Doubt, what Verdict you ought to give? For I confeſs, were it a thing in the leaſt doubtful, Matters of Perjury are ſo nice and tender, that we and you ought to be cautious how you convict People for Perjury in doubtful Matters; but if it be a thing without doubt, and plainly evident, that there was a Verdict thereupon, it adds to the Guilt, becauſe the Juſtice of the Nation is impoſed upon. The God of Heaven deliver every honeſt Man's Soul and Conſcience from ſuch Guilt! For my part, I would not for the Univerſe have the leaſt Guilt of innocent Blood lie upon me.

Then, Gentlemen, to prove what *Oates* ſwore is not true, you have no leſs than twenty-two Witneſſes, that ſwear directly he was not here in *London* the

the 24th of *April* 1678. But it may be, that it is not such a positive Testimony as the Law requires to prove a Perjury: but then to swear directly that he was in another place at that time, is a positive Contradiction to his Evidence; and this has been testified by the Oaths of twenty-two Persons, against the Credit of whose Testimony there is no Objection at all really made, but only Impudence; and that Shadow of an Objection, They are all Papists, and I am a Protestant: and truly a wonderful Credit it is, I must needs say, for the Protestant Religion to have such a learned and pious Supporter, as Mr. *Oates*, to be of that Persuasion; but it is certain there was a *Judas* amongst the twelve Apostles, and there are Rascals of all Persuasions. And truly I take it makes never the more for his Advantage, nor the Honour of our Church, that he is pleased to call himself by that Name, which he, and such as he, have brought into some Scandal and Reproach, by setting themselves up, as the great Pillars of it; but we know Dr. *Oates* has been very liberal to himself, he has given himself Baptism, and given himself the Doctor's Degree, and now he gives himself the Title of the Reforming Protestant, Mr. *Oates*. We have Protestant Shoe-makers, and Protestant Joiners, and Protestant Atheists, and all sorts of true Protestant Rascals; but it becomes us and you to assert the Honour of our Religion, by disowning any Fellowship with such Villains, or their Actions.

Gentlemen, the Method that was taken, gives you an exact account in point of time, as to this whole Business. First, says Mr. *Hilsley*, I left him, in time the 23d of *April* New Stile, at *St. Omers*, and I am sure I saw him there then, which is the 13th Old Stile; the 24th of *April* New Stile, which is the 14th Old Stile, I came from *St. Omers*, I did not see him there that Morning, but I myself came to *Calais*, it being Sunday, and I staid there till Sunday in the Afternoon, and all Night. I came on Monday in the Afternoon to take water at *Calais*, and from thence went to *Dover*. And from thence the next Day I went towards *London*; but I staid four or five Days by the way before I came to *London*; but then there is this Circumstance that you must take along with you, Gentlemen, that at this time, one Mr. *Burnaby* was coming from *London*, and going to *St. Omers*, and met with Mr. *Hilsley* in his way towards *London*: says *Hilsley*, I came afterwards to Town, and that was upon the Monday following, which happens to be the 21st or 22d of *April*, our Stile; but this I do remember very particularly, which makes his Testimony to be true, and not dressed up for this occasion; says he, I told one *Osbourn* at that time, that we had a pretty Fellow at *St. Omers*, that went sometimes by the Name of *Lucy*, and sometimes by the Name of *Oates*, a Minister of the Church of *England*; and there he comes and gives an account of his ridiculous childish Actions, and what a remarkable Fellow he was; and this, says he, I told to *Osbourn*.

Now, to make this good, you have one Mr. *Dorrel*, who tells you there happened a Discourse, where he was present, between his Mother and Mr. *Osbourn*, about Religion; and amongst other things *Osbourn* did say, Mr. *Hilsley* had told him he left *Oates* at *St. Omers* when he came away from thence; and Mr. *Osbourn*, he comes and says, I remember I did tell Mr. *Dorrel* and his Mother, at that time that Mr. *Hilsley* did tell me this Story: so that here are these two Witnesses which support Mr. *Hilsley* in that Circumstance of the time of his coming away, and his Relation of *Oates* being left behind him, and that this was related about the 21st or 22d of *April*.

Burnaby is the next Person that was produced, and he swears he met *Hilsley* by *Sittingburn*; and he happens to set out for *St. Omers* the 18th of *April*, our Stile, and to come thither to *St. Omers* the 21st; and he swears positively that he was there the 21st, 22d, 23d, and was there the 25th Day of *April*, our Stile; and he does positively affirm, that all those Days he saw *Oates* there at *St. Omers*; that *Oates* intruded into his Company at his first coming; and that he and all the other Scholars wondered at the Confidence of the Man; and he particularly remembers that he was with him at a publick Entertainment that was there the 25th: and if so, then it is impossible that what *Oates* has sworn of his being at the Consult the 24th of *April*, our Stile, can be true. And except you can imagine Mr. *Oates* to fly from *St. Omers* the 24th Day in the Morning, and be at the Consult and back again at Night, which is more than he would have believed, because he swears the contrary, you must conclude that what he swore was false.

The next Witness is Mr. *Pool*, and he comes and says, he was there at *St. Omers*, and he came over from thence the 25th of *April*, and that was the Day after *Oates* swears the Consult of the Plot to be here; and all the rest of the Witnesses do directly swear, That at the time that *Pool* went from thence *Oates* was there: so that the Testimony of *Pool* is fully and positively confirmed; and *Pool* gives you a reason why he came over, which was the Death of a Brother of his, and upon a Prospect of an Estate he came into *England*, which likewise is a reasonable Circumstance why he should remember the time, because he had such Inducement to come over hither.

The next, Gentlemen, is one *Thornton*, and he comes to the Month of *May*, to the 1st and 2d of *May*, their Stile, which was the 21st and 22d of *April*, our Stile; and particularly he is sure *Oates* was there upon the 22d of *April*, our Stile, that is, the 2d of *May*, their Stile. For, says he, there was an Action or Play of the Scholars; and I can tell you how I remember *Oates* was there; *Oates* had a mind to have a place to see the Play, which he had no Pretence or Title to, and he had a Scuffle with somebody about it; and therefore I remember, by that Token, that he was there at that time.

Now, Gentlemen, it is not easy to be imagined, that six or seven Men should agree in their Testimony in all those Circumstances, which in themselves are but minute; yet when offered as Reasons to induce Men's Remembrance, must be allowed as good Reasons; and yet this is to be thought but a made Story. If Sir *Richard Barker*'s Coach-man and Mrs. *Mayo* had had any such Circumstances to support their Testimony, they would have had much more Credit.

Then there is one *Conway*; and it is very observable what he speaks of; for he was there all the while that they say *Oates* was there, and he gives you an account that he saw him with *Burnaby* the first time he came over, and agrees with *Burnaby* in this, that he wonder'd much at his Confidence, and did think that he was very well known to him before: He swears *Oates* came in thither about the beginning of *December* 77, and he was not absent, says he and several more, any one Night, except in *January* once at *Watton*, till he went away in *June* 78. Nay, they are so precise in their Memory for very good Reasons, because they are so regular in their Societies, and keep a strict Order, each has his fixed Place in the Refectory, where all the *Socii*, or the Members of the College do meet; and because this Fellow was an old Fellow, older than the rest, and likewise was a Dunce, therefore he was set at the Dunce-Table in every body's View, because he was a Blockhead, and too old to keep company with the Boys: so that though perhaps one of those young Fellows in a mixt Society may escape the View, and be absent without being missed, yet remarkable Mr. *Oates* is not so easily forgotten, that us'd to sit by himself. And as that noble Lord, my Lord *Gerrard* of *Bromley*, says, he has a particular Face, and a particular Tone; and there was more reason to remark him than any other, both upon the account of his Person and of his Actions: so that I must needs say indeed, it is not a downright and positive Swearing, but their Testimony is given with deliberation and recollection of such particular Circumstances, as may reasonably induce any unprejudic'd Person to give credit to it.

The next Witness, Gentlemen, is *Haggerstone*, whose Evidence is wonderful particular, and very material as to the Circumstances that accompany it. For you are to observe, that in these Colleges some are of the Sodality, and some are not; and some are of such and such Classes or Forms, and others of other. Now this Gentleman and Mr. *Oates* were of the same Form, and he does particularly remember that he was setting up for a Preacher, as he has an excellent knack that way; and he tells you, how ridiculous he made the late King in a Sermon; that he halted between two Opinions, and there ran a Stream of *Popery* between his Legs; and such like precious Stuff he vented. And to fix it to be about the same time that is now in question, he says, he particularly remembers it was when he was Reader, when Mr. *Oates* was, it seems, the Buffoon to the Society, or, as I may call him, the Jack-pudding to the College, that used to make them Sport, and was guilty of so many ridiculous Things, that they could not but put particular Remarks upon him.

Next, I take notice, that this Person says, there were two Persons, *Williams* and *Marsh*, that were qualified to give Suffrages in the Congregation, that is, they were past eighteen Years standing, and did go over: For that there was a Consult, is not denied, nor that it was in *London*, nor that it was upon the 24th of *April*; but they say, it was a Triennial Meeting, which they us'd to have once in three Years for the choice of some Officers to manage the Affairs of the Society; as for the choice of a Provincial, and other Persons that they were to send upon their Errands, in order to the support of their Society: so that under the Colour and Countenance of what was in itself ordinary and usual, and that happened to be at that time, *Oates*, who had heard somewhat of it, and that it was the 24th of *April*, and that such and such were to be there, he upon that Hearsay, as should seem, at *St. Omers*, does feign and contrive this pretended Conspiracy.

The next is one *Beeston*; and it is very material too that he swears: For besides what he testifies, That from the time of his coming, which was in *December* 77, he was not absent till the 23d of *June*, when he went away; and for the Time in question, he very well remembers his being there, by this Circumstance: Says he, I was chosen to be Reader of the Sodality in the Month of *March*, but then *Oates* comes and gets the Office out of my Hands; but still with me there was that Benefit referred, that if he should at any time fail of reading there upon a *Sunday* or a Holyday, I was then to have read, and to have supplied his Place. Says he, I was there from *March*, till the time *Oates* went away in *June*; and *Oates* read there that very *Sunday* before the time in *June* that he went away. And I am sure I heard him read every time; and in case he had not read every time, I must have read in his absence: But I did not read at all during that time.

Now, Gentlemen, when a Man is to succeed or to supply the Absence of another in an Office that is peculiar as to the Charge incumbent upon the Officer, and considerable as to the Profit of it, that must needs make an impression upon the Mind, and give a Man a more exact remembrance of the Thing; and therefore I recommend it particularly to your Observation.

The next is one Mr. *Smith*; and he says, he saw *Oates* there all the time: And as to one part of it, when he himself was in the Infirmary, *Oates* went to visit him every two or three Days; nay, and about such a time in *May*, says he, which was about the beginning of *May*, *Oates* being then in the Infirmary, not well, the Doctor and he had a pretty Dialogue together, and *Oates* spoke false *Latin* to the Doctor, for he said, *Si placeat Dominatio vestra*, in the beginning of his Compliment: This he did particularly say was the Expression that this excellent Scholar used to the Physician at his first application to him, and all the whole College took notice of that Piece of his Learning.

The next is one *Price*, and he tells you, he was there all the time that the others speak of; he remembers him very well, and particularly says, I am sure *Oates* was there the 11th of *May* N. S. which will be the first of *May* O. S. because, says he, I know he was soundly beaten that day, upon a quarrel that he had there. This particularly he speaks to, besides his remembrance of the other Circumstances in concurrence with the former Witnesses.

Mr. *Doddington* swears the same, and Mr. *Gerrard* also swears the same, with that other particular Circumstance that Mr. *Solliciter* repeated to you, which was of *Oates*'s being there upon the Day of Confirmation, the 26th of *May* N. S. the 16th of *May* O. S. and he is sure of it, because he was confirmed along with him, and therefore it is impossible he should forget it: And my Lord *Gerrard*, who was next, gives this reason upon his remembrance of all the fore-mentioned Particulars, that he always took special notice of the Man for his canting Tone, his Physiognomy, and remarkable Behaviour.

Then there is Mr. *Morgan*, who is no *Papist*, but a Minister of the Church of *England*; now Mr. *Oates* was angry with all the rest, because they were Catholicks; but what has he to say to Mr. *Morgan*, who is a Protestant? Why the truth is, there are none of them to be believed, because they swear against him, and really he ought to be permitted to give that reason, or it is like to go very hard with him; for if in case you believe but a third part of the Testimony that has been given, it is enough to do his Work. But what says Mr. *Morgan*? Truly he comes up

to

to the 24th of *April* particularly, and he tells you how he remembers it; and the firſt occaſion he had to look into it was, they being all ſurprized at *St. Omers* at what *Oates* had ſworn, and Mr. *Morgan* recollecting with himſelf, did remember that very Day he was playing at Ball within the College, and happened to toſs his Ball over the Wall into the Garden, and not being able to recover it any other way, he ſpied *Oates* walking and looking into his Book, and therefore he deſired him to lend him his Key, and by the help of that, he went in and fetched his Ball; and this was the very Day that *Oates* ſwore he was here.

Mr. *Arundel* ſays the ſame: The two *Turberviles* ſay the ſame; and one of them is poſitive to have ſeen him there, either the 24th or 25th, or 23d and 24th of *April* O. S. which is the 3d and 4th, or 4th and 5th of *May* N. S. and if it were either of theſe Days, it cannot be poſſible he ſhould be here at the Conſult.

The next is Mr. *Clavering*, and I cannot but particularly take notice of what he has ſworn: He ſays Mr. *Oates* was there all the time that the reſt ſpeak of; but it ſeems particularly about the time of the Congregation in *London*: There comes in a Stranger that was poor, and this Gentleman, Mr. *Clavering*, made a Collection for him: and it was talked of in the College as the Reaſon why he had not Succeſs in his Collection, becauſe the Fathers were gone to the Congregation. Nay, and yet farther, ſays he, I do remember particularly that Mr. *Williams* and Mr. *Marſh* did go over to the Congregation, but *Oates* did not; for I do remember when *Williams* and *Marſh* came back again, I had ſome Diſcourſe with Mr. *Oates* about the Congregation: He came to me, and deſired to know of me what account I was able to give of the Matter of that Meeting after the Conſult was over. Now had Mr. *Oates* been there, and been a Perſon of that great Truſt that he had ſworn himſelf into, he needed not ſure have aſked Mr. *Clavering* at *St. Omers*, what the Buſineſs of the Conſult was at *London*, where he himſelf had been, but the other had not.

There is, beſides Mr. *Copley*, another Witneſs, Mr. *Cooke*, that ſpeaks particularly of the 30th of *April*, that he was ſure *Oates* was there then, becauſe of the Proceſſion, and becauſe he walked by himſelf in it; and *Wright*, the laſt Witneſs, gives a general Account, but ſpeaks to no particular time.

And now, Gentlemen, after all this Evidence, *viva voce*, you muſt give me leave to hint *Teſtimonium Rei*, an improbable Oath was that which *Oates* owns he made, if it be conſidered in all its parts. Can any Man believe that fifty Perſons ſhould meet together in a Tavern in *London*, and theſe fifty Perſons ſhould come to a Reſolution to kill the King and ſubvert the Government, and alter the Religion; and that this Conſultation being drawn up in the Tavern (for ſo he ſwears it was), they ſhould ſever themſelves into leſſer Clubs and Companies, and take care that none ſhould ſign when they were all together and among themſelves, but muſt have it carried up and down from one Man's Chamber to another, and find no body to truſt with this Affair, that, if diſcovered, muſt ſubject them to preſent Deſtruction, and ruin their whole Party, but only Mr. *Oates*, who was none of their own Order, nor does appear to be of ſuch Credit amongſt them? Can you believe any Men ſhould be ſo void of Senſe and Reaſon, that of fifty together; and thoſe reputed as ſubtle as any ſort of Men whatſoever, there ſhould not be one Man of common Underſtanding, that ſhould take care for a more rational Management of ſo great and hazardous an Undertaking; when they were met together, and might have diſpatched it in a Quarter of an Hour, they ſhould ſeparate themſelves into ſeveral Parts of the Town, and truſt a Reſolution of that Nature in Mr. *Oates*'s Pocket, in whom if they had had more Confidence than they ſeem to have, yet it was folly and madneſs to give him that Opportunity of deſtroying all of them, and making himſelf? Were there no other Evidence but the very Teſtimony of the thing, it would go a very great Way with me, I confeſs; but I muſt ſay, withal, you are Judges of this Fact, upon a ſuperadded Teſtimony of Twenty-two Witneſſes, *viva voce*; I think it leaves the thing without any doubt.

Gentlemen, the Anſwer given by the Defendant to this Charge is very fallacious; and tho' he puts ſuch a Countenance upon it, as though his Witneſſes were ſuch Perſons of Credit, that nothing could be objected againſt them, yet he is certainly very much miſtaken in that: He has produced but two poſitive Witneſſes, and thoſe two, as poſitive as they are in their Proof, are likewiſe poſitive in their Contradictions of one another, and what they have ſaid is left to your Conſideration.

The one is a Coachman, the other was Sir *Richard Barker*'s Houſekeeper; they indeed do ſay, Sir *Richard Barker*'s Wife's Siſter, and his Nephew, and his Daughter, and his Nieces, and a worſhipful Knight, and I know not who, that the old Woman tells me are gone into my Country, were all there at the ſame time, and no body comes to teſtify it, but only this Coachman and this old Woman: Theſe, Gentlemen, are things fit to be thought of.

But now let us conſider how they agree in their Evidence. Says the Woman, I ſaw him not till the beginning of *May*; but I am ſure he was there before once or twice. And how does ſhe know that? Becauſe the Coachman told her ſo; and he came there ſeveral times, but he did dine there but once; and when he came there the firſt time ſhe ſaw him; he came in ſuch a Diſguiſe, and he had a ſhort Perriwig, and a kind of ſhort white Coat, and a white Hat. But when the Coachman comes to ſwear, he tells you, the firſt time he ſaw him, the Woman ſaw him too; that he had his own Hair, and cut cloſe to his Ears, that made him look, as the young Fellow told her, like a Quaker. And when I aſked the Coachman, Are you ſure that *Benjamin* the young Fellow did ſee him the firſt time you ſaw him there? He told me, No; but he was ſure the old Woman did look out of the Window and ſee him; which ſhe denies. I then aſked him how often he dined there? He tells you ſeveral times, and there were ſuch and ſuch, and the old Woman did ſee him dine there ſeveral times; which ſhe denies that ſhe ever ſaw him dine there above once. And I take notice of one of the Evidence, the Coachman, he gives but an odd ſort of Reaſon for his remembrance. In *February*, ſays he, my Lady died, and my Maſter was ſick at *Putney*, and *Oates* came into the Yard while I was cleaning my Coach; and I am ſure it was when the Coat of Arms hung over the Door, becauſe he ask'd me about my Lady's Death, and therefore it muſt be in *May*; when, for aught does appear to the contrary, it might be in any other Month after the Eſcutcheon was up; and in the other Circumſtances there is no Certainty at all: So that it is plain, theſe Witneſſes ſwear according as their Humour leads them, and not according to any Remembrance they have of the thing.

And I rather believe it, becauſe the third Witneſs, that is *Page* the Apothecary, that uſed to make up Sir *Richard Barker*'s Medicines, gives an Evidence contrary to both thoſe; he cannot remember the Year poſitively or particularly; but I'll tell you how he thwarts and contradicts the other People's Teſtimony; for he remembers he came in ſuch a Diſguiſe, but he believes no body ſpoke to him but himſelf, becauſe he found him walking in the Place that was for the common Reception of the Patients; and he asked for Dr. *Tongue*, and he not being within, he went away very diſcontented: And ſo now theſe three Witneſſes ſeem to contradict one another; and the laſt Witneſs *Walker*, who is the Parſon, he ſays nothing to the Matter; for it does plainly appear, the Time which he ſpeaks of, which was about a Year and half before he was called to teſtify at the five Jeſuits Trial, muſt be in the Year 77, and not in the Year 78, which is the Queſtion here, which muſt be before he went firſt to *St. Omers*.

Gentlemen, the other Part of Mr. *Oates*'s Defence has been upon this Topick: Says he, I have been believed heretofore, the Parliaments have given me Credit; and to prove it, he has called ſeveral noble Lords and Perſons of Quality. The firſt was my Lord of *Devonſhire*, who ſays he cannot remember any Particulars of his Evidence, 'tis ſo long ſince; but he remembers the Parliament, upon the Evidence given of the Plot, did make ſuch Votes as we do all know of. And there were a great many People that gave Credit to his Teſtimony, who, God be thanked, are of another Opinion now. And my Lord of *Clare* ſays, he was not in the Houſe of Lords at the beginning of the Diſcovery, and cannot remember any thing in particular. But my Lord of *Huntingdon* was a little more particular; and Mr. *Oates* began to be angry with him, becauſe he ſpoke ſo much: Says he, I remember Mr. *Oates* was examin'd in the Houſe of Lords, and was believed there, becauſe they did believe he ſpoke Truth at that time; but now, upon Conſideration of the Contradictions and Falſities of his Evidence, I cannot but ſay, I do believe him, ſays he, to be a great Villain, and that he has been guilty of ſpilling innocent Blood. And this noble Lord ſpeaks with great Honour and Conſideration: And truly, I believe, if every Man that is here were to ſpeak his Mind, my Lord has delivered the Opinions of us all, and many Thouſands more in the Nation.

Mr. *Oates* call'd next my Lord Chief Baron, my Brother *Gregory*, my Lord of *London*, Sir *George Treby*, Mr. *Williams*, and my Brother *Delben*. But they all tell you, they are able to give no particular Anſwers to his Queſtions; and this was the Sum of his Evidence.

To this Mr. *Attorney-General* has given a Reply of Evidence, that truly is of very great moment. Firſt, here is produced Sir *George Wakeman*, whom *Oates* accuſed of High-Treaſon, and he ſuffered his Trial and was acquitted; ſo that as well as the Jury had given Credit to him in the former Verdicts, ſo, ſays Mr. *Attorney*, I muſt ſpeak likewiſe for the Credit of that Verdict that did diſbelieve him, becauſe though he did ſwear as roundly and briskly up to the matter as he had done before, yet when he had not the Hurry and Surpriſe of his Diſcovery to ſupport him, his Villany was detected, and the Innocent acquitted. And beſides the Record of the Acquittal, here is the Perſon himſelf, who is now under no dread or danger, having ſtood his Trial and being acquitted; and he takes it upon his Oath, and in the Preſence of the great God, and the Searcher of Hearts, that whatſoever *Oates* ſwore againſt him at his Trial, was every Tittle of it falſe: And this Acquittal of his, being after great and mature Conſideration, is an Evidence of another-guiſe Quality, than the Verdicts of the other Convictions.

Next to him, is my Lord *Caſtlemain*, a Perſon of very great Honour; and he gives an Account he was arraigned of High-Treaſon at this Bar, and upon his Trial *Oates* was produced as a Witneſs againſt him, and there he ſwore he met with my Lord *Caſtlemain* in *Lincolns-Inn-Fields*, and great familiarity there was between them, ſo that my Lord could not truſt him in a leſs Affair than the Plot; and away he goes with him to *Fenwick*'s Chamber, there to talk about a Deſign of killing the late King; Mr. *Oates*, of all Mankind muſt be the great Repoſitory of this Secret. But the Jury then being Perſons of great Underſtanding and Integrity, did not believe *Oates*, but acquitted my Lord *Caſtlemain*. And he does here take it upon his Oath, back'd with all the Imprecations of Evil to himſelf that a Man can uſe, that there was not one Word of Truth in *Oates*'s Teſtimony; nor did he ever ſee *Oates* in his life, till ſuch time as he was taken up upon his Accuſation. Now are here two Perſons of Honour and Quality, that upon their Oaths do particularly give you an Account, as in the Preſence of Almighty God, that *Oates* has twice forſworn himſelf againſt them.

Gentlemen, there is notice to be taken of the Journal of the Houſe of Lords; and though it is true for the ſake of the Precedent, and to ſecure the Juſtice of the Nation, we did keep them ſtrictly to their Proof, that it was upon Oath. And as to the Buſineſs of *Smith*, though we do believe the Thing in our private Judgments, yet we thought it not fit to be permitted, that Perſons ſhould upon their own Oaths confeſs themſelves to be guilty of Perjury, and afterwards give Evidence againſt others; for ſuch are not to have the Countenance of ever being Witneſſes again: Yet, by the Records of Parliament, and other Evidence, there is enough to make the matter aimed at clear.

For it is clear by his Narrative, that *Oates* did firſt ſwear, as far as he could well ſwear, to bring him into the Diſpleaſure of the People: For that was his Way to intimidate all he had to do with, and thereby force them to comply with his Deſigns. And there was no more plauſible Accuſation at that time, than to accuſe a Man for ſaying ſomewhat againſt the Parliament, or being in a Combination to ſubvert the Proteſtant Religion. But you ſee, when he comes to have his own turn ſerved, then this Man upon whom he had fixed ſuch an odious Character, is really no Papiſt at all, but engaged in Service for his King and Country, and has Mr. *Oates*'s Paſſport, a thing of great advantage to him at that Seaſon. This the King's Counſel made uſe of with great Reaſon, as an Evidence of tampering: For the Man has altered his Opinion of one he has before accuſed, and now brings him as an honeſt

honeſt Man to give Evidence for him. And this, ſay they, muſt be intended to be done by Practice and by Threats.

And the rather, Gentlemen, for that you have an Account by Witneſſes ſworn, that there was one *Clay* a Popiſh Prieſt, that lay in Priſon at the *Gate-houſe*, and while he was there, *Oates* and Sir *William Waller* came into the Priſon to him, and tampering with him, ſays *Oates*, I hear there are ſome *St. Omers* Boys that intend to teſtify that I was at *St. Omers* when I ſay I was at *London*; but you muſt ſwear, that you dined with me at Mr. *Howard*'s in *May* 1678; or if you will not, you know I know you to be a Prieſt, and I'll hang you. Says *Clay*, where is my Silver and Gold that was taken away from me? And we all know Sir *William Waller* was wonderful good at the fingering of Gold; he us'd to take away broad Pieces as Popiſh Reliques, becauſe of the Croſſes upon them. Says *Clay*, Give me my Gold again, I will ſwear for you; I have been a Rogue before, and I may be a Rogue again. And accordingly a Contract is made for him to ſwear directly, that *Oates* and he were together at Mr. *Howard*'s Houſe in *May* 78. This very Fellow that tells you now the Story, told it the next Morning to another Man, who has likewiſe ſworn the ſame. Then is *Clay* conveyed by *Oates* to the *Old-Bailey*, and there ſwears, being thus threaten'd and ſuborn'd, that in *May* 1678, he and Mr. *Oates* dined together at Mr. *Howard*'s Houſe, and you have Mr. *Howard* produc'd, who does ſwear that *Clay* did ſwear ſo; but indeed he was not there with Mr. *Oates* at Dinner till *July* after.

This, Gentlemen, is direct Corruption and Subornation; and if a Man will be a corrupt Knave, and endeavour to ſuborn Witneſſes to ſwear that which is falſe, he is the more likely to ſwear falſe himſelf. Beſides that, you are to take notice, here is his own Narrative produced, where you have it ſworn by himſelf, that he went back to *St. Omers* about the beginning of *May*, and was there all the Month of *May*, and in *June*, till the latter end of it. Then all this while, either Mr. *Oates*, or his Witneſſes, are perjured in the Caſe: He ſays, he ſtaid but three or four Days in *England* after the Conſult was over, and then went ſtraight back again to *St. Omers*. Which muſt be the firſt Week in *May*; but if you believe his two Witneſſes, he din'd with them ſeveral times after that: And ſo it is apparent ſome of them are guilty of groſs and foul Perjury.

Now, Gentlemen, I cannot but reſort back to the Objection that I made at firſt. 'Tis ſtrange to me, that a Man that came upon ſuch a Deſign, ſhould go publickly about the Streets at Noon-day, though in a Diſguiſe, yet he was known. But if you take the Perſons Time to be in the Year 1677, then it is eaſily reconciled what they did ſay of their ſeeing him in ſuch a Diſguiſe; and ſo all their Teſtimony may ſtand together, and perhaps they may miſtake in a Point of Time, though not in the Subſtance of their Evidence: and I would out of Charity conclude it to be ſo.

But I will ſay, if they are to be taken ſtrictly to the Year 1678, it is monſtrous to imagine, that we ſhould have no body brought to let us know where he lodged, where he eat, with whom he convers'd, for all that time.

Gentlemen, I have detain'd you the longer in this Matter, becauſe I take it to be of ſo great Weight, wherein the Juſtice and Honour of the Nation are ſo much engag'd, and it was therefore fit this Cauſe ſhould be tried in the moſt ſolemn and publick manner, in order to vindicate the Nation from the Reproach and Calumny of Injuſtice and Oppreſſion. And ſure I am, if you think theſe Witneſſes ſwear true, as I cannot ſee any Colour of Objection, there does not remain the leaſt doubt, but that *Oates* is the blackeſt and moſt perjur'd Villain that ever appear'd upon the Face of the Earth.

Cl. of Cr. Tipſtaff, you muſt take care of the Jury.

L. C. J. Gentlemen, if any of you have a mind to drink at the Bar, before you go, you ſhall have ſome got for you.

Jury. No, my Lord, we do not care for drinking.

L. C. J. Then we will ſtay for you.

Then the Jury withdrew to conſider of their Verdict, and after about a quarter of an Hour's ſtay, they returned and delivered their Verdict: That the Defendant was guilty of the Perjury whereof he was indicted. *Which being Recorded, the Lord Chief Juſtice ſpoke to the Jury to this Effect:*

L. C. J. Gentlemen, that we are not, God be thanked, in thoſe Times of Diſorder and Confuſion that we have been heretofore in, to have Humming or Hiſſings to declare the Auditors Approbation or Diſlike of Juries Verdicts: But becauſe there has been this Day mention made of the Opinions of Judges about Verdicts, I ſhall take the liberty to declare my Mind to you now, That for my part, I am ſatisfied in my Conſcience you have given a good and a juſt Verdict; and ſo I believe is every other Judge upon the Bench.

To which the reſt of the Judges aſſented; and then the Court aroſe.

A Second Trial of Titus Oates, *D. D. at the* King's-Bench, *for* Perjury, May 9, 1685.

Paſchæ 1 Jac. II.

THIS Day being appointed for the Trial of the other Cauſes between our Sovereign Lord the King, and *Titus Oates*, for Perjury; the ſame began about Nine in the Morning, and proceeded after this Manner:

Firſt, Proclamation was made for Silence: Then the Defendant was called; who, appearing in Perſon, was adviſed to look to his Challenges: but he challenged none; only he deſired, that they might be all aſk'd, Whether they were of the Grand Jury that found the Bill? which was done. And all denying it, the Twelve ſworn were theſe:

JURY.

Sir *Thomas Vernon*, Kt.	*George Toriano*,
Nicholas Charlton, Eſq;	*Henry Loades*,
Thomas Langham, Eſq;	*John Midgley*,
Thomas Harlop,	*John Pelling*,
Francis Griffith,	*Thomas Short*, and
John Kent,	*George Peck*.

Cl. of Cr. Gentlemen, you that are ſworn, hearken to the Record.

Memorandum, That by a certain Inquiſition for our Sovereign Lord the King, at the *Guildhall* of the City of *London*, and within the ſame City, on *Tueſday* the 28th of *October*, in the 36th Year of the Reign of our late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* before Sir *Henry Tulſe*, Knight, Mayor of the City of *London*; Sir *William Turner*, Knight; and Sir *James Edwards*, Knight, Aldermen of the ſaid City; Sir *Thomas Jenner*, Knight, one of his Majeſty's Serjeants at Law, and Recorder of the ſame City; Sir *Robert Jefferies*, Knight; and Sir *John Peake*, Knight, other Aldermen of the ſaid City; and others their Companions, Juſtices of our ſaid Lord the King; by his Majeſty's Letters-Patents under the Great Seal of *England*, to enquire of ſeveral Offences in the ſaid Letters-Patents contain'd, and to hear and determine the ſame, according to the Laws and Cuſtoms of this Kingdom, by the Oaths of twelve Jurors, honeſt and lawful Men of the City of *London* aforeſaid, who then and there being ſworn, and charged to enquire for our ſaid Sovereign Lord the King, and the Body of the ſaid City, upon their Oaths, preſent:

That at a certain Seſſion of our ſaid Lord the King, holden for the County of *Middleſex* at *Hicks*'s-*Hall* in *St. John-Street*, in the County aforeſaid, on *Monday* (to wit) the 16th Day of *December*, in the Year of the Reign of our ſaid late Sovereign Lord, *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* the 30th, before Sir *Reginald Foſter*, Baronet; Sir *Philip Matthews*, Bart. Sir *William Bowles*, Knight; Sir *Charles Pitfield*, Knight; *Thomas Robinſon*, *Humphrey Wyrley*, *Thomas Harriot*, and *William Hempſon*, Eſquires, Juſtices of our ſaid Lord the King; to enquire by the Oaths of honeſt and lawful Men, of the County of *Middleſex* aforeſaid, and by other ways, manners, and means, whereby they might, or could better know, as well within Liberties as without; by whom the Truth of the matter might be better known and enquired of, concerning all Treaſons and Miſpriſions of Treaſons, Inſurrections, Rebellions, Counterfeitings, Clippings, Waſhings, Falſe-making, and other Falſifying of the Moneys of this Kingdom of *England*; and of any other Kingdoms and Dominions whatſoever; and of all Murthers, Felonies, Manſlaughters, Killings, Burglaries, and other Articles and Offences in the Letters-Patents of our ſaid Lord the King, to them, or any four or more of them, thereupon directed, ſpecified; as alſo the Acceſſaries of the ſame, within the County aforeſaid, as well within Liberties as without, by whomſoever, howſoever had, made, done, or committed, and to hear and determine the ſame Treaſons, and other the Premiſſes according to the Law and Cuſtom of this Kingdom of *England*, aſſigned by the Oath of *Ralph Wain*, *John Vaughan*, *Richard Foſter*, *Thomas Paget*, *Robert Newington*, *Henry Tompkins*, *Robert Hayes*, *John Greenwood*, *Peter Stinyeſon*, *Joſiah Richard Richman*, *Auguſtine Bear*, *John King*, *Nathaniel Brit*, *Francis Fiſher*, *Edward Foſter*, and *Samuel Lynn*, honeſt and lawful Men of the County aforeſaid, ſworn, and charged to enquire for our ſaid Lord the King, and the Body of the County aforeſaid, upon their Oaths; it was preſented, That *Thomas White*, otherwiſe *Whitebread*, late of the Pariſh of *St. Giles in the Fields*, in the County of *Middleſex*, Clerk; *William Ireland*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Fenwick*, late of the ſame Pariſh and County, Clerk; *Thomas Pickering*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; and *John Grove*, late of the Pariſh aforeſaid, in the County aforeſaid, Gentleman; as falſe Traitors againſt the moſt Illuſtrious and moſt Serene, and Excellent Prince, our ſaid late Sovereign Lord *Charles* II. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* their ſupreme and natural Lord; not having the Fear of the Lord in their Hearts, nor weighing the Duty of their Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our ſaid Lord the King, towards him our ſaid Lord the King, ſhould, and of right ought to bear, utterly withdrawing and contriving, and, with all their might, intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb; and the true Worſhip of God, within this Kingdom of *England* uſed, and by Law eſtabliſhed, to ſubvert; and Sedition and Rebellion within this Kindom of *England* to move, ſtir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful

faithful Subjects of our ſaid Lord the King, towards him the ſaid Lord the King ſhould, and of right ought to bear, utterly to withdraw, put out, and extinguiſh; and our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, the 24th of *April*, in the 30th Year of the Reign of our ſaid late Sovereign Lord *Charles* II. at the Pariſh of *St. Giles in the Fields* aforeſaid, in the County of *Middleſex* aforeſaid; falſely, maliciouſly, ſubtilly, adviſedly, and traitorouſly, did purpoſe, compaſs, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, ſtir up, and procure, and a miſerable Slaughter amongſt the Subjects of our ſaid Sovereign Lord the King to procure and cauſe; and our ſaid Lord the King, from the Regal State, Title, Power, and Government of his Kingdom of *England*, wholly to deprive, depoſe, caſt down, and diſinherit: and him our ſaid Lord the King to Death and final Deſtruction to bring and put; and the Government of the ſaid Kingdom, and the ſincere Religion of God, in the ſame Kingdom, rightly and by the Laws of the ſame Kingdom eſtabliſhed, at their Will and Pleaſure to change and alter; and the State of this whole Kingdom of *England*, through all its parts well inſtituted and ordained, wholly to ſubvert and deſtroy, and War againſt our ſaid Lord the King, within this Kingdom of *England* to levy.

And to compleat and perfect the ſame their moſt wicked Treaſons, and traitorous Imaginations and Purpoſes aforeſaid; they, the aforeſaid *Thomas White* otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other falſe Traitors, to the Jurors unknown, the aforeſaid 24th Day of *April*, in the 30th Year aforeſaid, with Force and Arms, *&c.* at the Pariſh of *St. Giles in the Fields* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, maliciouſly, ſubtilly, adviſedly, deviliſhly and traitorouſly did aſſemble themſelves, unite, and congregate; and then and there falſly, maliciouſly, ſubtilly, adviſedly, deviliſhly and traitorouſly did conſult and agree, our ſaid Sovereign Lord the King to Death and final Deſtruction to bring and put, and the Religion within this Kingdom of *England*, rightly and by the Laws of the ſame Kingdom eſtabliſhed, to the Superſtition of the *Romiſh* Church to change and alter. And the ſooner to compleat and perfect the ſame their moſt wicked Treaſons and traitorous Imaginations and Purpoſes aforeſaid, the ſaid *Thomas White* otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other falſe Traitors of our ſaid late Lord the King, to the Jurors unknown; afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, at the aforeſaid Pariſh of *St. Giles in the Fields*, in the County of *Middleſex* aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly, and traitorouſly, between themſelves did conclude and agree, that they the ſaid *Thomas Pickering* and *John Grove*, him our ſaid late Lord the King ſhould kill and murder; and that they, the ſaid *Thomas White* otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, and others, falſe Traitors, to the Jurors unknown, a certain number of Maſſes, between them then and there agreed, for the Health of the Soul of him the ſaid *Thomas Pickering*, therefore ſhould ſay, celebrate, and perform; and therefore ſhould pay unto the ſaid *John Grove* a certain Sum of Money between them then and there agreed.

And the Jurors aforeſaid, upon their Oaths aforeſaid, did further preſent, That the ſaid *Thomas Pickering* and *John Grove*, upon the Agreement aforeſaid, then and there falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly and traitorouſly did take upon themſelves, and to the ſame *Thomas White* otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors againſt our ſaid Lord the King, to the Jurors aforeſaid unknown, then and there falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly, and traitorouſly did promiſe, that they the ſaid *Thomas Pickering* and *John Grove* him our ſaid late Lord the King would kill and murder: And that they, the ſaid *Thomas White* otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, *John Grove*, and other falſe Traitors againſt our ſaid Lord the King unknown, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, at the aforeſaid Pariſh of *St. Giles in the Fields* in the County of *Middleſex* aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly and traitorouſly did give their Faith each to other, and upon the Sacrament then and there traitorouſly did ſwear and promiſe to conceal, and not to divulge their ſaid moſt wicked Treaſons and traitorous Compaſſings, Conſultations, and Purpoſes ſo between them had, him our ſaid late Lord the King traitorouſly to kill and murder, and the *Romiſh* Religion within this Kingdom of *England* to be uſed, to introduce, and the true reformed Religion within this Kingdom of *England*, rightly and by the Laws of the ſaid Kingdom eſtabliſhed, to alter and change. And that the ſaid *Thomas Pickering* and *John Grove*, in Execution of the traitorous Agreement aforeſaid, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, and divers Days and Times after, at the aforeſaid Pariſh of *St. Giles in the Fields*, in the County aforeſaid, Muſkets, Piſtols, Swords, Daggers, and other offenſive and cruel Weapons, him the ſaid late Lord the King to kill and murder, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly and traitorouſly did prepare and obtain, had, and kept for themſelves; and that they the ſaid *Thomas Pickering* and *John Grove*, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, and divers Days and Times after, with Force and Arms, *&c.* at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, and in other Places within the County of *Middleſex* aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly and traitorouſly did lie in wait, and endeavour our ſaid late Lord the King traitorouſly to kill and murder; and that the ſaid *Thomas White* otherwiſe *Whitebread*, *William Ireland*, *John Fenwick*, and other falſe Traitors to the Jurors aforeſaid unknown, afterwards (to wit) the ſame 24th Day of *April*, in the 30th Year aforeſaid, at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly and traitorouſly did prepare, perſuade, excite, abet, comfort and counſel four other Perſons, to the Jurors unknown, and Subjects of our ſaid Lord the King, him our ſaid late Lord the King traitorouſly to kill and murder, againſt the Duty of their Allegiance, againſt the Peace of our ſaid Lord the King his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided; and thereupon it was ſo far proceeded, that afterwards, at the Court of Goal-Delivery of our ſaid Lord the King, at *Newgate*, at *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, in the Pariſh of *St. Sepulchre*, in the Ward of *Faringdon without*, *London*, the 17th Day of *December*, in the 30th Year aforeſaid, before the Juſtices of the ſaid Lord the King, of the ſame Goal-delivery, then and there held by Adjournment, of the County of *Middleſex* aforeſaid, came the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*, under the Cuſtody of Sir *Richard How*, Knight, and Sir *John Chapman*, Knight, Sheriff of the County of *Middleſex* aforeſaid; into whoſe Cuſtody, for the Cauſe aforeſaid, they were before committed: Being brought to the Bar there, in their proper Perſons, and preſently being ſeverally aſked concerning the Premiſes above-charged upon them, how they would acquit themſelves; the aforeſaid *William Ireland*, *Thomas Pickering* and *John Grove* did ſeverally ſay, *That they were not thereof guilty*; and for the ſame, for good and bad, they did ſeverally put themſelves upon the Country; and by a certain Jury of the Country, in that behalf duly impannell'd, ſworn and charged then and there in the ſame Court, before the Juſtices of Goal-delivery aforeſaid, were tried: And that upon that Trial, between our ſaid late Lord the King, and the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*, at *London* aforeſaid, to wit, at the *Juſtice Hall* in the *Old Bailey* aforeſaid, in the Pariſh of *St. Sepulchre*, in the Ward of *Faringdon without*, *London* aforeſaid, the Defendant *(Titus Oates)* late of the Pariſh of *St. Sepulchre* aforeſaid, in the Ward aforeſaid, *Clerk*, was produced as a Witneſs, on the part of the ſaid late Lord the King, upon the Trial aforeſaid; and before the ſaid Juſtices of Goal-delivery, in the Court aforeſaid, then and there held, upon the *Holy Goſpels of God*, was duly ſworn to ſpeak and teſtify the Truth, the whole Truth, and nothing but the Truth, of and in the Premiſes between our ſaid Lord the King, and the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*. And that the ſaid *Titus Oates* then and there, in the Court of Goal-delivery aforeſaid, upon his Oath aforeſaid, upon the Indictment aforeſaid, at the Pariſh and Ward aforeſaid, by his own proper Act and Conſent of his moſt wicked Mind, falſely, voluntarily and corruptly did ſay, depoſe, ſwear, and give in Evidence to the Jurors of the Jury aforeſaid, then and there ſworn and impannell'd, to try the Iſſue aforeſaid between our ſaid late Lord the King, and the ſaid *William Ireland*, *Thomas Pickering* and *John Grove*; That the ſaid *William Ireland*, in the Indictment aforeſaid mentioned, was in Town (within the Cities of *London* and *Weſtminſter*, or the places adjacent to the ſaid Cities, meaning) upon the 1ſt or 2d Day of *September*, in the Year 1678. Whereas in truth and in deed the ſaid *William Ireland*, in the Indictment aforeſaid mentioned, was not in Town nor within the Cities of *London* and *Weſtminſter*, or the places adjacent to the ſame Cities, or either of them, upon the 1ſt or 2d Day of *September*, in the Year 1678. And ſo the aforeſaid *Titus Oates*, the aforeſaid 17th Day of *December*, in the 30th Year aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court aforeſaid, upon the Trial aforeſaid, upon the Indictment aforeſaid, between our late Lord the King, and the aforeſaid *William Ireland*, *Thomas Pickering* and *John Grove*, ſo as aforeſaid had, by his own Act and Conſent, and of his moſt wicked mind, falſely, voluntarily and corruptly, in Manner and Form aforeſaid, did commit voluntary and corrupt Perjury.

And the Jurors aforeſaid, laſt ſworn to enquire for our ſaid Lord the King, and the Body of the City of *London* aforeſaid, upon their Oaths aforeſaid, do further preſent, That at another Seſſion of our ſaid late Lord the King, held for the County of *Middleſex*, at *Hicks's-Hall* in *St. John Street*, in the County aforeſaid, on *Thurſday* (to wit) the 12th Day of *June*, in the 31ſt Year of our ſaid late Lord King *Charles* II. before Sir *Philip Matthews*, Baronet, Sir *Thomas Orby*, Knight and Baronet, Sir *William Pultney*, Knight, Sir *William Bowles*, Knight, *Thomas Robinſon*, *Thomas Harriot*, Eſquires, and others their Companions, by Letters Patents of our ſaid late Lord the King, to the ſame Juſtices afore-named, and others, and to any four or more of them, under the Great Seal of our ſaid late Lord the King made, to enquire, by the Oaths of good and lawful Men of the County of *Middleſex* aforeſaid, and by all other ways, manners and means, by which they might or could better know, as well within Liberties as without; by whom the Truth of the Matter might be beſt known and enquired, of all Treaſons, Miſpriſions of Treaſons, Inſurrections, Rebellions, Counterfeitings, Clippings, Waſhings, Falſe-making, and other Falſifyings of the Money of this Kingdom of *England*, and of other Kingdoms and Dominions whatſoever; and of all Murders, Felonies, Man-ſlaughters, Killings, Burglaries, Rapes, Meetings and unlawful Conventicles; Speakings of Words, Combinations, Miſpriſions, Confederacies, falſe Allegations, Treſpaſſes, Riots, Routs, Retainers; Eſcapes, Contempts, Oppreſſions; and of other Articles and Offences in the ſame Letters Patents of our ſaid Lord the King, ſpecified: As alſo, the Acceſſaries of the ſame, within the County aforeſaid, as well within Liberties as without, by whomſoever and howſoever had, done, perpetrated or committed; and of other Articles and Circumſtances concerning the Premiſes howſoever; and the ſame Treaſons, and other the Premiſes, to hear and determine according to the Law and Cuſtom of this Kingdom of *England*; being aſſigned by the Oaths of *Henry Aſhurſt* Eſq; *Edward Gravel*, *John Radford*, *John Warral*, *William Hanmar*, *Robert Pritchard*, *John Trodder*, *Gilbert Ureweyn*, *David Collivex*, *Abraham Harriſon*, *Charles Morgan*, *Philip Trehearn*, *John Collier*, *Robert Whiterod*, *William Webb*, *Thomas Edwards* and *Abraham Tillent*, honeſt and lawful Men in the County aforeſaid, ſworn and charged to enquire for our ſaid Lord the King, and the Body of the County aforeſaid; upon their Oaths it was preſented, That *Thomas White*, late of the Pariſh of *St. Giles* in the *Fields*, in the County of *Middleſex*, Clerk, otherwiſe called *Thomas Whitebread*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Fenwick*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *William Harcourt*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk, otherwiſe called *William Harriſon*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; *John Gaven*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; and *James Corker*, late of the Pariſh aforeſaid, in the County aforeſaid, Clerk; as falſe Traitors againſt the moſt Illuſtrious, moſt Serene and Excellent Prince, our late Sovereign Lord King *Charles* II. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* their Supreme and Natural Lord; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance; but being moved and ſeduced by the Inſtigation of the Devil, the Cordial Love, the true, due, and natural Obedience, which true and faithful Subjects of our ſaid Lord the King, towards him our ſaid Lord the

King

King ſhould, and of right ought to bear; wholly withdrawing, and contriving, and with all their might intending the Peace and common Tranquillity of this Kingdom of *England* to diſturb; and the true *Worſhip of God* within this Kingdom of *England* uſed, and by Law eſtabliſhed, to overthrow; and the Government of this Kingdom of *England* to ſubvert, and Sedition and Rebellion within this Kingdom of *England* to move, ſtir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our Lord the King, towards him the ſaid Lord the King, ſhould, and of right ought to bear, utterly to withdraw, put out, and extinguiſh; and our ſaid late Lord the King to Death and final Deſtruction to bring, and put, the 24th Day of *April*, in the 30th Year of the Reign of our ſaid late Lord King *Charles* II. *&c.* at the Pariſh of *St. Giles* in the *Fields*, and the County of *Middleſex* aforeſaid, with divers other falſe Traitors againſt our ſaid late Lord the King, to the Jurors aforeſaid unknown, falſely, ſubtilly, adviſedly, maliciouſly and traitorouſly did purpoſe, compaſs, imagine, and intend Sedition and Rebellion within this Kingdom of *England* to move, ſtir up, and procure, and a miſerable Slaughter among the Subjects of our ſaid Lord the King to procure and cauſe; and our ſaid late Lord the King, from the Regal State, Title, Power and Government of his Kingdom of *England*, utterly to deprive, depoſe, caſt down, and diſinherit; and him our ſaid late Lord the King to Death and final Deſtruction to bring and put; and the Government of the ſame Kingdom, and the ſincere Religion of God in the ſame Kingdom, rightly and by the Laws of the ſaid Kingdom eſtabliſhed, at their Will and Pleaſure to change and alter; and the State of this whole Kingdom of *England*, through all its Parts well inſtituted and ordered, wholly to ſubvert and deſtroy; and War againſt our late Lord the King, within this Kingdom of *England* to levy: And to perfect and compleat the ſame, their moſt wicked Treaſons and traitorous Imaginations, and Purpoſes, they the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, *Anthony Turner*, and *James Corker*, and other falſe Traitors to the Jurors aforeſaid unknown, the aforeſaid 24th Day of *April*, in the 30th Year aforeſaid, with force and Arms aforeſaid, at the Pariſh of *St. Giles* in the *Fields* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, maliciouſly, ſubtilly, adviſedly, deviliſhly and traitorouſly did aſſemble, unite and gather themſelves together; then and there falſely, maliciouſly, ſubtilly, adviſedly, deviliſhly, and traitorouſly did conſult, conſent and agree our ſaid late Lord the the King to Death and final Deſtruction to bring and put, and the Religion within this Kingdom of *England*, rightly and by the Laws of the ſame Kingdom eſtabliſhed to change and alter, to the Superſtition of the Church of *Rome*, and the Government of this Kingdom of *England* to ſubvert; and that one *Thomas Pickering*, and one *John Grove*, him our ſaid late Lord the King ſhould kill and murder: And that they the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, *Anthony Turner*, *James Corker*, and other falſe Traitors againſt our ſaid late Lord the King, to the Jurors unknown, a certain Number of Maſſes, between them, then and there agreed upon, for the Health of the Soul of him, the ſaid *Thomas Pickering*, therefore ſhould ſay, celebrate and perform; and therefore ſhould pay upon the ſaid *John Grove*, a certain Sum of Money, between them then and there agreed upon. And that the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *John Gaven*, *Anthony Turner*, *William Harcourt* otherwiſe *Harriſon*, and other falſe Traitors againſt our ſaid late Lord the King, to the Jurors unknown, in the further Proſecution of the Treaſons and Traitorous Conſultations and Agreements aforeſaid, afterwards (to wit) the ſaid 24th Day of *April*, in the 30th Year aforeſaid, at the aforeſaid Pariſh of *St. Giles* in the *Fields*, in the County of *Middleſex* aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly, and traitorouſly, did ſeverally give their Faith each to other; and upon the Sacrament, then and there traitorouſly did ſwear and promiſe to conceal, and not to divulge their ſaid moſt wicked Treaſons and traitorous Compaſſings, Conſultations and Purpoſes aforeſaid, ſo between them had, him the ſaid late Lord the King traitorouſly to kill and murder, and to introduce the *Romiſh* Religion, to be uſed within this Kingdom of *England*; and the Religion within this Kingdom of *England*, rightly and by the Laws of this Kingdom eſtabliſhed, to alter and change; and that the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, *Anthony Turner*, *James Corker*, and other falſe Traitors to the Jurors aforeſaid unknown, in further Proſecution of the Treaſons and traitorous Intentions and Agreements aforeſaid, afterwards (to wit) the ſaid 24th Day of *April*, in the 30th Year aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid, falſely, ſubtilly, adviſedly, maliciouſly, deviliſhly and traitorouſly, did prepare, perſuade, excite, abet, comfort and counſel four other Perſons to the Jurors unknown, and Subjects of our ſaid late Lord the King, him our ſaid late Lord the King traitorouſly to kill and murder, againſt the Duty of their Allegiance, and againſt the Peace of our ſaid late Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. Whereupon, it was commanded the Sheriff of the County aforeſaid, that he ſhould not omit, *&c.* but ſhould take them to anſwer, *&c.*

Which Indictment the ſaid Juſtices of our Lord the King, afterwards (to wit) at the Goal-delivery of our ſaid Lord the King, of *Newgate*, holden by Adjournment for the County of *Middleſex*, at *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Friday* (to wit) the 13*th* Day of *June*, in the 31*ſt* Year aforeſaid, before Sir *James Edwards*, Knight, Mayor of the City of *London*; Sir *William Scroggs*, Knight, Lord Chief Juſtice of his Majeſty's Court of *King's-Bench*; Sir *Francis North*, Knight, Lord Chief Juſtice of his Majeſty's Court of *Common-Pleas*; Sir *Thomas Allen*, Knight and Baronet, one of the Aldermen of the ſaid City of *London*; Sir *George Jefferies*, Knight, Recorder of the ſaid City of *London*; and other their Companions, Juſtices of our ſaid Lord the King, aſſigned to deliver his Goal of *Newgate* of the Priſoners in the ſame being, by their own proper Hands did deliver there, in the Court of Record, in form of Law to be determined: And thereupon, at the ſaid Goal-delivery of our Lord the King of *Newgate*, holden by the Adjournment aforeſaid, for the County aforeſaid, at *Juſtice-Hall* aforeſaid, the ſaid *Friday* the 13*th* of *June*, in the 31*ſt* Year aforeſaid, before the aforeſaid Juſtices of our ſaid late Lord the King laſt named, came the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, under the Cuſtody of Sir *Richard How*, Knight, and Sir *George Chapman*, Knight, Sheriff of the County aforeſaid; into whoſe Cuſtody, for the Cauſe aforeſaid, they were before that time committed; being brought to the Bar there, in their proper Perſons; who were committed to the aforeſaid Sheriff, *&c.* And immediately being ſeverally demanded concerning the Premiſes aforeſaid, in the Indictment aforeſaid ſpecified, charg'd upon them as above, how they would thereof acquit themſelves; the ſaid *Thomas White*, otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven* and *Anthony Turner*, did ſeverally ſay, that they were *not* thereof *Guilty:* And thereupon, for good and bad, did ſeverally put themſelves upon the Country. And thereupon, upon the Indictment aforeſaid laſt recited, at the Seſſion of our Lord the King, at the *Juſtice-Hall* in the *Old-Bailey*, it was ſo far proceeded, that the Iſſue aforeſaid between our ſaid late Lord the King, and the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, afterwards (to wit) the aforeſaid *Friday* the 13th Day of *June*, in the 31ſt Year aforeſaid, at *Juſtice-Hall* aforeſaid, by a certain Jury of the Country in that behalf duly impannell'd, ſworn and charged, was tried; and that upon the Trial of the Iſſue aforeſaid laſt mentioned, between our ſaid late Lord the King, and the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt*, otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, at *London* aforeſaid, (to wit) at the *Juſtice-Hall* in the *Old-Bailey* aforeſaid, in the Pariſh of *St. Sepulchre*, in the Ward of *Faringden* without *London* aforeſaid, the ſaid Defendant, *Titus Oates*, was alſo a Witneſs produced on behalf of our ſaid late Lord the King, upon the Trial aforeſaid, upon the Indictment laſt aforeſaid: And he, the aforeſaid *Titus Oates*, then and there at the Seſſion laſt aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court of the ſame Seſſion (to wit) at the Pariſh and Ward aforeſaid, was duly ſworn upon the *Holy Goſpels of God*, to ſpeak and teſtify the Truth, the whole Truth, and nothing but the Truth of, and in the Premiſes, in the Iſſue aforeſaid laſt mentioned, ſo as aforeſaid joined between our ſaid late Lord the King, and the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, And that the ſaid *Titus Oates*, then and there, at the Seſſion aforeſaid laſt mentioned, in the *Juſtice-Hall* aforeſaid, in the Court of the ſame Seſſion, upon his Oath aforeſaid, upon the Indictment laſt aforeſaid, by his own proper Act and Conſent, of his moſt wicked Mind, falſely, voluntarily, and corruptly did ſay, depoſe, ſwear, and give in Evidence to the *Jurors* of the *Jury* aforeſaid laſt mentioned, ſo as aforeſaid ſworn and impannell'd to try the Iſſue aforeſaid between our ſaid late Lord the King, and the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*; That *William Ireland* (one *William Ireland* then before convicted and executed for High-Treaſon againſt our late Lord the King, meaning) took his leave of him the ſaid *Titus Oates* and others, at the Chamber of the ſaid *William Ireland*, then being in *Ruſſel-ſtreet* (a certain Street called *Ruſſel-ſtreet*, lying within the City of *Weſtminſter*, in the County of *Middleſex*, meaning) between the 8th and 12th Day of *Auguſt*, in the Year of our Lord 1678. Whereas, in truth and in deed, the ſaid *William Ireland* did not take his Leave of the ſaid *Titus Oates*, or any other Perſons whatſoever, at the Chamber of the ſaid *William Ireland*, then being in *Ruſſel-ſtreet* aforeſaid, between the ſaid 8th and 12th Days of *Auguſt*, in the Year of our Lord 1678. And ſo the ſaid *Titus Oates*, upon the ſaid *Friday* the 13th Day of *June*, in the 31ſt Year aforeſaid, at the Seſſion laſt aforeſaid, at the *Juſtice-Hall* aforeſaid, in the Court of the ſame Seſſion, upon the Indictment laſt aforeſaid, ſo put in Iſſue, and tried as aforeſaid, between our ſaid late Lord the King, and the ſaid *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, by his own proper Act and Conſent, and of his moſt wicked Mind, falſely, voluntarily, and corruptly, in manner and form aforeſaid, did commit voluntary and corrupt Perjury, to the great Diſpleaſure of *Almighty God*, in manifeſt contempt of the Laws of this Kingdom of *England*, to the evil and pernicious Example of all others in the like Caſe offending, and againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment he has been arraigned; and thereunto hath pleaded, *Not Guilty*; And for his Trial, hath put himſelf upon the Country, and his Majeſty's *Attorney-General* likewiſe; which Country you are; Your charge is, to enquire, whether the Defendant, *Titus Oates*, be *Guilty* of the Perjury he ſtands indicted, or *Not Guilty*. If you find him *Guilty*, you are to ſay ſo: If you find him *Not Guilty*, you are to ſay ſo, and no more; And hear your Evidence,

L. C. J. Look ye, Mr. *Attorney*, my Lord Chief Juſtice *Jones* has ſent to know, whether you have any thing to do with him to-day here? Sir *George Jefferies*.

Mr. Att. Gen. Not at all, that I know of. Sir *Robert Sawyer*.

L. C. J. Mr. *Oates*, do you intend to make uſe of my Lord Chief Juſtice *Jones*, or any of the Judges of the *Common-Pleas*, as Witneſſes?

Oates. Yeſterday, my Lord, I did call for them, to have made uſe of them as Witneſſes.

L. C. J. But have you any thing to ſay to them to-day?

Oates. I cannot tell, as yet.

L. C. J. Then my Lord Chief Juſtice *Jones* muſt be told, that he does not know, whether he ſhall, or not. Go on, Sir *Samuel Aſtry*.

Then Proclamation was made for Information, *and* Evidence *was made in uſual manner.*

Mr. *Phipps.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, this is an Indictment againſt *Titus Oates*, Clerk, for Perjury: And this Indictment ſets forth, that *William Ireland*, *Thomas Pickering*, and *John Grove*, in the 30th Year of the late King, were indicted of High-Treaſon, and tried at the *Old-Bailey*; and at that Trial, the Defendant, *Titus Oates*, was produced a Witneſs for the King; and being ſworn to tell the Truth, the whole Truth, and nothing but the Truth, did falſely, voluntarily, and corruptly, depoſe, and ſwear, and give in Evidence to the Jury that did try that Cauſe, that the ſaid *William Ireland* was in Town (within the Cities of *London* and *Weſtminſter*, or the Places adjacent, meaning) upon

upon the firſt or ſecond Day of *September*, in the ſecond Year 1678. Whereas, in truth, the ſaid *William Ireland* was not in Town, nor within the Cities of *London* and *Weſtminſter*, or the Places adjacent, upon the firſt or ſecond Day of *September*, in the Year 1678; and ſo the ſaid *Titus Oates* hath committed wilful and corrupt Perjury. And the Indictment further ſets forth, that upon the 13*th* Day of *June*, in the 31ſt Year of the late King, *Thomas White* otherwiſe *Whitebread*, *John Fenwick*, *William Harcourt* otherwiſe *Harriſon*, *John Gaven*, and *Anthony Turner*, were indicted and tried at the *Old-Bailey* for Treaſon, and at that Trial the ſaid *Titus Oates* was a Witneſs produced on the part of the King: And being ſworn to teſtify the Truth, the whole Truth, and nothing but the Truth, by his own Act and Conſent, of his own moſt wicked Mind, falſely, voluntarily and corruptly did depoſe and ſwear, and give in Evidence to the Jury, that *William Ireland* (one *William Ireland*, before that time convicted and executed for High-Treaſon, meaning) did take his leave of him the ſaid *Titus Oates*, at his the ſaid *William Ireland*'s Chamber, then being in *Ruſſel-ſtreet*, between the 8*th* and 12*th* Day of *Auguſt*, in the Year of our Lord 1678. Whereas, in truth, the ſaid *William Ireland* did not take his leave of him the ſaid *Titus Oates*, or of any other Perſons whatſoever, at his the ſaid *William Ireland*'s Chamber, then being in *Ruſſel-ſtreet* aforeſaid, between the ſaid 8*th* and 12*th* Day of *Auguſt*, in the Year of our Lord 1678. And ſo the ſaid *Titus Oates* did then and there commit wilful and corrupt Perjury. And this is laid to be to the great Diſpleaſure of *Almighty God*, in contempt of the Laws of this Land, to the evil and pernicious Example of all others in the like Caſe offending, and againſt the King's Peace, Crown and Dignity. To this he has pleaded, *Not Guilty*. If we prove it, we do not queſtion, but you will find him *Guilty*.

Mr. Att Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; Mr. *Oates* ſtands indicted for having perjured himſelf: The Inſtances Gentlemen, that we charge him with, are theſe: Firſt, What he ſwore at the Trial of *Ireland*; and we ſay, that at that Trial he did ſwear *Ireland* was in Town the 1ſt or 2d of *September*, 1678. The ſecond Inſtance is, what he ſwore at the Trial of the five Jeſuits: and there we ſay, he did ſwear, that *Ireland* was in Town between the 8*th* and 12*th* of *Auguſt*, and that he took his leave of him here in Town at his Chamber in *Ruſſel-ſtreet*; and we do charge him by this Indictment, that he has forſworn himſelf in both Inſtances: And that *Ireland*, Gentlemen, was neither in Town between the 8*th* and 12*th* of *Auguſt*, nor the 1*ſt* or 2*d* of *September*. And we ſhall make it out very evidently: For, Gentlemen, as to the Proof in this Caſe, our Caſe ſtands thus: we ſay, that the 3*d* of *Auguſt*, 1678, *Ireland* went into *Hertfordſhire*, to a Houſe of my Lord *Aſton*'s, and from thence went into *Staffordſhire*. I will not ſtand to open the Particulars where he was every Day; but we ſhall give you an Account, in a Method very eaſy to be remembered and obſerved, where he was till the 14*th* of *September*. But one remarkable Inſtance, Gentlemen, I deſire to take particular notice of; and that is, the Time of *Pancras* Fair, which is upon the 2*d* of *September* always, a known Day, and a known Place in that Country. Now we have among the reſt, many Witneſſes to prove, that Mr. *Ireland* was there that Day, and not in Town. And when we have proved this, as we ſhall by a whole Cloud of Witneſſes, I believe, you Gentlemen of this Jury, will no more doubt that Mr. *Oates* is forſworn in theſe Particulars, than the Jury yeſterday did in that Particular; nor than, I believe, the whole Kingdom does by this time.

Mr. Sol. Gen. My Lord, we ſhall go to our Evidence; and firſt, we produce the Records of the two Trials of *Ireland*, and the five Jeſuits. Swear Mr. *Swift*. [*Which was done.*] Pray, Sir, put in the Records. Are thoſe true Copies?

Mr. *Swift*. My Lord, I examined theſe Records with the Originals, and they are true Copies?

Mr. Att. Gen. Mr. *Oates*, will you have them read? Or to ſave the time of the Court, will you agree them?

Oates. My Lord, I conſent to ſave the time of the Court; if they ſhall be made uſe of for Evidence for me.

L. C. J. No doubt they are Evidence for you as well as againſt you, when they are produced here.

Mr. Sol. Gen. If Mr. *Oates* does admit the Records then ſhall we go on, and prove what he did ſwear at thoſe Trials; and for the firſt part of the time, which is between the 8*th* and 12*th* of *Auguſt*, we deſire that Mr. *Thomas Harriot*, and Mr. *Rainsford Waterhouſe* may be ſworn. [*Which was done.*

Mr. Att. Gen. Mr. *Harriot*, pray, do you remember at the Trial of the five Jeſuits, was Mr. *Oates* produced and ſworn as a Witneſs?

Mr. *Harriot*. Yes, he was, my Lord.

Mr. Att. Gen. Do you remember what Teſtimony he gave about *Ireland*'s being in Town, and when it was, he ſaid, he was in Town?

Mr. *Harriot*. My Lord, he did poſitively ſwear, that Mr. *Ireland*, the late Jeſuit, did take his leave of him, the ſaid *Oates* and others, at the ſaid *Ireland*'s Chamber in *Ruſſel-ſtreet*, betwixt the 8*th* and 12*th* of *Auguſt*, 1678.

Mr. Sol. Gen. Were you of the Jury that tried the five Jeſuits, Mr. *Harriot*?

Mr. *Harriot*. Yes, I was Foreman of that Jury.

Mr. Sol. Gen. What ſay you, Mr. *Waterhouſe*? Were you preſent at that Trial?

Mr. *Waterhouſe*. Yes, I was of the Jury too.

Mr. Sol. Gen. What did *Oates* ſwear at that Trial?

Mr. *Waterhouſe*. He ſaid, that Mr. *Ireland* took his leave of him the 12*th* of *Auguſt*. My Lord Chief Juſtice *Scroggs* then aſked him, are you ſure it was the 12*th*? And then he ſaid, he would not be poſitive it was the 12*th*, but between the 8*th* and 12*th* it was, I am poſitive upon my Oath.

Mr. Att. Gen. It is ſo in the Print too; but we will now go on.

L. C. J. But will the Defendant aſk theſe Witneſſes any Queſtions?

Oates. My Lord, if your Lordſhip pleaſe, I will aſk Mr. *Harriot* a Queſtion.

L. C. J. Ay, do aſk him what you will.

Oates. Mr. *Harriot*, did I ſwear, that he took his leave of me, or I took my leave of him?----------Mr. *Harriot*. You ſwore, that *Ireland* took his leave of you and others, between the 8*th* and 12*th* of *Auguſt*, 1678; between thoſe two Days, and in that Year.

Mr. Juſt. *Withins*. It is a nice Queſtion that of your's, Mr. *Oates*, upon my Word.

Oates. My Lord, I know what reaſon I have to aſk that Queſtion; I am ſure in Perjury, the Court ought to keep up the Witneſſes ſtrictly to what is laid in the Indictment.

L. C. J. Well, you have his Anſwer according to the Indictment.

Oates. Pray, my Lord, be pleaſed to aſk Mr. *Harriot* this Queſtion, Whether he took Notes of the Trial?----------Mr. *Harriot*. Yes, I did ſo, Sir.

Oates. My Lord, I deſire to know of Mr. *Harriot*, Whether he has thoſe Notes by him?

Mr. *Harriot*. No, Sir, I have them not here; but I have had them by me this four or five Years, or more. It was my manner in all the Trials, wherein I was concerned as a Jury-Man, to read the Trials ſtrictly over, when they were printed, eſpecially where I happened to have any Notes that I took at the Trial, and to compare the printed Trial with my Notes; and where I found any thing doubtful, I uſed to put a Query upon it. And this and many other things, I found to be in the printed Trial ſtrictly according to my Notes.

Oates. My Lord, I deſire to know, what Trial he was Foreman at?

Mr. *Harriot*. That of the five *Jeſuits*, in *June*; the 13*th* of *June*, 1679.

L. C. J. Have you any thing to aſk Mr. *Waterhouſe*?

Oates. Yes, my Lord. Pray, Sir, let me aſk you a Queſtion.

Mr. *Waterhouſe*. Ay, if you pleaſe, Sir.

Oates. Did you take Notes of that Trial you ſpeak of, Sir?

Mr. *Waterhouſe*. No, I did not.

Oates. How come you there to remember this, that I was ſo poſitive as to the time betwixt the 8*th* and 12*th* of *Auguſt*?

Mr. *Waterhouſe*. Becauſe I was one of the Jury; and becauſe my Lord Chief Juſtice made a ſtop, when you ſaid, 'twas the 12*th* of *Auguſt*, and bad you conſider: And you conſider'd, and conſider'd it; and did affirm poſitively, that it was between the 8*th* and 12*th* of *Auguſt*.

L. C. J. He gives you a plain Reaſon for his Remembrance.

Oates. My Lord, I have done with him.

Mr. Sol. Gen. Then we deſire Mr. *Foſter* may be ſworn. [*Which was done.*] Mr. *Foſter*, Pray will you tell what you remember Mr. *Oates* ſwore at Mr. *Ireland*'s Trial, about *Ireland*'s being in Town?

Mr. *Foſter*. I was one of the Jury at the Trial of Mr. *Ireland*, Mr. *Pickering*, and Mr. *Grove*; and I did ſee Mr. *Oates* ſworn, as a Witneſs for the King, at that Trial; and ſo was Mr. *Bedloe*: And *Bedloe* there gave Evidence, that there was a Meeting at *Harcourt*'s Chamber; and *Ireland Grove*, and *Pickering* were there: And that this was the latter End of *Auguſt*. Mr. *Ireland* did make his Defence, as much as he could, to prove, that he was not in Town from the Beginning of *Auguſt* to the Middle of *September*; and brought divers Witneſſes. But upon his denying to be here the latter End of *Auguſt*, Mr. *Oates* did come and ſwear: *I am certain* (ſays he) *that the firſt and ſecond of* September *he was in Town*; *for then I had of him Twenty Shillings*.

Oates. Was I poſitive, that he was here in Town the 1ſt or 2d of *September?*---------Mr. *Foſter*. You were poſitive, Sir, to the 1ſt or 2d; I have it in my Notes in Writing.

L. C. J. He tells you, it is in his Notes: And therefore he's ſure you ſaid ſo.

Mr. Att. Gen. In the printed Copy, if it be right, there is mention made of the Word *Poſitive*.

L. C. J. I think, that is in *Auguſt*, between the 8th or 12th, he was poſitive.

Oates. Did I ſay theſe Words, *I was poſitive?*------Mr. *Waterhouſe*. I ſay, you affirmed that he was in Town the 1ſt or 2d of *September*.

L. C. J. It is not neceſſary, that you ſhould uſe the Word *Poſitive*: The Queſtion is, Whether it was poſitively affirmed?

Mr. Juſt. *Withins*. Was not that true that you ſaid? Did not you affirm a poſitive Truth?--------*Oates*. My Lord, I'll tell you the Reaſon why I aſk the Queſtion, becauſe I have forgot myſelf, whether I uſed the Word or no; and therefore I aſk for my own Information now.

L. C. J. Well, aſk for what Reaſon you will, you have received an Anſwer to your Queſtion; and upon my Word he gives a notable Evidence: Says he, *Bedloe* had ſworn a treaſonable Practice by *Ireland*, in the latter end of *Auguſt*. Then *Ireland* comes, and make his Defence: Says he, *That cannot be*; *for I was out of Town at that time*; *I was not in* London *all* Auguſt, *nor the beginning of* September. Then come you in to ſupport the Teſtimony of *Bedloe*, and ſwear, that he was in Town the 1ſt or 2d of *September*; for then he gave you twenty Shillings. And ſo you come to rivet the Matter that was ſworn before by *Bedloe*.

Oates. My Lord, what I ſwore was Truth.

L. C. J. That is now to be tried.

Mr Att. Gen. We have another of the Jury here, Mr. *John Byfield*: Pray, ſwear him. [*Which was done.*

Mr. Sol. Gen. Well, Sir, what did you hear *Oates* ſwear at that Trial?

Mr. *Byfield*. I heard the ſame that they have teſtified before.

L. C. J. But you muſt tell us what that was.

Mr. Sol. Gen. Were you a Jury-man at that Trial?

Mr. *Byfield*. Yes, I had a Summons to the *Old-Bailey*--------

L. C. J. But what did *Oates* ſwear? That's the Queſtion.

Mr. *Byfield*. Mr. *Oates* did poſitively aſſert, that *Ireland* was here in Town the 1ſt or 2d of *September*; and to confirm it, he ſaid, he received of him twenty Shillings.

Mr. Att. Gen. Now, my Lord, we ſhall go to our Evidence to prove, that all this is abſolutely falſe: For *Ireland* went out of Town into *Staffordſhire*, and did not return till after the 9th of *September*. And for this, we call *Ann Ireland*. [*Who was ſworn.*

Mr. Sol. Gen. Mrs. *Ireland*, pray where did you take your leave of your Brother, Mr. *Ireland*, who was excuted in *Summer* 1678, and when?

Mrs. *A. Ireland*. I took my leave of him the beginning of *Auguſt*.

Mr. Sol. Gen. What Day in *Auguſt*, do you remember?

Mrs. *A. Ireland*. The 3d of *Auguſt*.

Mr. Sol. Gen. Where was it?-----Mrs. *A. Ireland*. In my own Lodging.

L. C. J. Where was your Lodging?

Mrs. *A. Ireland*. In *Ruſſel-ſtreet*, *Covent-Garden*.

L. C. J. Now tell us again the time when it was?

Mrs. *A. Ireland*. It was on *Saturday* Morning, as I remember, the 3d of *Auguſt*, the *Saturday* after *St. Ignatius*'s Day.

L. C. J. How come you to remember ſo particularly, that it was then?

Mrs. *A. Ireland.* Becauſe upon St. *Ignatius*'s Day, we were invited to Mr. *Giffor d*'s, at *Hammerſmith*; my Brother, my Mother, and I, were invited to ſtay all Night: But my Brother refuſed to ſtay, becauſe—

L. C. J. Which Brother? What was his Name?

Mrs. *A. Ireland.* *William Ireland.*

L. C. J. Did they ſtay there?

Mrs. *A. Ireland.* No, my Lord, my Brother came home on foot, but we ſtaid all Night.

Mr. Att. Gen Here is an Almanack of that Year: And the 3d of *Auguſt* was on a *Saturday.*

Mrs. *A. Ireland.* He ſaid he could not ſtay, becauſe he was to go into the Country upon *Saturday.* I aſk'd him, *Why he would ſet out on* Saturday? And ſays he, *I'll go to* Standen, *there I ſhall meet with my Lord* Aſton, *and his Family; and have an Opportunity to go with him into* Staffordſhire.

L. C. J. She ſays, he went out of Town on *Saturday* after St. *Ignatius*'s Day; which was *Saturday* the 3d of *Auguſt.* But there being a Diſcourſe between her and her Brother, why he ſhould make choice of a *Saturday*; which ſhe thought, it ſeems, was an inconvenient Day to take a Journey on: And upon that, her Brother made anſwer again, That that Night he would only go to *Standen*, to my Lord *Aſton*'s Houſe, where he ſhould meet with Company to go along with him into *Staffordſhire.*

Mr. Att. Gen. What Day of the Week was St. *Ignatius*'s Day?

Mrs. *A. Ireland.* St. *Ignatius*'s Day was on *Wedneſday.*

L. C. J. What Day of the Month is St. *Ignatius*'s Day?

Mrs. *A. Ireland.* It is either the laſt Day of *July*, or the 1ſt of *Auguſt.*

L. C. J. Look on your Almanack, if you have any one of that Year, Mr. *Attorney.*

Mr. Att. Gen. We have no ſuch Saint in our Almanack.

Mrs. *A. Ireland.* It was, as near as I can remember, the 3d of *Auguſt*, that he went out of Town.

Mr. Sol. Gen. The 3d of *Auguſt*, at that time, was on a *Saturday.*

Lord *Petre.* St. *Ignatius*'s Day is always the laſt Day of *July*, my Lord.

Mr. Att. Gen. In this Almanack, another Saint has juſtled him out; and that is Biſhop *German.*

L. C. J. And in my Almanack, a third has juſtled them both out: but my Lord *Petre* ſays, it is always the laſt of *July*; and that was on a *Wedneſday* that Year.

Mrs. *A. Ireland.* I remember it was on a *Wedneſday.*

L. C. J. And you are ſure he went out of Town the *Saturday* after?

Mrs. *A. Ireland.* Yes, I am ſure he went out of Town then; for I aſked him, why he would go on a *Saturday?* And he told me, he would go but to *Standen* that Night.

Mr. Sol. Gen. And that does hold, according to the Computation, to be the 3d of *Auguſt.*

Oates. My Lord, ſhe is not poſitive in this, that he went out of Town the 3d of *Auguſt.*

Mr. Att Gen. Yes, but ſhe is; for ſhe ſays, that ſhe was the *Wedneſday* before (which was St. *Ignatius*'s Day) with him a little way out of Town.

L. C. J. And that it was *Saturday* after he went out of Town; and ſhe gives the Reaſon, that ſhe entered into a Diſcourſe with him, why he would go on *Saturday?* And he made that Anſwer which you hear.

Mr. Juſt. *Withins.* Mr. *Oates* knows what Day St. *Ignatius*'s Day is upon, I preſume.--*Oates.* It is the laſt Day of *July*, I think.

Mr. Sol. Gen. In our Proteſtant Almanacks, it ſeems, we give another Biſhop place.

Mr. Att. Gen. Mrs. *Ireland*, when did you ſee him again?

Mrs. *A. Ireland.* Juſt a Fortnight before *Michaelmas*, and not before.

L. C. J. You were his near Relation, I ſuppoſe?

Mrs. *A. Ireland.* Yes, my Lord, I was his Siſter.

L. C. J. Pray, when he came to Town again, where did he lodge?

Mrs. *A. Ireland.* He uſed to lodge at the ſame place where we did always; and in the mean time, while he was abſent, my Mother lent one Mrs. *Eagleſton* his Lodging.

L. C. J. Is that Perſon, you lent his Chamber to in his Abſence, here?----Mrs. *A. Ireland.* No, My Lord.

L. C. J. When did ſhe enter upon his Lodging?

Mrs. *A. Ireland.* Truly, my Lord, I cannot tell; her Maid fell ſick, and ſo ſhe came down a Pair of Stairs lower into his Lodging. It was in a ſhort time after he went out of Town, my Lord, as I remember.

L. C. J. When did he come to Town again, do you ſay?

Mrs. *A. Ireland.* He came to Town again a Fortnight before *Michaelmas*; it was that Day Fortnight before *Michaelmas*, that *Michaelmas-day* fell on—

L. C. J. Have you any Queſtions to aſk her Mr. *Oates?*

Oates. My Lord, I deſire to know, why ſhe did not give this Evidence before? Or whether ever ſhe did give this Evidence at any of the Trials?

Mrs. *A. Ireland.* Yes, I was at my Brother's Trial; and there I gave the ſame Evidence.

Oates. Were you there at the Trial of the five Jeſuits? And did you give the ſame Evidence then?

Mrs. *A. Ireland.* No, I was not call'd.

L. C. J. But were you there?

Mrs. *A. Ireland.* I was in the Court at the ſame time, but was not examin'd.

Oates. What Year is it you ſpeak of, that he went out of Town the 3d of *Auguſt?*---Mrs. *A. Ireland.* The Year 78.

Oates. I deſire, my Lord, to aſk this Gentlewoman, what Religion ſhe is of?--Mrs. *A. Ireland.* I am a *Roman* Catholick, my Lord.

Oates. I deſire to know, whether her Name be *Ireland* or *Ironmonger?*

Mrs. *A. Ireland.* My right Name is *Ironmonger*; but becauſe of his Profeſſion, he went by the Name of *Ireland*; and for his ſake we go by that Name too.

Oates. By what Name did you give Evidence at *Ireland*'s Trial?

Mrs. *A. Ireland.* By that Name of *Ireland.*

L. C. J. Why, Mr. *Oates*, that is a good Name enough to be call'd by; you may remember, you were called *Titus Ambroſius*, and *Sampſon Lucy*, at *St. Omers.*

Mr. Att. Gen. Swear Mrs. *Eleanor Ireland.* [*Which was done.*

Mr. Att. Gen. When did your Son go out of Town?

Mrs. *El. Ireland.* The 3d of *Auguſt.*

Mr. Sol. Gen. Are you ſure it was the 3d of *Auguſt?*

Mrs. *El. Ireland.* Yes, I am ſure it was.

Mr. Sol. Gen. What Year was it?

Mrs. *El. Ireland.* My Memory is not good enough for that; I cannot tell what Year, my Daughter can.

Mr. Sol. Gen. Was it the ſame Year he was tried afterwards?

Mrs. *El. Ireland.* Yes, it was the ſame Summer; at *Michaelmas* after he was taken up.

Mr. Sol. Gen. What time did he return again out of the Country?

Mrs. *El. Ireland.* The 14th of *September* after.

Oates. My Lord, I would aſk her, Whether or no ſhe gave this Evidence at her Son's Trial?

Mrs. *El. Ireland.* Yes, I was a Witneſs there; but they would not permit me to ſpeak half ſo much; they would hardly let me ſpeak at all.

Oates. I deſire to know, Whether ſhe was an Evidence at the five Jeſuits Trials?---Mrs. *El. Ireland.* No, I was not there then.

Mr. Att. Gen. Pray ſwear Mrs. *Duddle*, and Mrs. *Quino.*

[*Which was done.*

Mr. Sol. Gen. Come, Mrs. *Duddle*, do you remember when Mr. *Ireland* went out of Town, in the Year 78?

Mrs. *Duddle.* To the beſt of my Remembrance it was the 3d of *Auguſt.*

Mr. Sol. Gen. Why do you think it was the 3d of *Auguſt?*

Mrs. *Duddle.* He went for a Recreation out of Town three Days before, which was upon an Holiday, St. *Ignatius*'s Day; and he went out of Town one Night then, and he came and ſtaid but two Nights after; and went out of Town upon the *Saturday.*

L. C. J. Did he ſtay out of Town one Night?

Mrs. *Duddle.* Yes, he ſtaid out of Town all Night.

L. C. J. Are you ſure he ſtaid there all Night?

Mrs. *Duddle.* I am ſure he ſtaid but one Night.

L. C. J. But what ſay you to that, Mr. *Attorney?* this Witneſs contradicts the other.---Mr. Juſt. *Withins.* Ay, plainly.

Mrs. *Duddle.* Mrs. *Ireland*, and Mrs. *Anne Ireland*, and he went out upon a Recreation out of Town, it being Holiday; and I remember well, that was of a *Wedneſday*; and that *Saturday* he went away, and never came again till a Fortnight before *Michaelmas.*

L. C. J. But mind my Queſtion, Woman.

Mrs. *Duddle.* Yes, my Lord.

L. C. J. Did he come home that Night he went on the Recreation?

Mrs. *Duddle.* I do not know.

L. C. J. But juſt now, you ſwore he ſtaid out all Night.

Mrs. *Duddle.* No, my Lord.

L. C. J. Yes, but you did though; prithee mind what thou art about.

Mrs. *Duddle.* I do not ſay he, but I am ſure his Siſter and the Company ſtaid out that Night. I remember very well, he went the third Day after, which was *Saturday.* And Mr. *Jenniſon* came to aſk for him three Weeks after; and there was a Perſon of Quality with him in the Coach, I think it was Sir *Miles Wharton.* And he asking for him, they gave him an account, that they had not heard from him ſince he went; which was then three Weeks after he was gone. And I remember well, he did not come to Town again till a Fortnight before *Michaelmas.*

L. C. J. How can you tell that?

Mrs. *Duddle.* My Lord, I can tell it very well: for I was almoſt every Night in the Room where he uſed to lie; and there lay a Gentlewoman there that I knew.

L. C. J. What was her Name?---Mrs. *Duddle.* Mrs. *Eagleſton.*

L. C. J. How came ſhe to lie there?

Mrs. *Duddle.* Her Maid fell ſick, and ſhe chang'd her own Chamber, and lay there all the time he was out of Town.

Oates. My Lord, is this good Evidence?---*L. C. J.* Ay, why not?

Oates. My Lord, I think ſhe contradicts the other Witneſs: For ſhe ſays he lay out two Nights.

L. J. C. No, there you are miſtaken too. But I tell you what I did obſerve before. Mrs. *Anne Ireland* ſwore, that they did ſtay all night; but Mr. *Ireland* refuſed to ſtay there, but would go home, becauſe he was to go his Journey on *Saturday.* Then this Woman comes, and ſhe ſaid at firſt, that he went out of Town on the *Wedneſday*, and ſtaid out all Night, and lay at home but two Nights, and then went away. But now, when I put her in mind to take care what ſhe ſaid, ſhe ſwears, ſhe is ſure the Siſter lay out, but ſhe is not ſure of *Ireland*'s lying out: But ſhe is poſitive he went away on *Saturday* the 3d of *Auguſt*, and return'd not till a Fortnight before *Michaelmas.*

Oates. My Lord, I humbly conceive, ſhe having once ſworn falſe---

L. C. J. Ay, but ſhe immediately recollected herſelf.

Oates. By what Token does ſhe remember it to be the 3d of *Auguſt?*

L. C. J. She ſaid before, it was the *Saturday* after St. *Ignatius*'s Day, which was on a *Wedneſday*, the laſt Day of *July*; and he went then out of Town. She call'd it by the Name of *Recreation.*

Oates. Was it the *Saturday* after St. *Ignatius*'s Day?

Mrs. *Duddle.* Yes, it was: And I had not remember'd it, but that it was upon that Holiday.

Oates. This is a *Roman* Catholick, I ſuppoſe, my Lord.

L. C. J. I cannot tell. What Religion are you of?

Mrs. *Duddle.* I am a *Roman* Catholick, my Lord. Mr. *Jeniſon* knows what I ſay to be true.

Oates. Were you a Witneſs in any of the Trials at the *Old-Bailey?*

Mrs. *Duddle.* I was in the Court, but was not call'd.

Mr. Sol. Gen. What ſay you, Mrs. *Quino?* When did Mr. *Ireland* go out of Town?

Mrs. *Quino.* I muſt ſay the ſame; it was the 3d Day of *Auguſt*, on a *Saturday.*

L. C. J. How do you know that it was on a *Saturday* the 3d of *Auguſt?*

Mrs. *Quino.* By the ſame Reaſon that ſhe ſpeaks, I mark'd that other Day he went out of Town; and he came again, and his Mother ſtaid there that Night: And he went on *Saturday* Morning out of Town. I know it very well; for my Huſband was his Taylor, and he had ſomewhat to alter in his Clothes; and I brought it immediately after it was done.

L. C. J. Are you ſure he went out of Town that Day?

Mrs. *Quino.* He went out of the Houſe, and as I take it, went out of Town.

L. C. J. Did he ſay he was to go out of Town?

Mrs. *Quino.* He had his Boots on; and took Horſe at the *Bull-Inn* in *Drury-Lane.*

L. C. J. How do you know it?

Mrs. *Quino.* Becauſe his Servant that was there has teſtified it.

Mr. Att. Gen. Now ſwear my Lord *Aſton.* [*Which was done.*] We'll bring *Ireland* now upon the 3d of *Auguſt* at Night, to my Lord *Aſton*'s Houſe at *Standen.*

Mr. Sol. Gen. Pray will your Lordſhip give my Lord and the Jury an account, when Mr. *Ireland* came to your Houſe, and how far he travelled with you afterward?

Lord *Aſton.* My Lord, being in Town, I was ſpoke to, and deſired that Mr. *Ireland* might have the Opportunity of going in my Company down into *Staffordſhire*; which I conſented to. I went out of Town, as I remember, the latter end of *July* 1678, and this ſame Mr. *Ireland* came to me at my Houſe in *Hertfordſhire*, at *Standen*, upon the 3d of *Auguſt*, at Night.

L. C. J. What Day of the Week was that, my Lord?

Lord *Aſton.* As I remember, it was *Saturday*, and in the Evening.

L. C. J. How long did he ſtay with your Lordſhip?

Lord *Aſton.* My Lord, I ſtaid till *Monday* at *Standen*; and upon *Monday* he went in my Company to *St. Albans*, which was the 5th of *Auguſt.*

Mr. Att. Gen. Whither then did you go, my Lord?

Lord *Aſton.* There I met with my Brother and Siſter *Southcoat.*

L. C. J. Sir *John Southcoat* you mean, my Lord.

Lord *Aſton.* Yes, my Lord. And thence, in four Days we went to my Houſe at *Tixhall.*

L. C. J. Did Mr. *Ireland* travel with you all the Way?

Lord *Aſton.* I cannot charge my Memory, my Lord, that he did, ſo as particularly to ſwear it: But there he came into my Company ſometimes at *Tixhall*; but I cannot tell the particular Days: Nor could I ſpeak poſitively to thoſe Things that I have ſpoke to now, but that I find in my Note-Book, that at that time he did come to my Houſe at *Standen*, and did go with me to *St. Albans.*

Mr. Att. Gen. Pray, my Lord, did he go that Journey to *Tixhall* along with you?

Lord *Aſton.* I cannot ſay poſitively that, Mr. *Attorney*; but I have a general Notion that he did. Nor could I teſtify this ſo poſitively, I ſay, but by Notes that I have of things at that time: Where I have only writ down theſe things concerning Mr. *Ireland*, and that he came the 3d of *Auguſt* to my Houſe at *Standen:* That on *Monday* we went together to *St. Albans*; and there met us Sir *John Southcoat*, and my Siſter his Wife; and thence I went to *Tixhall*; and there I arriv'd the 8th of *Auguſt*, which was *Thurſday.*

L. C. J. My Lord, I aſk you this Queſtion; you ſay, you have a general Apprehenſion that he did go with you to *Tixhall*: Pray, did he come with you to *Standen* for that purpoſe, to go with you to *Tixhall?*

Lord *Aſton.* I had no buſineſs with him at all; but he deſired the opportunity to go down in my Company into *Staffordſhire.*

L. C. J. Pray, my Lord, do you remember you ſaw him within four or five Days after at *Tixhall?*

Lord *Aſton.* To name particular Days, I cannot; but that I ſaw him ſeveral Days at *Tixhall*, I am ſure.

Oates. My Lord, you ſay that Sir *John Southcoat* went with you to *Tixhall?*

Lord *Aſton.* Yes, he did ſo.

Oates. My Lord, I would aſk this Nobleman, whether he was at the Trial of the five Jeſuits? or the Trial of *Ireland?*

Lord *Aſton.* No, my Lord, I was not.

Oates. Then I would aſk my Lord, if he ſaw Mr. *Ireland* executed?

Lord *Aſton.* No, I did not.

Oates. Then I would aſk him this Queſtion; Whether the *Ireland* that was executed be the ſame *Ireland* he ſpeaks of?

Lord *Aſton.* Amongſt thoſe that knew him well, I have been told it was the ſame.

Oates. That is but Hear-ſay, my Lord; he does not ſpeak of his own Knowledge.

L. C. J. For that matter, I ſuppoſe, you'll produce ſome other *Ireland*, Mr. *Oates*, if it was not the ſame.

Mr. Att. Gen. Was it this Mrs. *Ireland*'s Brother that was here a Witneſs now?

Lord *Aſton.* He was ſo reputed, and ſo looked upon.

L. C. J. That is all one. If any body ſhould aſk me, if you were the ſame Mr. *Oates* that was at *St. Omers*; I ſhould ſay, I heard ſo; and it would be very good Evidence, unleſs ſome one elſe were produc'd.

Oates. My Lord, I ſubmit; I will be directed by the Court in any thing that is fair, and not injurious to my Defence.

L. C. J. We will not direct you in any thing that's foul; but pray keep to thoſe Queſtions that are pertinent.

Oates. Are you ſure *Ireland* went the whole Journey with you, my Lord?

Lord *Aſton.* I did anſwer that; I have but a general Notion of it, he came to me for that Purpoſe.

Oates. Then my Lord is not poſitive he went with him into *Staffordſhire.*

L. C. J. No, he is not; but I would aſk you this Queſtion, My Lord *Aſton*, do you believe he went with you to *Tixhall?*

Lord *Aſton.* I make no doubt of it, I would pawn all I have in the World upon it; only I cannot ſwear it, becauſe I have it not in my Notes, as I have thoſe two other Days.

Mr. Juſt. *Withins.* Do you like him the worſe, becauſe he is cautious, Mr. *Oates?*

Oates. No, Sir; I do not. But pray, my Lord, aſk him, becauſe it is a Queſtion here about a point of time; whether he remembers, that within eight or ten Days he ſaw *Ireland* at *Tixhall?*

Lord *Aſton.* I cannot ſay any thing as to that.

Mr. Att. Gen. Swear Sir *Edw. Southcoat.* [*Which was done.*]

L. C. J. I thought you had called him Sir *John Southcoat.*

Mr. Att. Gen. Sir *John* is ſick, and cannot be here.

Oates. I ſuppoſe my Lord *Aſton* is a *Roman* Catholick?

L. C. J. Ay, that all the World knows very well: but I tell you what, Mr. *Oates*, I obſerve he is not ſo eaſy in giving his Oath; nay, he is wonderful cautious in ſwearing: I ſpeak it for his Commendation, not as his Fault, he is not very forward at ſwearing.

Mr. Juſt. *Withins.* Well, what do you aſk this Gentleman, Mr. *Attorney?*

Mr. Att. Gen. We deſire Sir *Edward Southcoat* would give an account, whether he met Mr. *Ireland* at my Lord *Aſton*'s? And when?

Sir *Edw. Southcoat.* I was with my Lord *Aſton* in his Company.

L. C. J. When was that, Sir?

Sir *Edw. Southcoat.* The 4th of *Auguſt* I ſaw Mr. *Ireland* at my Lord *Aſton*'s.

L. C. J. Was it the ſame *Ireland* that was afterwards tried and executed?

Sir *Edw. Southcoat.* It was the ſame *Ireland* that was commonly reported; I did not ſee him executed.

Mr. Att. Gen. Was it the ſame that was reputed to be this old Gentlewoman's Son?—Sir *Edw. Southcoat.* Yes, it was.

L. C. J. Pray, Sir, go on with your Evidence.

Sir *Edw. Southcoat.* Upon *Monday* we began our Journey to *Tixhall*, and went that Night to *St. Albans*, where we met my Father and Mother, and thence we continued on our Journey the next Day.

L. C. J. Was he with you there that Day you went to *St. Albans?*

Sir *Edw. Southcoat.* He was with us, I remember very particularly. It was hot Weather, and my Lord *Aſton* invited him into the Coach; for before he was riding by the Coach-ſide, and there I remember a particular Diſcourſe that he and my Lord *Aſton* had; from thence we went on to *Northampton*, and came there *Tueſday* Night.

L. C. J. Was *Ireland* with you there?

Sir *Edw. Southcoat. Ireland* was with us there.

Oates. My Lord, I did not well obſerve what this Gentleman ſaid.

L. C. J. Pray mind your Buſineſs yourſelf, he ſpeaks plain enough; go on, Sir.

Sir *Edw. Southcoat.* Mr. *Ireland* was with us, I ſay, my Lord, all the Journey; and I do remember it particularly by a pretty Horſe Mr. *Ireland* rode upon; and I had a Diſpute with my Couſin, who ſhould buy him: I took particular notice every Day of him, as he rode by the Coach, and converſed with him every Night in the Inn. We went, I ſay, from *St. Albans* to *Northampton* on the *Tueſday*; from *Northampton* we went to *Coventry* on the *Wedneſday*, and from thence to my Lord *Aſton*'s, at *Tixhall*, on the *Thurſday.*

L. C. J. Come, let us go by degrees. Was Mr. *Ireland* with you, when you went from my Lord *Aſton*'s at *Standen* to *St. Albans?*

Sir *Edw. Southcoat.* Yes, he was.

L. C. J. You ſay it was a hot Day when you ſet out; and my Lord *Aſton* did invite him into the Coach.

Sir *Edw. Southcoat.* Yes, my Lord, he came into the Coach on *Monday*, which was the firſt Day we ſet out, and came that Night to *St. Albans.*

L. C. J. You lay there that Night?—Sir *Edw. Southcoat.* Yes, my Lord

L. C. J. Where did you lie there?

Sir *Edw. Southcoat.* At the great Inn, at the *Bull.*

L. C. J. Ay, that is the great Inn.

Sir *Edw. Southcoat.* The next Night, my Lord, we came to *Northampton.*

L. C. J. Where did you lie there?

Sir *Edw. Southcoat.* We lay at the Sign of the *George*; it was Sir *William Farmer*'s Houſe, but made uſe of for an Inn, becauſe the Town was burnt down.

L. C. J. Was Mr. *Ireland* with you all that Day?

Sir *Edw. Southcoat.* He rode with us all the Day.

L. C. J. And you took notice of it, becauſe of his Horſe, you ſay?

Sir *Edw. Southcoat.* Yes, he had a very pretty Horſe, my Lord; and my Brother bought the Horſe of him after we came back again.

L. C. J. Whither went ye the next Day?

Sir *Edw. Southcoat.* The next Night we lay at the *Bull* in *Coventry*, and from thence on *Thurſday*, we arrived at my Lord *Aſton*'s at *Tixhall.*

Mr. Att. Gen. My Lord, the Jury deſires to know what he ſays? For they have not heard it.

L. C. J. He ſays, Mr. *Ireland* went with my Lord *Aſton* in the Coach, it being a hot Day, on *Monday* the 5*th* of *Auguſt*, from *Standen*, my Lord *Aſton*'s Houſe in *Hertfordſhire*, to *St. Albans*, and lay there at the *Bull* Inn that Night; That he went the next Day, which was *Tueſday*, the 6*th* of *Auguſt*, with them to *Northampton*; That he rode upon a pretty Horſe, which makes him remember it particularly; and that there was a Diſpute on the Road, who ſhould buy him; and when they came back, his Brother bought him. He ſays, they lay on *Tueſday* Night at *Northampton*, at the *George*, which was a Gentleman's Houſe, which was turned into an Inn, becauſe of the Fire: That he went with them the next Day to *Coventry*, which was *Wedneſday* the 7*th* of *Auguſt*, and lay with them that Night at the *Bull* in *Coventry*; and the next Day, which was *Thurſday* the 8*th*, they came, and *Ireland* with them, to my Lord *Aſton*'s Houſe at *Tixhall*, in *Staffordſhire.*

Mr. Att. Gen. Pray Sir *Edward Southcoat*, how long did he ſtay with you at *Tixhall*, at my Lord *Aſton*'s?

Sir *Edw. Southcoat.* He ſtaid with us there till the *Tueſday* after; and then we began our Journey from my Lord *Aſton*'s Houſe, in *Tixhall*, into *Wales*, to *St. Winifred*'s Well.

L. C. J. That is *Holy-Well*, you mean.—Sir *Ed. Southcoat.* Yes, my Lord.

L. C. J. You ſay he ſtaid all *Friday*, *Saturday*, *Sunday*, *Monday*, and till *Tueſday*, after you came to my Lord *Aſton*'s at *Tixhall?*

Sir *Edw. Southcoat.* Yes, my Lord, he did ſo.

Mr. Att. Gen. So then, my Lord, we are gotten to *Tueſday* the 13th of *Auguſt*, which is paſt the time of the Perjury that is laid ſecond in the Indictment; but in point of Time, is the firſt that happened, for he ſwore that *Ireland* took his leave of him, and others here in Town, between the 8*th* and 12*th* of *Auguſt?*

Mr. Sol. Gen. Where did you go on *Tueſday*, Sir?

Sir *Edw. Southcoat.* Towards *Wales.*

Mr. *Jones.* Was he at *Tixhall* the 12*th* of *Auguſt?*

L. C. J. He ſays, he was till *Tueſday* the 13*th.* Pray let us not have the ſame Queſtions repeated over and over again.

Mr. Sol. Gen. Where did you go on *Tueſday* Night?

Sir *Edw. Southcoat.* We went to *Nantwich*, and lay at the *Holy-Lamb* there.

L. C. J. Where were you the next Night?

Sir *Edw. Southcoat.* The next Day we reached to St. *Winifred*'s Well.

L. C. J. Where did you lie there?

Sir *Edw. Southcoat.* At the *Star*, which is the great Inn there.

L. C. J. It is ſo.

Mr.

Mr. Att. Gen. Was Mr. *Ireland* there with you?

Sir *Edw. Southcoat.* Yes, he was.

Mr. Att. Gen. Whither did ye go then?

Sir *Edw. Southcoat.* We ſtaid not but one Day at *Holy-Well*; for we arrived there pretty late at Night, and all the Morning we ſpent there; and went away in the Afternoon, and came that Evening to *Cheſter*, and lay there only one Night, and came the next Day to *Tixhall* again.

Mr. Att. Gen. Which was *Friday* the 16th of *Auguſt*.

Mr. Sol. Gen. Pray, my Lord, be pleaſed to aſk him, Whether this Gentleman, Mr. *Ireland*, was with them all the while, in this Journey to *Holy-Well?*

Sir *Edw. Southcoat.* Every Day particularly; I remember it very perfectly.

Mr. Att. Gen. After he came to *Tixhall* again, how long did he tarry there?

Sir *Edw. Southcoat.* That I cannot ſo well ſay: I do remember truly, but he was afterwards at my Lord *Aſton*'s at *Tixhall*, I remember ſome ſcambling Days; but I cannot fix upon only two.

L. C. J. Which are they?

Sir *Edw. Southcoat.* I cannot tell what Day of the Month it was, or what Day of the Week; but one Day that I remember him there, was Mr. *Chetwind*'s Race with Sir *Henry Gough*; and one other Day.

L. C. J. When was that Horſe-Race?—Sir *Edw. Southcoat.* My Lord, I cannot tell what Day of the Month it was.

Mr. Att. Gen. When was the other time you ſpeak of?

Sir *Edw. Southcoat.* I remember him there one *Thurſday* upon the *Bowling-Green* at *Tixhall*, where there was a particular Company.

Mr. Sol. Gen. My Lord, we deſire to know, when his Brother did buy the Horſe of Mr. *Ireland?*

Sir *Edw. Southcoat.* When we came back; for he came home with us from my Lord *Aſton*'s, and we began our Journey, the 9*th* or 10*th* of *September*, from *Tixhall* to *Kingſton*; and when we arriv'd at my Father's Houſe, my Brother bought the Horſe of him.

L. C. J. Did you come home back again with Mr. *Ireland*, do you ſay?

Sir *Edw. Southcoat.* Yes, my Lord, we did.

L. C. J. When did you ſet out from *Tixhall?*

Sir *Edw. Southcoat.* The ninth of *September*, my Lord, I think it was; I am ſure it was upon a *Monday*, the 9*th* or 10*th*.

L. C. J. When did you come home?

Sir *Edw. Southcoat.* We were four Days on our Journey.

L. C. J. And did you come ſtraight to *London?*

Sir *Edw. Southcoat.* No, we went to my Father's Houſe in *Surrey*.

L. C. J. Which way did you come?

Sir *Edw. Southcoat.* The firſt Night we came to the *Bull* in *Coventry*; and from thence, the next Night, we went to the *Altar-Stone* at *Banbury*; and from *Banbury*, we came the third Day to *Agmondeſham* (I think, it is called) a little Town in *Buckinghamſhire*; and from thence the fourth Day, to my Father's Houſe, by *Kingſton* in *Surrey*.

Mr. Att. Gen. And then *Ireland* ſold his Brother his Horſe.

L. C. J. How long was he at your Father's Houſe in *Surrey*, Sir *Edward?*

Sir *Edw. Southcoat.* My Lord, we came on the *Thurſday*; and as I take it, he went on the *Saturday* to *London*. My Brother, after he had bought his Horſe, lent him the Horſe to Town; and ſent a Man with him to bring it back again.

Mr. Att. Gen. That *Saturday*, my Lord, makes it come juſt to the Fourteenth of *September*; and is the very Day Fortnight before *Michaelmas-Day*.

Oates. My Lord, I deſire to aſk this Gentleman, whether he ſaw *Ireland* all *Auguſt*, and till the Fourteenth of *September* in *Staffordſhire*, and elſewhere? And how long in *Staffordſhire?*

Sir *Edw. Southcoat.* I cannot ſay as to any particular Days of the Months, after our coming from *Holy-Well*, till our coming from *Tixhall* to *London*.

L. C. J. Marry, if he did, he would contradict what he had ſaid before: For, from the time of coming from *Holy-Well*, to the time of coming back to *London*, he could tell but of two Days, and thoſe uncertain: For he remembers not by the Times, but by other particular Circumſtances.

Oates. Pray, my Lord, be pleaſed to aſk him this Queſtion, When was the firſt Day he ſaw him in *September?*

Sir *Edw. Southcoat.* Truly, my Lord, I remember not any Day before we began our Journey home.

Mr. Att. Gen. But, my Lord, this is his Teſtimony: He was in his Company till the ſixteenth of *Auguſt*. It is true, there were other times that he ſaw him at *Tixhall*; but he cannot particularly ſpeak unto them: But, by and by, we ſhall go on to every Day, and prove particularly where he was.

Oates. My Lord, I deſire to know, Was Sir. *Edw. Southcoat* at the Trial of *Ireland* a Witneſs, or no?—Sir *Edw. Southcoat.* No, I was not, my Lord.

Oates. Were you at *Whitebread*'s Trial, Sir?

Sir *Edw. Southcoat.* Yes, I was, and gave the ſame Evidence I give now.

Mr. Sol. Gen. Then ſwear Mr. *John Southcoat.* [*Which was done.*

Mr. Att. Gen. This is Sir *Edward Southcoat*'s Brother, my Lord.

L. C. J. What, he that bought the Horſe?

Mr. *John Southcoat.* Yes, my Lord, I bought the Horſe of Mr. *Ireland*.

L. C. J. Well, what do you aſk him?—*Mr. Att. Gen.* Pray, Sir, When did you meet Mr. *Ireland* in *Auguſt* 1678? And where?

Mr. *John Southcoat.* My Lord, I met with Mr. *Ireland*, upon *Monday* the Fifth of *Auguſt*, at the *Bull*-Inn in *St. Albans*, with my Lord *Aſton:* I came thither that day with my Father and Mother. And the next Day we went to *Northampton*; and there we inn'd at the Sign of the *George*, Sir *William Farmer*'s Houſe, which is an Houſe in the Road, us'd for an Inn ſince the Town was burnt: And I converſed with him every day, in our Journey. And from thence, the next day, we went to *Coventry*, to the *Bull*-Inn there; and from thence, to my Lord *Aſton*'s (on *Thurſday* Night) at *Tixhall:* There we ſtaid all *Friday*, *Saturday*, *Sunday*, and *Monday*. Mr *Ireland* was there; I was with him all the while. And then upon *Tueſday* we ſet out for *Holy-Well* in *Flintſhire*, and went that Night to *Nantwich*, to the *Lamb* there. And the next day we went through *Cheſter* to *Holy-Well:* We ſtaid that Night at *Holy-Well*; and the next day came back again towards Noon to *Cheſter*; and there lay that Night: And then the next Night, which was *Friday*, we came back again to *Tixhall*.

L. C. J. Was Mr. *Ireland* with you both thoſe Journeys, all the while?

Mr. *John Southcoat.* Yes, my Lord, he was; I did ſee him, and rode with him every Day.

L. C. J. Pray, Sir, how long were you at *Tixhall*, after you came from *Holy-Well?*

Mr. *John Southcoat.* We ſtaid there till we came away for good and all.

L. C. J. Was Mr. *Ireland* with you all that time?

Mr. *John Southcoat.* No, he was not.

Mr. Att. Gen. Do you remember, that Mr. *Ireland* came to *Tixhall* the Ninth of *September*; and came along home with you, when you came?

Mr. *John Southcoat.* Yes, I do remember it very well.

L. C. J. What Day did you come home, Sir?

Mr. *John Southcoat.* We came home in four Days.

Mr. Sol. Gen. When did he leave you?—Mr. *John Southcoat.* We came home upon *Thurſday*, and he went to *London* on *Saturday*.

L. C. J. Pray, Sir, can you recollect when you did firſt ſee him again at *Tixhall*, after you came from *Holy-Well?*—Mr. *John Southcoat.* My Lord, I cannot tell particularly any Day, till the Day we came away.

L. C. J. Do you remember the Horſe-Match between Mr. *Chetwind* and Sir *Henry Gough?*—Mr. *John Southcoat.* I was there, my Lord; but I do not remember Mr. *Ireland* was there.

L. C. J. How long did he ſtay at your Father's Houſe in *Surrey*, Sir?

Mr. *John Southcoat.* Two Days, my Lord.

Mr. Sol. Gen. You lent him your Horſe you bought of him, I think, Sir?

Mr. *John Southcoat.* Yes, up to *London*, I did; and I ſent my Man with him, to bring him back again.

Mr. Att. Gen. Has Mr. *Oates* any Queſtions to aſk this Gentleman?

Oates. My Lord, I deſire to aſk Mr. *Southcoat*, Whether or no he is ſure, that *Ireland* was in his Company from the fifth of *Auguſt* to the Sixteenth?

Mr. *John Southcoat.* Yes, every day, I am ſure of it; I remember it very well.

Oates. Pray, my Lord, aſk him, Whether or no he teſtified this that he now ſwears at *Ireland*'s Trial?

Mr. *John Southcoat.* My Lord, I was not at *Ireland*'s Trial.

Oates. Then I deſire to aſk him, Whether or no he did teſtify this at the five Jeſuits Trial?

Mr. *John Southcoat.* No; I was not ſent for to any of the Trials.

L. C. J. I am ſorry you were not, Sir: 'Twas pity you were not there. It might have ſaved ſome innocent Blood.

Mr. Att. Gen. Now ſwear *Harriſon.* [*Which was done.*

Mr. Sol. Gen. Pray, will you give an Account when you ſaw *Ireland*, and where?

Harriſon. In the Year of our Lord 1678, my Maſter, Sir *John Southcoat*, went with my Lady, on *Monday* the Fifth of *Auguſt*, to *St. Albans*; and we came with a Coach and four Horſes: For my Maſter had an old Servant, that had a Pair of Horſes, which my Maſter made uſe of. And there we met my Lord *Aſton*, in the Company of Mr. *Ireland*. And the next Morning, my Lord *Aſton* went with my Maſter and Lady towards *Tixhall:* And I rode by, in Mr. *Ireland*'s Company; and came acquainted with him that Day. That Night we came to *Northampton*; and there we inn'd at a Stone-Houſe, that was uſed for the Inn, the Town being burnt before. The next Night we went to *Coventry*; and on *Thurſday* we came to *Tixhall:* There we ſtaid till *Tueſday*. After we went to *Holy-Well*; and the *Tueſday* Night we lay at *Nantwich:* And thence we went to *Holy-Well*, and ſtaid there on *Wedneſday* Night; And on *Thurſday* we came to *Weſt-Cheſter*; and I parted with him upon the *Friday* at *Weſt-Cheſter*.

Mr. Att. Gen. Pray, did you know this *Ireland?* Was it he that was tried and executed?---*Harriſon.* I was at Mr. *Ireland*'s Trial.

L. C. J. Was it the ſame Man that was tried?

Harriſon. My Lord, I ſaw him at his Trial, the Hair of his Face was grown, and he was a little diſordered; he did not look ſo well, becauſe he was not ſo well dreſs'd; but it was the ſame Man, my Lord.

Mr. Sol. Gen. Before this Man goes, we have more Queſtions to aſk him: When did you ſee him again, after you left him in *Cheſter* you ſay?

Harriſon. I ſaw him ſeveral times at *Tixhall*; I ſaw him at the *Bowling-green* upon *Thurſday*; and I ſaw him when the Horſe-Race was between Mr. *Chetwind* and Sir *Henry Gough:* I cannot tell what Day it was; for I had no reaſon to keep an account of the particular Days at that time.

Mr. Att. Gen. Did you come up with your Maſter again the 9th of *September?*

Harriſon. My Lord, I did ſo; I have a Note wherein I ſet down the Charges at that time. It is in this bit of Paper, which I have kept in my Almanack ever ſince. My Lord *Aſton* ſent his Coach with us to *Banbury*, where my Maſter's Coach was to meet him; but came only to *Coventry* the firſt Night. The next Night, which was *Tueſday*, we came to the *Altar-Stone* at *Banbury*, and there we lay: From thence, on *Wedneſday*, we came to *Agmondeſham*, where we were ill lodged. The next Day we baited at *Uxbridge*, and came to *Kingſton*, and ſo to Sir *John Southcoat*'s Houſe upon the *Thurſday* Night. Upon the *Friday* Mr. *Ireland* ſold his Horſe to Mr. *John Southcoat*, my Maſter's Son. Upon the *Saturday* Morning, I came with him from my Maſter's Houſe towards *London*; he did ride upon the Horſe he had ſold to Mr. *Southcoat*, and ſo we came up to Town, and took water; and I took a little Bag that belonged to Mr. *Ireland* upon my Arm, and we landed at *Somerſet-Houſe*, and I came with him to his Lodging in *Ruſſel-ſtreet*; and when he came there, he went up ſtairs, where two Women met him, and welcom'd him home: Said they, *We are glad you are come, we thought we had loſt you, becauſe we had never heard from you all this while.* There I took my leave of him, and did not ſee him again till his Trial at the *Old-Bailey*; and this was *Saturday* the 14th of *September*.

L. C. J. Pray let me ſee your Paper you ſpeak of.

[*Which was delivered in, and the Court look'd upon it.*]

L. C. J. Did you write this in your Journey?

Harriſon. Yes, my Lord, I did it at that time.

Mr. Att. Gen. Are the particular Days inſerted there, my Lord?

L. C. J. No, they are not, Mr. *Attorney*.

Harriſon.

Harriſon. I could not write well; it was only but *Memorandums* for myſelf.

L. C. J. What Day of the Month was the *Saturday* he came to Town?

Harriſon. It was the 14th of *September*, my Lord.

L. C. J. That agrees with all that the Women ſaid, that he came on *Saturday*, a Fortnight before *Michaelmas*, being the ſame Day of the Week as *Michaelmas-day* was: Thus far it is as clear as the Sun at Noon-day.

Oates. My Lord, there was a time when this was not believed.

L. C. J. Ay, Mr. *Oates*, we know there was a time, when there were *Ignoramus* Juries, and things were believed, and not believed, as the Humour went. What can you, Mr. *Oates*, ſay to it? I muſt needs tell you, *prima facie*, 'tis ſo ſtrong an Evidence, that if you have any Senſe in the World you muſt be concerned at it.

Oates. Not at all, my Lord; I know who they are, and what is the end of it all.

L. C. J. Upon my Faith, I have ſo much Charity for you, as my Fellow-Creature, as to be concerned for you.

Oates. 'Tis not two Straws matter whether you be or no; I know my own Innocency.

L. C. J. Thou art the moſt obſtinately hardened Wretch that ever I ſaw.

Oates. Pray, my Lord, aſk him, Whether he did not appear at Mr. *Ireland*'s Trial? And let it be remember'd what Credit he had then for all this Story he tells now. Theſe People come here to ſerve a turn only, and care not what they ſwear againſt me.

L. C. J. You muſt hold your tongue.

Oates. My Lord, I muſt ſpeak the Truth, and I will ſpeak the Truth.

L. C. J. I think there is ſcarce a Word of Truth comes out of thy Mouth.

Oates. You may think what you will, my Lord; but theſe Popiſh Traitors, I am ſure, will ſwear any thing, and ſuborn Witneſſes upon Witneſſes againſt me to overthrow the Plot.

Mr. Juſt. *Withins.* If you cannot behave yourſelf better than you do, we muſt ſend you elſewhere; we muſt not ſuffer this Behaviour: And therefore either be quiet, or get you gone.

L. J. C. Let him keep himſelf in order, and we'll hear him. If he thinks by boiſterous Impudency to outface Juſtice, we will not ſuffer it. Go on, Mr. *Attorney*.

Mr. Att. Gen. Swear Mr. *George Hobſon.* [*Which was done.*]

Mr. Sol. Gen. Were you in the Journey to *Tixhall* with Mr. *Ireland*, and my Lord *Aſton* in 78?

Mr. *Hobſon.* Yes, I was ſo, my Lord.

Mr. Sol. Gen. Pray tell all your Knowledge of the matter.

Mr. *Hobſon.* From the 3d of *Auguſt* till the 16th at Night, I was preſent with him every Day.

L. C. J. How do you know you were?

Mr. *Hobſon.* That is to ſay, the 3d of *Auguſt* he came to my Lord's Houſe at *Standen*, in *Hertfordſhire*, in the Evening, and there he remained till *Monday* the 5th of *Auguſt*; and that Day in the Morning he went, together with other Company to *St. Albans*, where we met Sir *John Southcoat* and his Lady towards the Evening; and we all lodged there, becauſe that was the appointed Place to meet at: We lodged the 6th of *Auguſt* at Night at *Northampton*; upon the 7th at *Coventry*; upon the 8th at *Tixhall*, my Lord's Houſe, where Mr. *Ireland* remained till *Tueſday* the 13th in the Morning. And upon the 13th in the Morning we ſet forth with my Lady *Aſton*, my Lord's Mother, Sir *John Southcoat*, and Mr. *Ireland*, and the other Company, towards a Place called *Holy-Well* in *Flintſhire*. That Night, being *Tueſday* the 13th of *Auguſt*, we lodged at *Nantwich* in *Cheſhire*; the *Wedneſday* Night we lodged at *Holy-Well*, where Mr. *Ireland* was with the reſt of the Company; and on *Thurſday* Night we returned back again to *Cheſter*, and lay there. Upon *Friday* we came back again to my Lord's Houſe at *Tixhall*. After that I did not ſee Mr. *Ireland* till *Monday* the 26th of *Auguſt*, when he came back again to our Houſe: Where he went in the mean time I cannot tell.

L. C. J. Whoſe Houſe is it that this Man means by our Houſe?

Mr. *Hobſon.* I mean my Lord *Aſton*'s Houſe, at *Tixhall*.

L. C. J. You know him very well, did not you?

Mr. *Hobſon.* Yes, my Lord, I knew him very well.

L. C. J. You ſay, he came back the 26th of *Auguſt* to *Tixhall?*

Mr. *Hobſon.* Yes, as I remember, he did ſo.

Mr. Att. Gen. How long after the 26th of *Auguſt* was it, that you ſaw him at *Tixhall?*

Mr. *Hobſon.* When he went away for *London*.

Mr. Att. Gen. When was that?----Mr. *Hobſon.* The 9th of *September*.

L. C. J. Did you come along with him to *London?*

Mr. *Hobſon.* No, my Lord; I ſaw him go; he was not in the Coach, but he was in the Company.

Oates. My Lord, I would fain ask him a Queſtion, When he was firſt acquainted with Mr. *Ireland*, that he ſpeaks of?

Mr. *Hobſon.* I never ſaw him till he came to my Lord *Aſton*'s, at *Standen*.

Oates. Were you at the Trial of Mr. *Ireland*, Sir?

Mr. *Hobſon.* No, my Lord, I was not; I was then in *Staffordſhire*.

Oates. Then it is material, my Lord, for me to aſk him this Queſtion, it relating to a particular Perſon; Whether *Ireland* that was executed, was the *Ireland* he ſays he was with?

L. C. J. I will aſk him, if you will. Was that the ſame Man that was afterwards tried and executed.

Mr. *Hobſon.* I believe it was, my Lord.

Oates. I inſiſt not ſo much upon the Queſtion, but only in reference to the Witneſs, his Acquaintance being ſo ſhort with him.

L. C. J. Truly, I think it is not ſo very ſhort; for he ſwears he was with him from the 3d of *Auguſt* till the 16th every Day.

Mr. Juſt. *Withins.* I have no great Acquaintance with you; but I know you, Mr. *Oates*, becauſe I have ſeen you ſo often.

L. C. J. Is it the ſame *Ireland* that was at the Trial? You, *Harriſon*, you ſaw him then?

Harriſon. The very ſame, and no other.

Mr. Juſt. *Withins* Certainly no body doubts that.

L. C. J. 'Tis fit he ſhould have this Queſtion anſwer'd, if the Witneſs can. Pray, go on, Mr. *Attorney*.

Mr. Att. Gen. Swear *George North.* [*Which was done.*] Pray, will you give an account where you met Mr. *Ireland*, and whether you was with him in his Journey?

North. My Lord, I ſaw him the 4th of *Auguſt*, which was *Sunday*, at *Standen*, my Lord *Aſton*'s Houſe, in *Hertfordſhire*: Upon the 5th he went with my Lord to *St. Albans*; where my Lord met with Sir *John Southcoat* and his Lady; and I was with them. And from thence we went on *Tueſday* to the *George* at *Northampton*: And from thence, on *Wedneſday* the 7th, to the *Bull* at *Coventry*: And upon the 8th, we came to *Tixhall*, which was *Thurſday*. And from *Thurſday* the 8th, to *Tueſday* the 13th, I did ſee him every day at my Lord's Houſe at *Tixhall*.

L. C. J. Whither went he then?

North. He went with my old Lady, and ſome other Company, to go to *Holy-Well*.

L. C. J. When did you ſee him again?

North. I did ſee him ſeveral times after that at *Tixhall*: But I took no particular notice of him again till he went away for *London*.

L. C. J. When was that?

North. I did ſee him the 9th of *September*. He came to go with Sir *John Southcoat* to *London*: Mr. *John Southcoat*, and he. I took my leave of him.

Oates. What Religion are you of, Sir?

North. I am a Catholick, my Lord.

Oates. I deſire to know, how he comes to remember this ſo well?

North. I waited at the Table; and he was every day at Dinner with my Lord.

Oates. Were you at the Trial of *Ireland* a Witneſs?

North. No indeed, my Lord, I was not.

Mr. Att. Gen. Swear *Richard Ingletrap.* [*Which was done.*]

Mr. Sol. Gen. Pray, will you give an acconnt, whether you knew Mr. *Ireland*, and where you ſaw him?

Ingletrap. The 1ſt of *Auguſt*, my Lord, I was ordered to be at *Standen* in *Hertfordſhire*, to wait upon my Lord *Aſton*, to go with him to *Tixhall*. And the 3d of *Auguſt* I ſaw Mr. *Ireland* there at *Standen* Lodge at my Lord's Houſe. The 4th Day he reſted there, being *Sabbath-day*.

Mr. Att. Gen. What are you, an Hackney-Coachman?

Ingletrap. Yes, my Lord, I am ſo. And upon the 5th, which was *Monday*, he went with my Lord *Aſton* to *St. Albans*; upon the 6th to *Northampton*; on the 7th, to *Coventry*; and the 8th Day, to *Tixhall* Lodge. He was in the Company, and went all the way with him; and I was there too.

L. C. J. How long did he ſtay there?----*Ingletrap.* Till *Tueſday* the 13th.

L. C. J. Did you ſee him there till *Tueſday?*

Ingletrap. I do not ſay, that I did ſee him every Day.

L. C. J. Did you go with them on *Tueſday* to *Holy-Well?*

Ingletrap. No, I did not.

Mr. Att. Gen. But, my Lord, you obſerve, that is paſt one of the Times that he ſwore *Ireland* was here in Town; that is between the 8th and 12th of *Auguſt*.

L. C. J. It is ſo.

Mr. Att. Gen. Pray, what Religion are you of, Mr. *Ingletrap?*

Ingletrap. I am a Proteſtant, my Lord.

Oates. Were you at the Trial of the five Jeſuits, or that of *Ireland?*

Ingletrap. No, I was not.

Oates. My Lord, I deſire you would aſk him, he being a Proteſtant, how he came to be acquainted with *Ireland*, that was a Prieſt?

L. C. J. Why, Mr. *Oates*, is there no Converſation to be between Papiſts and Proteſtants?

Oates. Truly, very little, my Lord: But that is not the Point now. I deſire to have an Anſwer to my Queſtion.

Ingletrap. There was no great Acquaintance between us, my Lord; for I never ſaw him before that time.

Mr. Att. Gen. Swear *Andrew Wetton.* [*Which was done.*] Did you go that Journey with my Lord *Aſton* to *Tixhall?*

Wetton. No; I went from *Tixhall* to *Holy-well*.

Mr. Att. Gen. What Day did you ſet out from *Tixhall?*

Wetton. Upon *Tueſday* the 13th of *Auguſt*.

Mr. Sol. Gen. Where did you lie that Night?

Wetton. At *Nantwich* at the *Holy-Lamb*. And next Day we baited at *Cheſter*; and from thence we came the next Night to *Holy-Well*. There we ſtaid all Night, and till next day at Noon. We din'd at *Holy-Well*, and came that Night back to *Cheſter*: And from thence, the next day, we came home to *Tixhall*.

L. C. J. Was Mr. *Ireland* there all the while?

Wetton. Mr. *Ireland* was there, I looked after his Horſe.

L. C. J. When did he come firſt to *Tixhall?*

Wetton. He came upon the 8th, and ſtaid till the 13th; and then went to *Holy-Well*.

Mr. Sol. Gen. Pray, what Religion are you of?

Wetton. I am Proteſtant, Sir.

Mr. Att. Gen. And the 9th of *September* he came away from *Tixhall* to *London*, you ſay?

Wetton. Yes; I ſaw them take Coach; and he did ride on horſeback.

L. C. J. Did you ſee him often at *Tixhall*, between the time he came from *Holy-Well* and the time he went to *London?*

Wetton. Yes, he was there ſeveral times; but I cannot tell the particular Days: But, my Lord, if you pleaſe, I can tell you the very Money he gave me, which was a Shilling and two Sixpences, when he came back from *Holy-Well*.

L. C. J. And the 16th, you ſay, he came back from *Holy-Well?*

Wetton. Yes, it was the 16th, upon *Friday*, that he came from *Holy-Well*.

L. C. J. And he ſays, the 9th of *September* he came back again from *Tixhall* to *London*; and that he ſaw him ſevral times, in the mean time, at my Lord *Aſton*'s Houſe.

Mr. Sol. Gen. So, my Lord, we are paſt one of the times; and have fix'd him at *Tixhall* upon the 16th.

Mr. Att. Gen. We have a Couple of Witneſſes more upon this Point, and then we ſhall go on to the 17th; and ſo all along to the 9th of *September*.

Mr. Att. Gen. Swear *Thomas Sawyer.* [*Which was done.*] When came Mr. *Ireland* to *Tixhall?* can you tell?——M. *Sawyer.* He came the 8th of *Auguſt* to *Tixhall*, and continued there till the 13th: And then he

he went away; but whither he went I cannot tell: But, as I was told, it was to *Holy-Well*.

Mr. *At. Gen.* When did he come to *Tixhall* again?

Mr. *Sawyer.* When my old Lady *Aston* came home, which was *Friday* the 16th.

Mr. *Sol. Gen.* Do you know when he left *Tixhall* for good and all?

Mr. *Sawyer.* The 9th of *September*, my Lord, he went with Sir *John Southcoat* to go to *London*.

L. C. J. Can you remember he was there at any time between the 16th of *August*, and the 9th of *September*?

Mr. *Sawyer.* He was once or twice there; but I cannot tell the particular Days.

Mr. *Sol. Gen.* What Perſuaſion are you of, as to Religion, Sir?

Mr. *Sawyer.* I am one of the Church of *England*, my Lord.

L. C. J. Truth is the ſame in all Perſuaſions.

Mr. *Sol. Gen.* But we would obviate Mr. *Oates*'s Objection, that they are all Papiſts.

Mr. *At. Gen.* Swear *Frances Allen.* [*Which was done.*] Pray, will you give an Account, when you ſaw Mr. *Ireland* in *Staffordſhire*?

Mrs. *Allen.* He came the 8th Day of *Auguſt* to *Tixhall*, and continued there the 9th, 10th, 11th, 12th, and to the 13th in the Morning, and then he did go to *Holy-Well*.

Mr. *At. Gen.* She will tell you one particular Circumſtance, how ſhe remembers him about that Time.

Mrs. *Allen.* The 10th of *Auguſt* was *Saturday*; and that which cauſeth me to remember it, is this: There was a Woman, one *Sarah Paine*, I think her Name was, which teſtified at the Trial, that he was in Town at that Time; but he was not: For he was at *Tixhall* upon the 10th, which was *Saturday*; and the 11th, which was *Sabbath-day*: And I ſaw him in the Chamber thoſe Days.

Mr. *At. Gen.* How came you to know him ſo well?

Mrs. *Allen.* I was a Servant to my Lord *Aſton*, and look'd to Mr. *Ireland*'s Chamber, and waſh'd his Linnen; and thoſe Days I ſaw him in his Chamber.

Mr. *At. Gen.* When he went from *Tixhall* to *Holy-Well* the 13th, when did he come back again? — Mrs. *Allen.* The 16th Day, which was *Friday*.

Mr. *At. Gen.* Did he come afterwards to *Tixhall* at any Time?

Mrs. *Allen.* He went away the 17th, and I can tell you by a good Token, that he did ſo: For the 17th I carried his Clothes into his Chamber, that he was to take with him.

Mr. *At. Gen.* When did he come again to *Tixhall*?

Mrs. *Allen.* He came ſeveral Times, but truly I cannot tell what Days particularly. — Mr. *Sol. Gen.* Pray when did he go away for good and all?

Mrs. *Allen.* I remember his going away with Sir *John Southcoat*, but I cannot tell the Time.

Mr. *At. Gen.* Pray, what Religion are you of?

Mrs. *Allen.* I am a Proteſtant of the Church of *England*; ſo I was chriſtened, ſo I have lived, and ſo I hope to die before you all.

L. C. J. Upon my word, ſhe is very kind, ſhe has a Mind to die before us: 'Tis a Sign ſhe lives a good Life, ſhe's ſo ready to die.

Mr. *At. Gen.* So, my Lord, you ſee, that the 17th of *Auguſt* he departed from my Lord *Aſton*'s. Now we ſhall call Mrs. *Harwell* to give you an Account whither he went on the 17th. Swear Mrs. *Jane Harwell.* [*Which was done.*

Mr. *Sol. Gen.* Where do you live, Mrs. *Harwell?*

Mrs. *Harwell.* I live now in Town, my Lord.

Mr. *Sol. Gen.* Where did you live in the Year 78?

Mrs. *Harwell.* At *Wolverhampton.*

Mr. *Sol. Gen.* Did you know Mr. *Ireland*, he that was executed?

Mrs. *Harwell.* Very well, my Lord.

Mr. *Sol. Gen.* What Time did he come to your Houſe at *Wolverhampton?*

Mrs. *Harwell.* The 17th of *Auguſt*, 1678.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Harwell.* Upon *Saturday.*

Mr. *Sol. Gen.* From whence did he ſay he came at that Time?

Mrs. *Harwell.* I do verily believe it was from *Tixhall* that he came; I cannot poſitively ſay.

Mr. *Sol. Gen.* How long ſtaid he there?

Mrs. *Harwell.* He came to my Houſe the 17th of *Auguſt*, 1678. He ſupped there that Night, and I think he lay in my Houſe every Night till the 26th of the ſame Month. Upon the 19th Day, after Dinner, I went with him a good Part of the Town of *Wolverhampton*; and upon *Friday* following, which was the 23d, he went a little Way out of Town, to a Fair hard by, and return'd the ſame Day, and ſtaid at my Houſe the next Day, being *Bartholomew-Day.* The next Day, being the 25th, being *Sunday*, he was at my Houſe, and he ſtaid, as I ſaid, every Night, and lay at my Houſe; and went away on *Monday* the 26th of *Auguſt.* It was, to the beſt of my Remembrance, in the Morning.

Mr. *Sol. Gen.* Whither he did ſay he was going, when he went from your Houſe on the 26th?——Mrs. *Harwell.* I think to *Tixhall*, he ſaid.

Mr. *Sol. Gen.* When did you ſee him again after that?

Mrs. *Harwell.* He returned to me again the 4th of *September* following. That Night he ſupped at my Houſe, and lay there; and he ſtaid at my Houſe *Thurſday* the 5th of *September*, *Friday* the 6th, and he went away on the 7th from me for good and all.

Mr. *At. Gen.* Whither did he go then?

Mrs. *Harwell.* To *Tixhall*, I think, I cannot tell.

Mr. *At. Gen.* Whence did he ſay he came, when he came laſt to your Houſe; which was *Wedneſday* the 4th of *September?*

Mrs. *Harwell.* Then he ſaid he came from *Boſcobel* and *Black-Ladies*, and that Way.

Mr. *Sol. Gen.* Can you tell any Thing that makes you remember he was at *Boſcobel?*

Mrs. *Harwell.* I have ſome Circumſtances that make me believe and remember it.

L. C. J. Ay, tell us what they are.

Mrs. *Harwell.* My Lord, upon *Monday* the 2d of *September*, I heard Mr. *Ireland* would be at *Boſcobel*, and I ſaid to my Friend that told me ſo, *Sure Mr.* Ireland *will not be there that Night, and I ſo near him. Yes*, ſaid ſhe, *he will. Then*, ſaid I, *I will write to him*; and ſo I did. And I tell you the 4th of *September*, which was *Wedneſday*, he came to my Houſe, and ſtaid that Night, and the two next Days with me, and went away upon the *Saturday* after.

L. C. J. You ſay you did write to him upon the 2d of *September?*

Mrs. *Harwell.* Yes, I did ſo.

L. C. J. What was the Occaſion of your writing to him at that Time?

Mrs. *Harwell.* One Madam *Dormer* was then in thoſe Parts, and he being gone a viſiting his Friends at *Black-Ladies*, I writ to him, and deſired him to give her a Viſit; for I knew ſhe would be glad to ſee him.

L. C. J. He came back to you the 4th of *September*, you ſay?

Mrs. *Harwell.* Yes, he did ſo, my Lord.

L. C. J. Did he own upon the fourth of *September* that he had received your Letter?

Mrs. *Harwell.* He ſaid he had been at the Place, my Lord, but I know not whether he had received my Letter or no; but I am ſure he waited upon my Lady, for ſhe told me ſo afterwards.

Oates. I deſire to know, whether this Gentlewoman was at *Ireland*'s Trial?

Mrs. *Harwell.* No, my Lord; but I heard that upon the 17th of *December* following, Mr. *Ireland* was tried at the *Old-Bailey* for High Treaſon. Upon the 19th, I was informed by the Poſt what was ſworn againſt him; and particularly as to this Time, which I knew to be falſe: And upon my own Coſts and Charges I ſent an Expreſs away to Town here to a Friend that I knew, upon reading the Letter that was written to me, that Mr. *Ireland* was falſely accuſed; and by that Expreſs alſo I ſent a Petition, humbly beſeeching his late Majeſty, that we might bring in Witneſſes to prove, that Mr. *Ireland* was in *Staffordſhire*, when Mr. *Oates* ſwore he was in Town; and upon that the King ſtaid the Execution about five Weeks. We did hope for a ſecond Trial, but we could not obtain it; and he was executed. I did it at my own Coſt and Charges: For I thought it my Duty, if I could, to ſave his Life, knowing that to be falſe which was ſworn againſt him.

L. C. J. She ſpeaks gravely and ſoberly, upon my Word.

Mr. Juſt. *Withins.* So ſhe does indeed.

Mr. *At. Gen.* We have Abundance of them, my Lord. Swear Mr. *William Ruſhton.* [*Which was done.*

Mr. *Sol. Gen.* Tell my Lord what you know of Mr. *Ireland*'s being at Mrs. *Harwell*'s in *Auguſt* 1678, at *Wolverhampton.*

Mr. *Ruſhton.* My Lord, in the Month of *Auguſt* 1678, I did ſee Mr. *William Ireland*, at *Wolverhampton*, in the County of *Stafford*; and it was upon the 18th of *Auguſt*, and I ſaw him there, from the 18th to the 25th, every one of the Days but one, and that I cannot be poſitive in. He went that Day to *Litchfield*, which was upon the 23d, as I take it, but I cannot be poſitive; but all the reſt of the Days I did ſee him there once, if not twice or thrice a Day.

Mr. *At. Gen.* Where did he lodge then?

Mr. *Ruſhton.* At Mr. *Jyfford*'s, or Mrs. *Harwell*'s.

Oates. Were you at any of the Trials of *Ireland*, or the five Jeſuits, Sir?

Mr. *Ruſhton.* No, I was never at one till now.

Oates. Pray, my Lord, what Religion is this Gentleman of, I deſire to know.

Mr. *Ruſhton.* Not of your Worſhip's Religion, Dr. *Oates.*

L. C. J. But anſwer his Queſtion.

Mr. *Ruſhton.* I am a Catholick.

Oates. A *Roman* Catholick he means, I ſuppoſe.

Mr. *Ruſhton.* Yes; I am a *Roman* Catholick, and a loyal Subject.

Mr. *Sol. Gen.* Swear Mrs. *Katherine Winford.* [*Which was done.*

Mr. *At. Gen.* Mrs. *Winford*, pray, did you ſee Mr. *Ireland* at Mrs. *Harwell*'s in the Year 1678?

Mrs. *Winford.* Yes, I did, Sir.

Mr. *At. Gen.* Pray, tell the Court what you do know of that Matter.

Mrs. *Winford.* I did hear at *Wolverhampton*, that Mr. *Ireland* came to Town the 17th of *Auguſt*, and I did ſee him there the 18th, and I did ſee him there the 19th, and I did ſee him there the 20th; and I ſaw him there upon the 22d, 23d, 24th, and 25th; and that was the laſt Time I ſaw him there.

L. C. J. At Mrs. *Harwell*'s was it that you ſaw him?

Mrs. *Winford.* Sometimes at Mrs. *Harwell*'s, and ſometimes at my Father's Houſe, who lived in that Town.

Oates. My Lord, I deſire to know how ſhe comes to remember thoſe Days ſo particularly?

Mrs. *Winford.* I remember them, becauſe St. *Bartholomew*'s Day was the 24th of *Auguſt*, and that was the *Saturday* after he came to Town; and the firſt Day I ſaw him was the *Sunday* before, and ſo I reckon it to be on thoſe Days I ſaw him.

L. C. J. Have you any other Queſtions to aſk her, Mr. *Oates?*

Oates. No, my Lord, I have not: She was a Witneſs before at *Whitebread*'s Trial, and was not believed there.

L. C. J. Well, make your Remarks by and by, and let them now go on with their Evidence.

Mr. *Sol. Gen.* Then ſwear Mr. *William Stanley.* [*Which was done.*

Mr. *At. Gen.* Pray, did you ſee Mr. *Ireland* at *Wolverhampton*, and when?

Mr. *Stanley.* Upon the 18th of *Auguſt* 78. It was *Sunday*, I ſaw Mr. *Ireland* in *Wolverhampton* in the Morning, and in the Afternoon he was in my own Houſe. Upon *Monday* the 19th I ſaw him twice that Day at my own Houſe; I poſitively ſpeak that, and I verily believe I did ſee him on *Tueſday* the 20th, and *Wedneſday* the 21ſt; but *Tourſday* and *Friday* I cannot ſay I did ſee him thoſe two Days: For he went upon one of them to *Litchfield.* But upon *Saturday* and *Sunday* I am ſure I ſaw him, and two or three Times ſome Days.

Oates. Pray, Mr. *Stanley*, did you know him before?

Mr. *Stanley.* No, I did not, Sir.

Oates. Was you at his Trial?

Mr. *Stanley.* No, I was not.

Oates. Were you at the five Jeſuits Trial?

Mr. *Stanley.* No, I was not in *London* ſince, till the laſt Term.

Oates. What Religion are you of, Sir?

Mr. *Stanley.* What Religion are you of, Mr. *Oates?*

L. C. J. Nay, do not aſk Queſtions, but anſwer the Queſtions he aſks.

Mr. *Stanley.* I am a *Roman* Catholick.

Mr. *At. Gen.* Mr. *Stanley*, pray can you recollect any Circumſtance how you came to remember that it was ſuch and ſuch Days that you ſaw him?

Mr. *Stanley.* Yes, my Lord, I can.

L. C. J. What are they, tell them us?

Mr. *Stanley.* I buried a Child that Morning, being *Sunday* the 18th of *Auguſt*, and he came to my Houſe in the Afternoon, and I entertained him with thoſe Things that I had provided for to entertain my Friends at the Funeral. On *Monday* was a Wake, and the young People went all to the Wake, and left Madam *Harwell* alone; and ſo ſhe came with him to my Houſe, and I entertained him with the ſame Kind of Entertainment that I did the Day before.

L. C. J. That is a remarkable Circumſtance indeed.

Mr. *At. Gen.* Swear Mrs. *Dorothy Purcell.* [*Which was done.*] What ſay you, Mrs. *Purcell?* When did you ſee Mr. *Ireland* at *Wolverhampton?*

Mrs. *Purcell.* I ſaw him the 18th, 19th, 20th, 21ſt, 22d, and 23d Days of *Auguſt*, 1678.

Mr. *At. Gen.* Where did you ſee him?

Mrs. *Purcell.* At a Friend's Houſe in *Wolverhampton.*

L. C. J. How come you to remember thoſe Days of the Month?

Mrs. *Purcell.* I remember them by particular Circumſtances.

L. C. J. What are thoſe particular Circumſtances? Let us hear them. How come you to name thoſe very Days, the 18th, 19th, and ſo on?

Mrs. *Purcell.* I can remember it as well as any Thing in the World.

Oates. I deſire, my Lord, that ſhe may tell how ſhe does remember it.

Mrs. *Purcell.* That's enough, and as much as need to be ſaid, I remember very well.

Oates. But I deſire to know how you come to remember it.

Mrs. *Purcell.* I remember it, I tell you, very well; and I do affirm I ſaw him there.

Oates. But you do not tell what Circumſtances you remember it by.

Mrs. *Purcell.* No, there is no need of it, I am ſure I ſaw him there then.

Mr. *At. Gen.* Tell him ſome Circumſtances.

Mrs. *Purcell.* Thoſe were the Days before *Bartholomew* Eve.

Oates. My Lord, is this any Thing of Evidence?

L. C. J. The Jury heard it, and they will conſider of it.

Oates. What Religion are you of, Miſtreſs?

Mrs. *Purcell.* Muſt I tell what Religion I am of?

L. C. J. Yes, anſwer his Queſtion.

Oates. I dare ſay ſhe is a Papiſt; ſhe need not trouble her Head to anſwer it.

Mr. *At. Gen.* Swear Mr. *Scott.* [*Which was done.*] Were you at *Wolverhampton* when Mr. *Ireland* was there?——*Scott.* Yes, I was.

Mr. *At. Gen.* Did you do any Service for him there?

Scott. I look'd to his Horſe.

Mr. *At. Gen.* When did he come thither, do you remember?

Scott. I cannot tell juſt the Time that he came in.

Mr. *At. Gen.* What Day of the Week was it that he came thither?

Scott. It was of a *Saturday.*

Mr. *At. Gen.* What Month was it?

Scott. I cannot tell very well what Month it was; it was in *Auguſt* I think.

Mr. *At. Gen.* How long did he continue there?

Scott. The Space of a Fortnight off and on.

Oates. Is that Evidence, my Lord, that he has delivered?

L. C. J. It is but very ſmall Evidence. It is only circumſtantial to confirm the other Teſtimony.

Mr. *At. Gen.* How long was it before *Ireland* was tried and executed, can you tell that?——*Scott.* No, I know nothing of it.

Mr. *At. Gen.* Then ſwear Mr. *John Stamford.* [*Which was done.*

Mr. *Sol. Gen.* Did you ſee Mr. *Ireland* at *Wolverhampton*, and when was it, I pray you?

Mr. *Stamford.* My Lord, in the Year 1675, I was ſent beyond Sea, to *St. Omers*, to fetch over two young Gentlemen that were Students there; and there I became acquainted with Mr. *Ireland*, who was then Procurator of the Jeſuits at *St. Omers.* And in *Auguſt* 78, I did ſee him in *Wolverhampton*, upon the *Sunday* after the Aſſumption of our Lady, which was the 15th of *Auguſt*, he came to ſee me, and I ſaw him there that Day.

L. C. J. What Day of the Month is the Aſſumption of our Lady?

Mr. *Stamford.* That is always the 15th of *Auguſt*, my Lord.

Mr. *At. Gen.* How often did you ſee him there?

Mr. *Stamford.* I ſaw him *Sunday* and *Monday*, and till that Day Seven-night; I ſaw him every Day in that Week but one, when he went to *Litchfield.*

Oates. My Lord, I deſire to know how he comes to remember that it was at that Time.

L. C. J. He tells you a reaſon for it, becauſe it fell out to be upon the *Sunday* after the Aſſumption of our Lady, which is always the 15th of *Auguſt.*

Oates. My Lord, he ſays he came acquainted with Mr. *Ireland* at *St. Omers.*

L. C. J. Yes, he ſays, that was in the Year 1675.

Oates. I deſire to know, my Lord, what Buſineſs he had there?

L. C. J. He tells you, he went to fetch over two young Men that were Students there.

Oates. Pray, my Lord, I deſire to know what Religion he is of.

L. C. J. What Religion are you of?

Mr. *Stamford.* I am a *Roman* Catholick.

Oates. I deſire to know what is his Profeſſion?

Mr. *Stamford.* I am a younger Brother of a good and loyal Family as any of the County of *Stafford*, and that ſuffered as much as any for the late King.

Oates. I believe, if it were looked into, he is ſomewhat elſe beſides a younger Brother.

Mr. *At. Gen.* Yes, he ſays he is of a loyal Family.

L. C. J. I am ſure there is ſuch a Family in that County that were great Sufferers for King *Charles* I. and the late King; and were very inſtrumental in Services for the late King, at his Eſcape from *Worceſter:* but whether he be of that Family or no, I cannot tell.

Mr. *Stamford.* The Doctor thinks I am a Jeſuit, but I'll aſſure him I have a Wife and Children.

Mr. *At. Gen.* Mr. *Oates* was about to have made him a Prieſt, but it ſeems he hath a Wife and Children, and ſo is out of Danger.

Mr. *Sol. Gen.* Pray, Swear Mrs. *Katherine Fowler.* [*Which was done.*

Mr. *At. Gen.* Did you ſee Mr. *Ireland*, Mrs. *Fowler*, at *Wolverhampton*, in 1678?

Mrs. *Fowler.* Yes, I did.

Mr. *At. Gen.* When was it?

Mrs. *Fowler.* I did ſee him on *Saturday* the 17th of *Auguſt* at *Wolverhampton*; he came that day to my Mother's Houſe, where I was.

Mr. *At. Gen.* How long did he ſtay there?

Mrs. *Fowler.* Till the 27th, which was *Monday* was Seven-night after: I was in his Company every day in that time unleſs it were *Friday*, which day they ſay he went to *Litchfield* to the Fair.

L. C. J. Is Mrs. *Harwell* your Mother?

Mrs. *Fowler.* Yes, my Lord, ſhe is, and I lived at that time with my Mother.

L. C. J. How do you remember this? Have you any Tokens that you can give us, why you remember it was then?

Mrs. *Fowler.* My Lord, I recollected myſelf after Mr. *Ireland*'s Trial, in which Mr. *Oates* ſwore that he was here in Town between the 8th and 12th of *Auguſt*, that that was the very Month that Mr. *Ireland* was in *Wolverhampton*, and thereupon I concluded that Mr. *Oates* had not ſworn true, by that Recollection when it was freſh in my Memory, being within half a Year after.

Oates. Madam, are you Mrs. *Harwell*'s Daughter?

Mrs. *Fowler.* Yes, I am ſo, Sir.

Oates. Did you not know one Mr. *Jenniſon?*

Mrs. *Fowler.* Which *Jenniſon?*——*Oates.* Mr. *Robert Jenniſon.*

Mrs. *Fowler.* Yes, I do know him.

Oates. Are you not a-kin to him?

Mrs. *Fowler.* Yes, but I am ſorry to own I have ſuch a Relation.

Mr. *At. Gen.* Swear Mr. *Gifford.* [*Which was done.*

Mr. *Sol. Gen.* Did you ſee Mr. *Ireland* in *Staffordſhire*, and when, I pray you?

Mr. *Gifford.* I ſaw him there at *Wolverhampton* the 17th of *Auguſt* 1678, and he continued there till the 26th; I ſaw him there every day.

Oates. Pray, my Lord, be pleaſed to aſk this Gentleman, whether he were at the Trial of *Ireland?*

Mr. *Gifford.* No, I was not in Court, nor examined as a Witneſs.

Oates. Were you at the Trial of the five Jeſuits, Sir?

Mr. *Gifford.* I was there, but was not examined.

L. C. J. Was it every day, ſay you, that you ſaw him at *Wolverhampton?*

Mr. *Gifford.* Every day.

L. C. J. They ſay, he was one day out of Town at *Litchfield.*

Mr. *Gifford.* He was out of Town that day, but I ſaw him.

Mr. *At. Gen.* Swear Mrs. *Elizabeth Gifford.* [*Which was done.*

Mr. *Sol. Gen.* You hear the Queſtion, did you ſee Mr. *Ireland* in *Staffordſhire* in 78, and when?

Mrs. *E. Gifford.* Mr. *Ireland* came to *Wolverhampton* the 17th of *Auguſt*, and continued there till the 26th.

Mr. *At. Gen.* How do you remember it?

Mrs. *Gifford.* By a Wake that was juſt hard by, that was at that time: and he came to my Uncle's Houſe upon the *Sunday* following the Aſſumption of our *Lady.*

Mr. *At. Gen.* Did you ſee him every day till the 26th?

Mrs. *Gifford.* I remember I did ſee him every day but two days that I was abroad at the Wake.

Oates. My Lord, I deſire to know, whether ſhe was examined at any of the former Trials?

Mrs. *Gifford.* Yes, at the five Jeſuits Trial, I was.

Oates. Were you not at *Ireland*'s Trial?——Mrs. *Gifford.* No, I was not.

Oates. There was one *Gifford* examined there.

Mr. *At. Gen.* Swear Mrs. *Elizabeth Keeling.* [*Which was done.*

Mr. *Sol. Gen.* Did you ſee Mr. *Ireland* at *Wolverhampton*, and when?

Keeling. Yes, my Lord, I did ſee Mr. *Ireland* at *Wolverhampton.*

Mr. *Sol. Gen.* Pray tell when it was.

Keeling. It was the 17th of *Auguſt* he came to my Miſtreſs's Houſe.

Mr. *Sol. Gen.* What *Auguſt?*——*Keeling. Auguſt* before the Plot.

L. C. J. Who was your Miſtreſs?——*Keeling.* Mrs. *Harwell*, my Lord.

Mr. *Sol. Gen.* How long did he continue there?

Keeling. He came on the *Saturday*, and I ſaw him there till the *Monday.* When I was ſent for to my Mother's Burying, I left him and Madam *Dormer* at Dinner, and came back on the *Thurſday.* And in his Chamber I heard him diſcourſe, but I did not ſee him. Upon the *Friday* he went abroad, and returned again that Night. Upon the *Saturday* I ſaw him, and he continued there till *Monday* Morning, and then he went away, and returned on *Wedneſday* the 4th of *September*, and ſtaid till *Saturday* the 7th; and then went away from *Wolverhampton.*

Oates. I deſire to know what Religion this Woman is of?

Keeling. I am *Roman* Catholick, God be thanked.

Mr. *At. Gen.* Mrs. *Keeling*, when did Mr. *Ireland* return again, do you ſay, after he went firſt to *Wolverhampton?*

Keeling. It was the *Wedneſday* Seven-night after, Sir.

Mr. *At. Gen.* That was the 4th of *September.*

L. C. J. How long ſtaid he there then?

Keeling. Till *Saturday* in the Forenoon.

Mr. *At. Gen.* Whither did he ſay he was going then?

Keeling. He ſaid he went to *Bellamour* to Dinner.

L. C. J. Did you ſee him at any time after?

Keeling. No, my Lord, I ſaw him no more.

Mr. *At. Gen.* Then ſwear Mr. *Richardſon.* [*Which was done.*

Mr. *Sol. Gen.* Pray, Sir, will you give an account when you ſaw Mr. *Ireland*, and where, in the Year 78?

Mr. *Richardſon.* My Lord, I ſaw a Gentleman that I was informed was Mr. *Ireland* at *Wolverhampton*, at a Wake; which was *Monday* the 19th of *Auguſt.*

Mr. *At. Gen.* Where did he lodge?—Mr. *Richardſon.* At Mrs. *Harwell*'s.

Mr. *At. Gen.* What are you, a Tradeſman?

Mr. *Richardſon.* Yes, an Apothecary in *Wolverhampton.*

L. C. J. How many Days did you ſee him at *Wolverhampton?*

Mr. *Richardſon.* I ſaw him only one Day in the Market-place.

L. C. J. You did not know Mr. *Ireland* before?

Mr. *Richardſon.* But I was informed that was he.

L. C. J. What became of that *Ireland* that you were informed was at *Wolverhampton* then?

Mr.

Mr. *Richardſon.* I heard preſently after that, upon Mr. *Oates*'s Plot, he was ſecured and executed.

Mr. *At. Gen.* What Religion are you of, pray, Sir?

Mr. *Richardſon.* I am of the Church of *England.*

Oates. Pray, Sir, I would aſk you this Queſtion.

Mr. *Richardſon.* As many Queſtions as you pleaſe, Mr. *Oates.*

Oates. Who told you it was Mr. *Ireland?*—Mr. *Richardſon.* Mrs. *Harwell.*

Oates. When was it ſhe told you it was *Ireland?*

Mr. *Richardſon.* To the beſt of my remembrance, it was before he was apprehended as a Traitor.

Oates. He is uncertain when he was told ſo.

L. C. J. Well, make what advantage you can of it by and by.

Mr. *At. Gen.* Swear Mrs. *Eleanor Graves.* [*Which was done.*

Mr. *Sol. Gen.* Pray, Miſtreſs, did you ſee Mr. *Ireland* at *Wolverhampton* at any Time?—Mrs. *Graves.* Yes, I did, my Lord.

Mr. *Sol. Gen.* When was it?

Mrs. *Graves.* The firſt Time was ſix Years ago in *Auguſt*, it is now going on ſeven Years ſince.

Mr. *At. Gen.* What Time in *Auguſt* was it?

Mrs. *Graves.* The firſt Day was the 20th or 21ſt, I am ſure I ſaw him upon the 22d; for I dined with him, and was with him all the Afternoon, and ſupp'd with him. Upon the 23d we went to *Litchfield* together, which was *Bartholomew* Eve. And I ſaw him the 25th, which was *Sunday* after.

L. C. J. Are you ſure it is the *Ireland* we are now ſpeaking of?

Mrs. *Graves.* They ſaid it was the ſame Mr. *Ireland* that was executed. They call'd him ſo.

L. C. J. Nay, there is no great doubt, but only for Mr. *Oates*'s Satisfaction.

Mr. *At. Gen.* At whoſe Houſe did he lie at *Wolverhampton?*

Mrs. *Graves.* At Mrs. *Harwell*'s.

Mr. *At. Gen.* Where was it you ſupp'd with him, I pray you?

Mrs. *Graves.* He dined and ſupp'd at a Relation's Houſe of mine.

L. C. J. Who was that? name him.

Mrs. *Graves.* It was at my Uncle *Winford*'s.

L. C. J. Did you go along with him to *Litchfield*, do you ſay, on the 23d?

Mrs. *Graves.* Yes, and ſo did my Uncle; and at Night we came back together.

Mr. *Sol. Gen.* What Religion are you of, Miſtreſs?

Mrs. *Graves.* I am of the Church of *England.*

Oates. My Lord, I deſire to aſk her, how did ſhe know it was the ſame *Ireland* that was try'd?

Mrs. *Graves.* It was the ſame *Ireland* that they ſaid was afterwards executed. I know no more.

Mr. *Sol. Gen.* Did you go back with him to Mrs. *Harwell*'s from *Litchfield?*

Mrs. *Graves.* I did to my Uncle *Winford*'s Houſe.

Mr. *At. Gen.* Now we come, my Lord, to another Period of Time, which is from the 26th of *Auguſt*, to the 29th; and for that, we firſt call Sir *Thomas Whitegrave*, who is a Juſtice of the Peace, and a worthy Gentleman; a Member of the Church of *England* in that County. Swear him.

[*Which was done.*]

Mr. *Sol. Gen.* Pray, Sir *Thomas*, will you be pleas'd to give the Court an Account, whether you ſaw Mr. *Ireland* in *Staffordſhire* 1678, and what Time it was?

Sir *Thomas Whitegrave.* I ſaw Mr. *Ireland* upon the 29th of *Auguſt* before the Popiſh Plot; it was upon a *Thurſday* in the Afternoon upon *Tixhall* Bowling-green; and I diſcourſed with him: he told me he was to go home that Night with Sir *James Simmons* and Mr. *Heveningham.* They told me afterwards he went on *Saturday* to *Hilderſham*, and went thence on *Monday* following towards *Beſcobel*: ſome time after that, a Rumour came down that Mr. *Ireland* was accuſed with others, of being in a Plot of the Papiſts; and myſelf, and ſome others that were in Commiſſion for the Peace in that County, did reflect upon the Time that *Ireland* was in the Country; and we were a little diſturbed, becauſe he had been at particular Places among our Neighbours, whom we knew to be Catholicks.

Mr. *At. Gen.* Can you remember no Day but that one, Sir *Thomas?*

Sir *Thomas Whitegrave.* Only the 29th I ſaw him there, and diſcourſed with him; and afterwards there was word ſent to me, to deſire me that I would come up to *London* at his Trial.

L. C. J. And did you come up, Sir *Thomas?*

Sir *Thomas Whitegrave.* No, I did not; I had no *Subpœna*; and being a Juſtice of the Peace, I did not think fit to leave the Country at that Time without a *Subpœna.*

Oates. My Lord, I deſire to know of this Gentleman, how long he had been acquainted with Mr. *Ireland?*

Sir *Thomas Whitegrave.* I never ſaw him before, nor ſince.

L. C. J. He goes no further than the 29th.

Mr. *At. Gen.* No, my Lord, he does not. Then ſwear Mr. *William Fowler.*

[*Which was done.*]

Mr. *Sol. Gen.* Pray, will you give an Account when you ſaw Mr. *Ireland*, and where?

Mr. *Fowler.* I ſaw Mr. *Ireland* upon the 27th of *Auguſt* 78, in *Staffordſhire*, at a Horſe-Race at *Etching-hill.* The Race was run between Sir *Henry Gough* and Captain *Chetwind.*

Mr. *Sol. Gen.* Did you ſee him any other Day in that Month?

Mr. *Fowler.* Yes, the 19th of *Auguſt* I ſaw him at *Tixhall* Bowling-green.

Mr. *Sol. Gen.* When elſe did you ſee him?

Mr. *Fowler.* I ſaw him the 10th of *Auguſt* before.

Mr. *Sol. Gen.* Where, at *Tixhall*, at my Lord *Aſton*'s Houſe?

Mr. *At. Gen.* Do you remember Sir *Thomas Whitegrave* was upon the Bowling-green the 27th of *Auguſt?*

Mr. *Fowler.* Yes, he was, and did diſcourſe with Mr. *Ireland* there.

L. C. J. What became of Mr. *Ireland* afterwards?

Mr. *Fowler.* He went about the Country for ſome Time, my Lord.

L. C. J. Was it the ſame *Ireland* that was executed?

Mr. *Fowler.* Yes, it was the ſame.

L. C. J. You ſay you ſaw him the 29th at *Tixhall* Bowling-green.

Mr. *Fowler.* Yes, I did ſo

L. C. J. When you heard he was taken up for the Plot, what did they ſay whither he went at that Time?

Mr. *Fowler.* I think he went to Mr. *Heveningham*'s, or thereabouts.

Oates. I would fain know this Gentleman's Religion.

Mr. *Fowler.* I am a *Roman* Catholic.

L. C. J. We aſk it only becauſe Mr. *Oates* deſires to be ſatisfied in that Point.

Mr. *At. Gen.* Pray ſwear Mr. *Howard.* [*Which was done.*

Mr. *Sol. Gen.* What Time in *Auguſt* 78, did you ſee Mr. *Ireland* in *Staffordſhire*, and where?

Mr. *Howard.* I came out of *Shropſhire* upon the 27th of *Auguſt*, to the Horſe-race at *Etching-hill*; and there I ſaw this Mr. *Ireland* upon the 28th. I dined at one Mr. *Herbert Aſton*'s Houſe at *Bellamore*, and there I ſaw him again.

Mr. *At. Gen.* What other Time did you ſee him?

Mr. *Howard.* Never any other Time.

Oates. How does he know it was the ſame Mr. *Ireland?*

Mr. *Howard.* I came up to Town ſoon after, and they told me that knew him, that it was the ſame *Ireland* that ſuffer'd.

Mr. *At. Gen.* Swear Mr. *Drayton.* [*Which was done.*

Mr. *Sol. Gen.* Where did you ſee Mr. *Ireland?*

Mr. *Drayton.* At *Etching-hill* Race.

Mr. *At. Gen.* What Day was that?

Mr. *Drayton.* That was the 27th of *Auguſt* 1678.

Mr. *At. Gen.* When did you ſee him after?

Mr. *Drayton.* The next Day following I did not ſee him; but the *Thurſday* following I ſaw him at *Tixhall*, and he went home with Mr. *Heveningham* to *Aſton*; and I ſaw him on *Friday*, he was with us there, and went a fiſhing, and we catch'd a great Pike of a Yard long, which was not ordinary with us. Upon the 31ſt, which was *Saturday*, my Maſter went to kill a Buck in the Park, and Mr. *Ireland* went along with him; and they went to a little Village hard by, and there I parted with him, and did ſee him no more that Day. Mr. *Gerrard* of *Hilderſham* was to meet my Maſter a hunting, but he was ſick, and did not: Then upon *Sunday* the 1ſt of *September*, I was ſent to ſee Mr. *Gerrard* of *Hilderſham*, and there I ſaw Mr. *Ireland.*

L. C. J. Who was your Maſter, pray you?

Mr *Drayton.* This Lord *Gerrard* of *Bromley*'s Father.

Mr. *At. Gen.* He was accuſed by *Dugdale* of the Plot, and died afterwards in *Newgate.*

Oates. Pray aſk Mr. *Drayton* what Religion he is of?

Mr. *Drayton.* I am a *Roman* Catholick.

Mr. *At. Gen.* Swear Sir *James Simmons.* [*Which was done.*

Mr. *Sol. Gen.* When did you ſee Mr. *Ireland*, Sir *James?*

Sir *James Simmons.* Upon *Tueſday* the 27th of *Auguſt* 78, I remember very well I ſaw Mr. *Ireland* at the Horſe-race at *Etching-hill*, between Sir *Henry Gough* and Mr. *Chetwind*; and I remember particularly, that Sir *Henry Gough*'s Horſe diſtanc'd him. I did not ſee him before he came to the Inn; but there we met, and drank together. And *Thurſday* the 29th of *Auguſt*, being at *Tixhall* Bowling-green, Mr. *Ireland* was there, and came home with my Father *Heveningham* and me, and ſome Gentlemen in the Country; and came to *Aſton*, and ſtaid there that Night. I remember the next Day was *Pancraſs* Fair, and I went to the Fair, and did not come home.

Mr. *At Gen.* What Day of the Month is that Fair uſually kept?

Sir *James Simmons.* It is an unconſtant Time; now and then in *September*, now and then in *Auguſt*; and that Year we had a Subſcription to get it regulated to a certain Day.

L. C. J. Did you ſee him after?

Sir *J. Simmons.* My Lord, I cannot ſwear to the *Saturday*, becauſe I cannot ſo well tell whether I came back from the Fair on *Friday* Night; I think I did not.

Mr. *At. Gen.* Swear Mr. *Green.* [*Which was done.*

Mr. *Sol. Gen.* Did you know Mr. *Ireland?*

Mr. *Green.* Yes, my Lord, I did.

Mr. *Sol. Gen.* When did you ſee him in 78?

Mr. *Green.* The firſt Time was *Etching-hill* Race the 27th of *Auguſt.*

Mr. *Sol. Gen.* What other Days do you remember?

Mr. *Green. Thurſday* the 29th I ſaw him; I belong to Sir *James Simmons*, and Mr. *Ireland* came home with him, and ſome other Gentlemen, to Mr. *Heveningham*'s at *Aſton*, and was a ſetting with him on *Friday* the 30th in the Afternoon. And *Saturday* the 31ſt he was a hunting with Mr. *Gerrard.* Nay, more than that, I ſaw him drawn on the Sledge, but not executed; and that was the ſame Man that was there at that Time.

Oates. What Religion is this Gentleman of?

Mr. *Green.* I was ever a *Roman* Catholick.

L. C. J. Pray, were they a fiſhing that Day?

Mr. *Green.* In the Morning he was, and they got a great Pike; I ſaw the Pike, and did eat Part of it.

Mr. *At. Gen.* Swear Mr. *Fallas.* [*Which was done.*

Mr. *Sol. Gen.* When did you ſee Mr. *Ireland*, Sir?

Fallas. Upon the *Thurſday* after Sir *Henry Gough*'s Race, which was *Thurſday* the 29th of *Auguſt*, Mr. *Ireland* came to Mr. *Heveningham*'s, and I look'd to his Horſe there. Upon *Friday* Morning they went a fiſhing, and got a great Pike; and I did ſee them go out a ſetting after Dinner, he and Mr. *Green*, with my Lady and the Keeper; and I ſaw him come in again: and I ſaw him drink a Glaſs of Table-Beer in the Hall. Upon *Saturday* Morning, which was the 31ſt of *Auguſt*, they went a hunting in Mr. *Gerrard*'s Park, and killed a Buck; and afterwards my Maſter aſk'd him to go home with him again, but he would not; for he ſaid he muſt go to Mr. *Lowe*'s at Four, and we parted at Three. And I came here, and ſaw him executed; but while he was at my Maſter's Houſe, his Horſe was never out of the Stable, but I brought it to him.

Mr. *At. Gen.* When did you ſee him executed?

Fallas. It was the 24th of *January* afterwards, I think.

Oates. What Religion are you of?

Fallas. I am for the Church of *England*, a Proteſtant; I always was ſo.

Oates. Pray, my Lord, aſk him when he was acquainted with Mr. *Ireland?*

Fallas. The firſt Time was the 29th of *Auguſt*, when he came to my Maſter's Houſe.

Oates. That does not come to my Time, my Lord.

Mr. *At. Gen.* But it comes very cloſe to it; it reaches to the 31ſt of *Auguſt.*

L. C. J. It is within a Day of you, upon my Word.

Mr. *Sol. Gen.* And I'll tell your Lordſhip what is yet more conſiderable; this Place is an hundred and twenty Miles from *London*: but we ſhall not leave him there.

Oates. I deſire to know whoſe Servant he is?

Fallas. I am a Servant to Mr. *Heveningham*, and I ſerve the King; I come to teſtify the Truth. I was here before, but then we muſt not be heard; all the

the Cry was againſt us, that we were Rogues, and muſt be knock'd on the Head.

L. C. J. Were you here at any of the Trials?

Fallas. I was at the Council-Table, and there I was in great Danger of being knock'd on the Head.

Oates. Would they have knock'd him on the Head at the Council-Table, does he ſay?

Fallas. I have been in the Room by the Council-Table, where they have cried, knock them down, hang them Rogues; do they come to be Witneſſes againſt the Saviour of the World? And they came about me there, and aſked me if I knew any of them, or was of their Company? And I was glad to ſay I came thither about a Suit of Law I had with a Brother of mine, and then they pitied me.

Mr. *Sol. Gen.* Now we have brought him, my Lord, every Night where he lodged from the 3d of *Auguſt* to the 31ſt.

Mr. *At. Gen.* And then we ſhall prove that he went to Mr. *Gerrard*'s at *Hilderſham* that they ſpeak of; there he was the 31ſt and 32d———

L. C. J. How, Mr. *Attorney*, the 32d! I doubt you will hardly be able to tell us where he was then.

Mr. *At. Gen.* The 1ſt of *September*, I mean, my Lord.

L. C. J. Ay, we underſtand you very well.

Mr. *At. Gen.* Swear Mr. *John Proctor.* [*Which was done.*

Mr. *Sol. Gen.* When did you ſee Mr. *Ireland* in 78?

Proctor. I ſaw him the 31ſt of *Auguſt* 78.

Mr. *Sol. Gen.* Where?——*Proctor.* At *Fulford.*

Mr. *Sol. Gen.* At whoſe Houſe?——*Proctor.* At Mr. *Lowe*'s.

Mr. *Sol. Gen.* That was the Place the other Witneſs ſaid *Ireland* told him he was to be at four of the Clock, and therefore went away at three.

Mr. *At. Gen.* When did you ſee him afterwards?

Proctor. I ſaw him the next Day, the 1ſt of *September.*

Mr. *At. Gen.* Where?——*Proctor.* At Eſquire *Gerrard*'s.

Mr. *At. Gen.* How far is that from Mr. *Lowe*'s?

Proctor. It is a Mile and an Half.

Mr. *Sol. Gen.* Did you ſee him afterwards?

Proctor. Not there, I did not.

Mr. *At. Gen.* What Religion are you of?

Proctor. I am a Proteſtant.

L. C. J. What did you hear became of that *Ireland* afterwards?

Proctor. I ſaw him executed at *Tyburn* afterwards, and it was the ſame Man.

L. C. J. Where did you live then?

Proctor. I lived at *Fulford* then.

L. C. J. What, with Mr. *Lowe?*——*Proctor.* Yes, my Lord.

Oates. It ſeems he was a Servant to a Papiſt.

L. C. J. What then, what of that?

Oates. My Lord, I deſire you would aſk him, whether he ever ſaw *Ireland* before the 31ſt of *Auguſt* which he ſpeaks of?

Proctor. No, I did not.

L. C. J. But you are ſure it was the ſame Man you ſaw executed?

Proctor. Yes, I am ſure of it.

Mr. *Sol. Gen.* What Circumſtance can you tell that he was the 1ſt of *September* at Mr. *Gerrard*'s?

Proctor. I went to Dinner thither that Day: I rode before Madam *Brooke.*

L. C. J. What Day of the Week was that 1ſt of *September?*

Proctor. It was upon a *Sunday*, my Lord.

Mr. *At. Gen.* Was that about *Pancraſs* Fair-time?

Proctor. Yes, my Lord, it was.

Mr. *Sol. Gen.* He can tell you another Circumſtance how he comes to remember him at Mr. *Lowe*'s the 31ſt of *Auguſt.*

L. C. J. Ay, by what Token do you remember that he was there the 31ſt of *Auguſt?*

Proctor. I went that Day to . . . . pay ſome Money, and came home again in the Afternoon; and juſt as I came in, he came thither.

Oates. How does he ſay he knows him to be the ſame Man?

L. C. J. He has told you twice, he ſaw him executed.

Oates. What Religion is he of, does he ſay?

L. C. J. He is a Proteſtant.

Mr. *At. Gen.* Then ſwear Mr. *John King.* [*Which was done.*

Mr. *Sol. Gen.* Pray, do you acquaint the Court and the Jury where you ſaw Mr. *Ireland*, and when?

Mr. *King.* I ſaw Mr. *Ireland* at Mr. *Gerrard*'s of *Hilderſham* the 1ſt of *September*, that Year that the Plot broke out, which was in the Year 78. There I ſaw him on *Sunday*; and there he ſtaid all Night, and ſo did I; and on *Monday* Morning I went to Mrs. *Crompton*'s where I liv'd, and he came thither to *Millage* as ſoon as I, which is within a Mile of *Hilderſham*, and dined there the ſame Day.

L. C. J. How far is that from *London*, pray you?

Mr. *King.* An hundred and ten Miles.

L. C. J. And he was there at Dinner, you ſay?

Mr. *King.* Yes, he was.

L. C. J. How long was it before Dinner was done?

Mr. *King.* I believe he might go thence about two of the Clock.

L. C. J. Where did he ſay he deſigned to go then?

Mr. *King.* He deſigned to go to *Boſcobel* that Night.

L. C. J. Do you remember any body elſe was at Mr. *Gerrard*'s then when you ſaw him?

Mr. *King.* Yes, Mr. *Jerman Drayton* was at *Hilderſham* at that Time.

Oates. Pray, what Religion is this Gentleman of?

Mr. *King.* I am a *Roman* Catholick, Mr. *Oates.*

Mr. *At. Gen.* Pray ſwear Mr. *Francis Lee.* [*Which was done.*

Mr. *Sol. Gen.* Pray, tell my Lord and the Jury where you ſaw Mr. *Ireland*, and when.

Lee. I was a Servant to Mr. *Gerrard*, and Mr. *Ireland* upon *Saturday* Night came to my Maſter's Houſe, and ſtaid all Night and all Day on *Sunday*, and went away on *Monday* to *Millage.*

L. C. J. What time and what Year was it?

Lee. It was in 78; but I am not certain of the Day of the Month: It was on a *Saturday* he came, and I have Witneſſes to prove I was there at that time.

L. C. J. What Month was it?

Lee. It was in *Auguſt*, as I think, the laſt Day; but I am not certain. And he went on *Monday* to *Millage*, and there dined at Mrs. *Crompton's*; and from thence he went to *Pancraſs*, and thence he did go to *Boſcobel*, and ſtaid all Night there.

Mr. *At. Gen.* That was the 2d of *September.*

L. C. J. How do you know he went to theſe Places?

Lee. I was told ſo.

Oates. My Lord, I deſire to know how long this Man was acquainted with *Ireland* before?

Lee. I never ſaw him but at that time.

Oates. How does he know it is the ſame Man then?

Mr. *King.* Here is a Man that ſaw me with him, and was preſent at *Ireland*'s Execution.

L. C. J. Who is that? *Proctor?*

Mr. *King.* Yes, my Lord.

L. C. J. Then call *Proctor* again. [*Who came in again.*] Who went along with you to Dinner on *Monday?*

Lee. My Lord, he did ſee me at *Hilderſham* at Mr. *Gerrard*'s.

L. C. J. What ſay you, *Proctor*, was this Gentleman there at that time?

Proctor. Yes, my Lord, I did ſee him there.

L. C. J. Was that the ſame Man that was executed, which you ſaw at Mr. *Gerrard*'s?

Proctor. Yes, it was.

L. C. J. Did you dine with Mr. *Ireland* on *Monday* at Mrs. *Crompton*'s?

Lee. Yes, my Lord, I did, and went afterwards with him to *Pancraſs*, and ſtaid there two Hours, and then he went to *Boſcobel.*

Mr. *Sol. Gen.* There are the two Days gone which Mr. *Oates* ſwore to, and in which he was ſo poſitive that it was either the 1ſt or 2d of *September.*

Mr. *At. Gen.* Then ſwear Mr. *Biddolph.* [*Which was done.*

Mr. *Sol. Gen.* Pray, Sir, when did you ſee Mr. *Ireland*, and where?

Mr. *Biddolph.* My Lord, I was in *Staffordſhire* the latter end of *Auguſt* and the beginning of *September*, and I was at Mrs. *Crompton*'s Houſe, which is my Aunt, the 2d of *September* being *Monday*, where I ſaw Mr. *Ireland*, and dined with him that day; and after Dinner he went with Mr. *Gerrard*'s Son, who was to go to School to *Boſcobel.* And I will give your Lordſhip a particular Circumſtance that may ſatisfy you that I am not miſtaken in the time: As I came through *Northamptonſhire* that Summer, I was at my Lord *Cullen*'s, and he deſired me to be at a Horſe-Race at *Newton-Slade*, where there is a Plate always run for upon the firſt *Thurſday* in *September*, and that Year it was the 5th of *September.* Now when I dined at my Aunt *Crompton*'s, ſhe would have had me ſtaid all Night at her Houſe, but I excuſed myſelf, and told her I had promiſed to come to my Lord *Cullen*'s to be at the Race, and I muſt needs be there before, to be as good as my Word to my Lord; and therefore I went away to *Pancraſs*, and ſo on my Journey, otherwiſe I had ſtaid with my Aunt all Night: And I am ſure this was *Monday* before this Horſe-Race.

Oates. My Lord, this Gentleman ſpeaks to no Year particularly.

Mr. *Biddolph.* It was in 1678, the Year before Mr. *Oates*'s Plot broke out.

Mr. *At. Gen.* Now we will call Mrs. *Crompton.* Swear her.

[*Which was done.*]

Mr. *Sol. Gen.* Pray, when did you ſee Mr. *Ireland*, Mrs. *Crompton?*

Mrs. *Crompton.* He was at my Houſe at *Millage* in *Staffordſhire* at Dinner, the ſame Day that my Nephew *Biddolph* did dine there: As for the Day of the Month, I cannot ſo well tell it, becauſe when my Friends dine with me, I don't uſe to note down the Day particularly; but it was, I remember, a pretty remarkable time, for it was about *Pancraſs*-Fair. Mr. *Gerrard* of *Hilderſham* came with him, and Mr. *Ireland* being a Stranger, I aſked who he was, and they told me it was Mr. *Ireland:* He never was at my Houſe before nor after; he was a mere Stranger to me.

L. C. J. What Day was it, ſay you?

Mrs. *Crompton.* It was the ſame Day my Nephew *Biddolph* dined there.

L. C. J. Was it *Monday* the 2d of *September*, do you remember?

Mr. *At. Gen.* He ſays he was at her Houſe at *Millage* that Day, and ſhe ſays it was the ſame Day he dined there.

Mrs. *Crompton.* But I never note down the particular Days when my Friends dine with me, except I had particular occaſion to do it, as I had none at this time.

Oates. My Lord, I deſire to know what Religion this old Gentlewoman is of?

Mrs. *Crompton.* I am a *Roman* Catholic, my Lord.

Mr. *At. Gen.* Swear Mrs. *Palmer.* [*Which was done.*

Mr. *Sol. Gen.* Mrs. *Palmer*, where did you ſee Mr. *Ireland?*

Mrs. *Palmer.* I was at Dinner at Mrs. *Crompton*'s at *Millage*, where there was a Gentleman called Mr. *Ireland* that did dine there.

L. C. J. When was it?

Mrs. *Palmer.* I cannot tell truly what Day it was.

L. C. J. Who was there beſides you at Dinner that Day?

Mrs. *Palmer.* 'Tis ſo long ſince, I cannot remember.

L. C. J. Was Mr. *Biddolph* there?

Mrs. *Palmer.* Not that I remember, my Lord.

L. C. J. What do you bring her for, Mr. *Attorney?*

Mr. *At. Gen.* She dined there that Day it ſeems; but if ſhe cannot remember it, I cannot help it.

L. C. J. But theſe kind of Witneſſes do but ſlack your Proof.

Mr. *Sol. Gen.* My Lord, I think we do over-do our Buſineſs indeed.

Mr. *At. Gen.* We have one more Witneſs to this Point, and that is, Mrs. *Mary Holmes*; ſwear her. [*Which was done.*] Where did you ſee Mr. *Ireland* in the Year 78?

Mrs. *Holmes.* I ſaw him at *Millage*, my Lord.

L. C. J. When?

Mrs. *Holmes.* The firſt, or the beginning of *September*, I am ſure.

Mr. *Sol. Gen.* What Day of the Week was it?

Mrs. *Holmes. Monday.*

L. C. J. You have Proof enough of this, Mr. *Attorney General.*

Mr. *At. Gen.* Truly, I think ſo, my Lord.

Mr. *Sol. Gen.* Pray ſwear Mrs. *Eſther Gifford.* [*Which was done.*] Mrs. *Gifford*, when did you ſee Mr. *Ireland?*

Mrs. *Gifford.* Upon the 2d of *September* 78, I ſaw Mr. *Ireland* above a hundred Miles from this Place.

Mr. *Sol. Gen.* Where?

Mrs. *Gifford.* At *Pancraſs.*

Mr. Sol. Gen. What time of the Day was it?

Mrs. *Gifford.* In the Afternoon about four or five o'clock.

Mr. Sol. Gen. Did he ſtay there all Night?

Mrs. *Gifford.* I cannot tell indeed.

Mr. Att. Gen. Swear Mr. *Pendrel.* [*Which was done.*]

Mr. Sol. Gen. Now, my Lord, we are come to the 2d of *September* in the Evening; we ſhall prove where he was that Night and the 3d, and then we ſhall return to the 4th of *September*, when Mrs. *Harwell* ſwears he came back to *Wolverhampton.*

Mr. *Hanſes.* When did you ſee Mr. *Ireland*, Mr. *Pendrel?*

Mr. *Pendrel.* I ſaw him upon the 2d of *September.*

Mr. Att. Gen. Where did you ſee him?

Mr. *Pendrel.* At *Boſcobel* at my Houſe, there he lodg'd with me that Night.

Mr. Sol. Gen. In what Year was it?—Mr. *Pendrel.* In the Year 1678.

Mr. Att. Gen. Was it the *September* before the Plot, and before Mr. *Ireland* was executed?—Mr. *Pendrel.* Yes, my Lord, it was.

L. C. J. Did you know him before?

Mr. *Pendrel.* No, I did never ſee him before, as I know of.

L. C. J. How long did he ſtay there?

Mr. *Pendrel.* He ſtaid that Night and the next Day all day, and went away the 4th of *September* to *Black-Ladies.*

Mr. Sol. Gen. Whoſe Houſe is that?—Mr. *Pendrel.* It is Mr. *John Gifford*'s.

L. C. J. You ſay you live at *Boſcobel*; Did you hear any thing of a Letter came to your Houſe for Mr. *Ireland?*

Mr. *Pendrel.* Not that I know of, my Lord, there was not any that I remember.

Mr. Att. Gen. Then ſwear Mrs. *Pendrel.* [*Which was done.*]

Mr. Sol. Gen. Pray, Miſtreſs, will you give an Account where you ſaw Mr. *Ireland?*

Mrs. *Pendrel.* I ſaw him at *Boſcobel*, at the Royal Oak; he came there the 2d Day of *September.*

Mr. Sol. Gen. Can you tell what Year it was?

Mrs. *Pendrel.* It was the firſt Beginning of the Plot.

Mr. Sol. Gen. How long did he ſtay there?

Mrs. *Pendrel.* He ſtaid *Tueſday*, and *Wedneſday* he went to *Black-Ladies*, and ſo away to *Wolverhampton.*

Mr. Sol. Gen. We have but one Witneſs more, my Lord, for *Wedneſday* the 4th of *September*, and then we have done. Swear Mr. *Charles Gifford.* [*Which was done.*] When did you ſee Mr. *Ireland?*

Mr. *C. Gifford.* May it pleaſe your Lordſhip, I ſaw Mr. *Ireland* at my Father's Houſe at *Black-Ladies*———

Oates. My Lord, I would aſk Mrs. *Pendrel* a Queſtion before ſhe goes: Whether ſhe was not a Witneſs at the five Jeſuits Trial?

Mrs. *Pendrel.* I was in Court, but they would not ſuffer me to ſwear.

Oates. Did ſhe not give Evidence there?

L. C. J. She was examin'd, but ſhe could not be ſworn, becauſe ſhe came to teſtify againſt the King in a capital Cauſe.

Mr. Att. Gen. Pray, what ſay you, Mr. *Charles Gifford?*

Mr. *C. Gifford.* My Lord, I ſay I ſaw Mr. *Ireland* at my Father's Houſe at *Black-Ladies*, and he ſtaid there an Hour and an half, and went through *Chillington*, and ſaid he would go to *Wolverhampton.*

Mr. Att. Gen. What Day of the Month was it?

Mr. *C. Gifford.* I am morally certain it was the 4th of *September*, and ſo he went to *Wolverhampton*, as I am informed. He came to our Houſe to ſee a Lady that was there.

L. C. J. What Lady was it?—Mr. *C. Gifford.* It was one Madam *Wells.*

Mr. Att. Gen. Thus, my Lord, we have lodged him the 4th of *September* at *Wolverhampton*, when Mrs. *Harwell* ſays, he return'd to her; and ſo, my Lord, we have given an Account where he was from the 3d of *Auguſt* to the 14th of *September.*

Mr. Sol. Gen. We have prov'd where he was every Day in that time, but only the 8th of *September*, and for that we muſt leave it to the Jury. We have proved that he came away from Mrs. *Harwell*'s the 7th, and he ſaid he was to go to *Tixhall*; and the 9th he did go from *Tixhall* in Sir *John Southcot*'s Company, and came to *London* the 14th.

L. C. J. Well, what ſay you to it, Mr. *Oates?*

Oates. Has Mr. *Attorney* done his Evidence, my Lord?

Mr. Att. Gen. We ſhall call no more Witneſſes, unleſs you go about to ſupport your own Credit, and then we have other Witneſſes to call.

Oates. I do not value any Witneſſes you can bring againſt my Credit.

Mr. Att. Gen. Well, for the preſent, we do not deſign to call any more Witneſſes.—*L. C. J.* Then let us hear what you ſay to it.

Oates. My Lord, here is an Indictment exhibited againſt me, which ſets forth, that I ſhould ſwear at Mr. *Ireland*'s Trial, that Mr. *Ireland* was in Town the 1ſt and 2d of *September*; and it ſets forth, that in truth he was not in Town: And likewiſe it ſets forth, that I ſwore at the Trial of the five Jeſuits, that Mr. *Ireland* took his leave of me and others here in Town at his Lodging in *Ruſſel-ſtreet*, between the 8th and 12th of *Auguſt*: whereas the Perjury there aſſigned, is this, That he did not take his Leave of me, or any other Perſon, betwixt the 8th and 12th of *Auguſt*, at his Lodging in *Ruſſel-Street.* Now, my Lord, I was not the only Witneſs of Mr. *Ireland*'s being in Town in the Month of *Auguſt*, nor the only Witneſs of his being in Town about that time in *September.* My Lord, my Proſecutors have endeavoured to maintain this Charge againſt me thus: The firſt thing they have gone upon, as far as I can remember in the Indictment, is as to the 1ſt or 2d of *September*, or rather, they have endeavoured to prove both under one. Now, in anſwer to all this Evidence, my Lord, the firſt thing I ſhall offer to your Lordſhip's Conſideration, and the Conſideration of the Jury, is the great Hardſhip I lie under, after ſix Years time, to be put to diſprove what the Counſel here have now offered againſt me. My Lord, I obſerve firſt, that this Indictment, which is now upon Trial, is founded upon the Trial of *Ireland*, which was the 17th of *December* 1678, at the *Old-Bailey*, and it is now ſix Years after that Evidence of mine was delivered. A ſecond thing is, that the Indictment is found by ſpecial Commiſſion, as appears by the Indictment itſelf. Now, I muſt recommend to the Conſideration of your Lordſhip and this Jury, why the Proſecution of this pretended Perjury has been delay'd ſo long, when it appears by the Evidence which has been produced, that the Witneſſes to prove it were known ſix Years ſince, as much as they are now; and there is no colour of Evidence offered, that any new Fact has been lately diſcovered which was not then known. There is no Reaſon, my Lord, that is aſſigned, or can be aſſigned for this Delay, but only that the Hardſhip might be the greater upon me: For now it is difficult, if not impoſſible for me to maintain the Evidence I then gave, ſo many Perſons being ſince dead, or gone beyond the Seas, and many things that were freſh then, are now grown out of Memory; and I beg your Favour to inſiſt upon this, and I think it cannot be denied me. If ſuch a Practice as this be admitted, no Witneſs is ſafe in giving his Teſtimony againſt any Conſpirators whatſoever. For, my Lord, I muſt deſire leave to offer another thing to your Conſideration, before I ſpeak to the particular Evidence, and that is this; That here is nothing but a bare Point of Time upon which this Perjury is aſſigned; when the Subſtance of the Teſtimony that I gave at the Trials of Mr. *Ireland* and the reſt, about the Popiſh Plot, is not aſſigned as any Perjury at all; it is only a Circumſtance of Time and Place. And, my Lord, I ſhall offer this to your further Conſideration, that *Ireland* was convicted for a treaſonable Reſolution to murder the late King, and not for being in Town in *Auguſt* or *September* 78, or elſewhere; and he was not convicted for his being in his Chamber in *Ruſſel-ſtreet*, and taking his leave there in *Auguſt*, which is one matter of the Perjury now aſſigned. Next, my Lord, 'tis hard and unreaſonable to tie up Witneſſes that come to diſcover Plots and Conſpiracies, to ſpeak poſitively as to Circumſtance of Time and Place, and every little Punctilio in their Evidence, to bind them up to ſuch Niceties in the delivery of their Teſtimonies, as to Time and Place. It is uſual to ſpeak with latitude as to ſuch kind of things, and 'tis probably my Evidence which is now in queſtion, was not that *Ireland* was the 1ſt or 2d of *September* poſitively here in Town; but, my Lord, I did (I believe) give myſelf a latitude, and would not confine myſelf to either the 1ſt or 2d, 5th, 6th, 7th, or 8th; But my Lord, that he was in *September* there, I am poſitive. I muſt therefore beg your Lordſhip's and the Court's Opinion, whether that Mr. *Foſter* did prove that I was poſitive and preciſe to the Days of the 1ſt and 2d of *September* 78?

L. C. J. In my Opinion it is a plain Evidence that you did ſwear poſitively to thoſe two Days; and you ſpoke to a Circumſtance very material in your Evidence, that either the firſt or 2d of *September* you had twenty Shillings of him in Town here: Now that Circumſtance of his Kindneſs to you, was not a Circumſtance either of Time or Place.

Oates. Then, my Lord, I ſhall begin with my Proofs: but, my Lord, I deſire I may have free Liberty to mind my Buſineſs; for here is a Gentleman behind me that will not let me be at quiet, but is either meddling with me or my Papers.

L. C. J. Who is it? Let me know him, and I will take care to make him quiet, or ſet him farther off. You, Gentlemen, that are at the Bar ſhould know better, one would think: He muſt have liberty to make his own Defence; and if he complains and lets me know who meddles with him, they had better do ſomewhat elſe.

Oates. My Lord, the firſt thing that I offer, is, that *Ireland* was convicted of Treaſon, and for that you have the Record.

L. C. J. It is allowed of all ſides, that *Ireland* was convicted and attainted of Treaſon.

Oates. Then, my Lord, the principal Defence which, as near as I can remember, Mr. *Ireland* made at his Trial, was an Endeavour to prove that he was not in Town between the 8th and 12th of *Auguſt*, nor the 1ſt and 2d Days of *September*, which are the Points now in Iſſue; and he then produced one Mr. *Gifford*, and his Siſter and Mother; and fifteen or ſixteen Witneſſes were produced at Mr. *Whitebread*'s Trial, of which there is another Record, that being ſix Months after Mr. *Ireland* was tried: There Mr. *Whitebread* produces ſeveral Witneſſes, Mr. *Gifford*, I ſay, and ſeveral others, I think, to the number of ſixteen, which were to prove *Ireland*'s being out of Town in theſe times that theſe Witneſſes ſpeak of. Now, my Lord, all thoſe ſeveral Witneſſes being produced to prove *Ireland* then out of Town, the very Point that is now in Iſſue, was then ſo; and notwithſtanding all thoſe Witneſſes, the Jurors who tried Mr. *Ireland*, and the Jurors who tried Mr. *Whitebread* and the other four Jeſuits, found them guilty; tho' they endeavour'd with all their force imaginable to oppoſe my Teſtimony, and it was left to the Conſideration of the Jury what their Witneſſes had ſaid. If your Lordſhip pleaſes to remember, my Lord Chief Juſtice *Scroggs* did obſerve to the Jury, that the Evidence of the Priſoner at the Bar did conſiſt only in Punctilio's of Time; which, as near as I can remember what he ſaid, he called a nicety of Time; and in *Whitebread*'s Trial he was pleaſed to call it catching in Point of Time. And it was obſerv'd at *Ireland*'s Trial, that his Defence was ſo weak, that my Lord Chief Juſtice *Scroggs*, upon the Integrity of *Bedloe*'s Evidence and mine, uſes theſe Words to the Jury (tho' he then endeavour'd to do what theſe Witneſſes do now): It is moſt plain the Plot is diſcovered, and that by theſe Men, and that it is a Plot, and a villainous one. Which ſhews not only the Fullneſs and Satisfactorineſs of our Proof that we gave, but does alſo take notice of the little Shifts and catching Tricks he made uſe of to prove himſelf out of Town; which would not weigh with the Court. Therefore I obſerve, it is but the ſame Objection that then was made, and is not a new one now. And my Lord Chief Juſtice that then was, ſpeaking of that Proof he brought (which the Court heard with patience, but could eaſily ſee through the Vanity of it,) ſaid, What Arts they have of evading this, I know not; for as they have turn'd their Learning into Subtilty, ſo they have their Religion too. All this is well remembered by thoſe that were by, and heard that Trial: And tho' *Ireland* laboured to diſprove me in that Circumſtance of Time, yet ſtill the Court did juſtify the Evidence that Mr. *Bedloe* and myſelf had given. And the ſame Chief Juſtice ſaid, I leave it to you to conſider, whether you have not as much Evidence from theſe two Men as can be expected in a Caſe of this nature? And whether Mr. *Oates* be not rather juſtified by the Teſtimony offer'd againſt him, than diſcredited? This was after his Plea was debated and conſidered: and I muſt further obſerve to your Lordſhip, that tho' Mr. *Ireland* by his falſe Witneſſes preſſed this matter as far as he could then, and urged the Court to believe it; yet when the Jury brought in their Verdict and found him guilty, the Chief Juſtice expreſſed the Satisfaction of the Court in theſe Words: You have done, Gentlemen, like very good Subjects and very good Chriſtians; that is to ſay, like very good Proteſtants: and now much good may their 30000 Maſſes do them. This, my Lord, was the Caſe of Mr. *Ireland*, at his Trial;

and the ſame Point of his being out of Town was again managed before a ſecond Jury at the Trial of the five Jeſuits; but the Court ſaw the Deſign of the Popiſh Party to blemiſh the Evidence given of the Plot; but yet they look'd upon it only as a Trick. And my Lord Chief Juſtice *Scroggs*, in ſumming up the Evidence at that Trial, ſays, They fall foul upon Mr. *Oates*, meaning myſelf; he appears to have been their Agent, and whilſt ſo, bad enough: But if he had not had a mind to become a good Man, he would not have done us that good he has done, in the Diſcovery of the Deſign they had engaged him in. And if your Lordſhip pleaſe to remember, that at that Trial of the five Jeſuits, when all Arts were uſed to prove *Ireland* out of Town, and me at *St. Omers*, in the ſame Charge to the Jury, my Lord *Scroggs* did take notice that the Jeſuits were very exact at catching in a Point of Time; but now ſays, that is a thing that no Man can preciſely charge his Memory withal; and therefore he does there perſuade the Jury, that that ſhould not be too ſtrictly the Meaſure of their Judgments about Truth and Falſhood, by the Miſtake of ſeven or eight Days: For, ſaid he to the Jury, examine yourſelves how often every day you do miſtake things that have been tranſacted half a Year ago, and err in point of Time, taking one Week for another, and one Month for another; and therefore you are not to lay too great a Weight upon the Point of Time. Now, if too great Weight, my Lord, be not to be laid upon a point of Time, then this Charge that is now brought againſt me is not of weight at all. And beſides, my Lord, this ought to be conſidered, if this were the great Objection then, and then anſwered, it ceaſes to be an Objection now. And, as the Court did obſerve at the ſumming up of the Evidence, that they made their Defence about the Uncertainty of a Point of Time, which was no Defence at all; ſo that, my Lord, the whole Courſe of my Plea is this: 'Tis a hard caſe for a Man, after ſix Years, to be indicted for a Circumſtance of Time. I will firſt offer the Teſtimony of one Witneſs that is dead, and that is Mr. *Bedloe*, who at his Death confirmed all that he had ſworn of the Popiſh Plot to be true, and affirmed that he had rather ſpoken leſs than the Truth, than more; and for that I deſire that my Lord Keeper may be called, who took his dying Examination.

L. C. J. As for that, Mr. *Oates*, it is a thing very well known to the World, and particularly to a worthy Gentleman that ſits by you, [*Pointing to* Mr. *North*] that Mr. *Bedloe*, when he was ſick, did make ſome ſuch Proteſtation.

Oates. Then, my Lord, I deſire that Mr. *Blaney* may be ſworn, to give an account, what Mr. *Bedloe* teſtified at *Ireland*'s Trial.

Then Mr. Blaney *was ſworn.*

Oates. Mr. *Blaney*, pray will you ſee in your Notes of *Ireland*'s Trial, whether Mr. *Bedloe* did not ſwear that Mr. *Ireland* was in Town, the latter end of *Auguſt* 78, or the beginning of *September*?

Mr. *Blaney.* Whereabouts in the Trial is it, Sir?

Oates. It is in the printed Trial, *folio* 41.

Mr. *Blaney.* My Lord, I do find theſe Words in my Notes, that Mr. *Bedloe* ſhould ſay, about the latter end of *Auguſt*, or the beginning of *September*, but I believe it was the latter end of *Auguſt*, Mr. *Ireland* was at *Harcourt*'s Chamber, and being asked the Queſtion by my Lord Chief Juſtice *Scroggs*, Whether he ſaid poſitively, it was the latter end of *Auguſt*; he ſaid it was in *Auguſt*, he would not be poſitive to a Day, but he thought the latter end.

L. C. J. 'Tis very well known too, that *Bedloe* did ſwear *Ireland* was in Town the latter end of *Auguſt*, or beginning of *September*; and to confirm it upon Mr. *Ireland*'s Denial, you ſwore he was in Town the 1ſt or 2d of *September*; and gave you twenty Shillings, that was the Occaſion of your Oath.

Oates. Then, my Lord, I deſire to call ſome Witneſſes to teſtify to the Depoſition that was taken of Mr. *Jenniſon*, about *Ireland*'s being then in Town.

L. C. J. When was that Depoſition taken, and before whom?

Oates. It was taken in the Year 79, by Sir *Edmund Warcup*.

L. C. J. But we cannot admit that in Evidence, unleſs the King's Counſel will conſent.

Oates. My Lord, I will then produce what he ſwore at another Trial.

L. C. J. Why, where is he? Is he dead?

Oates. My Lord, it has coſt a great deal of Money to ſearch him out; but I cannot any where meet with him, and that makes my Caſe ſo much the harder that I cannot, when I have done all that Man can do to get my Witneſſes together. I ſent in the depth of Winter for him, when I thought my Trial would have come on before; but I could never hear of him.

L. C. J. We cannot help that.

Oates. Will what he ſaid at any other Trial be Evidence here?

L. C. J. Look you, though in ſtrictneſs, unleſs the Party be dead, we do not uſe to admit of any ſuch Evidence; yet if you can prove any thing he ſwore at any other Trial, we will indulge you ſo far.

Oates. Have you the Record of Sir *George Wakeman*'s Trial there, Sir *Samuel Aſtry*?

Mr. Att. Gen. Here it is; if Mr. *Oates* have any uſe for it, we will lend it to him.

L. C. J. Put it in; and now prove what you can, what *Jenniſon* ſwore at that Trial.

Oates. Mr. *Blaney*, have you your Notes of Sir *George Wakeman*'s Trial here?

Mr. *Blaney.* No, Sir, the Ticket of your *Subpœna* did only mention *Ireland*, *Whitebread*, and *Langhorn*'s Trials. But I did formerly upon another Occaſion look for the Trial of Sir *George Wakeman*, but could not find it among all my Notes.

Oates. Sir, can you remember then what *Jenniſon* ſwore at that Trial, about *Ireland*'s being here in Town?

Mr. *Blaney.* Truly, my Lord, I can never truſt my Memory at all when I take Notes; and it is now ſo long ſince that Trial, that I dare not undertake to ſay I remember any Particulars of it.

L. C. J. He ſays it is ſo long ſince, that he cannot remember any thing. But there is Sir *Edmund Warcup* now; Is he ſworn?

Cryer. Yes, my Lord.

L. C. J. What do you aſk him then?

Oates. I would deſire to examine Sir *Edmund Warcup*, my Lord, about the Depoſition of *Jenniſon* that he took.

L. C. J. But we tell you that cannot be admitted as Evidence, without they will conſent to it on the other ſide.

Oates. My Lord, he proves Mr. *Ireland* here the 19th of *Auguſt*, and that contradicts theſe Witneſſes.

L. C. J. If they will admit it, well and good; elſe we cannot do it.

Mr. Att. Gen. My Lord, we will be ſo fair with Mr. *Oates*, if he will admit Mr. *Jenniſon*'s Letter, that is under his hand, wherein he does own that he was miſtaken in his whole Evidence about that matter; we will conſent his Depoſition be read.

Mr. Juſt. *Withins.* If he will not conſent to that, there's no reaſon you ſhould conſent to the other, Mr. *Attorney*.

L. C. J. Look you, Mr. *Oates*, Mr. *Attorney* makes you this Offer; you deſire to have Mr. *Jenniſon*'s Depoſitions read, which cannot be done without their conſent; they tell you they will conſent, if you will let them prove what he has own'd ſince about that Buſineſs.

Oates. My Lord, I will conſent with all my heart; let them read any Letter under his hand.

L. C. J. Well, do it on both ſides by Conſent; and now, Mr. *Oates*, do you produce his Examination.

Oates. Pray, Sir *Edmund Warcup*, will you pleaſe to give the Court an Account what Depoſition Mr. *Jenniſon* made before you, about *Ireland*'s being in Town in *Auguſt* 78?

Sir *Edmund Warcup.* If my Lord commands me, I will.

L. C. J. Ay, you muſt anſwer his Queſtion.

Sir *Edmund Warcup.* This Mr. *Jennijon* did make one Information before me, and according to the Duty that was incumbent upon me, I deliver'd it in to the King and Council, and there it has lain ever ſince; for me to remember the Particulars of it, is impoſſible.

L. C. J. Have you his Examination here, Mr. *Oates?* If you have, ſhew it him.

Sir *Edmund Warcup.* If I ſee my Hand to it, atteſting it was ſworn before me, I can ſay ſomewhat to it.

Oates. My Lord, he ſays he deliver'd it in to the Council; but it is printed.----*L. C. J.* That is no Evidence, Man.

Sir *Edmund Warcup.* I can ſay nothing to it, unleſs I ſaw it under my own hand.

Oates. That is impoſſible for me to have, my Lord.

L. C. J. I cannot tell how to help it.

Sir *Edmund Warcup.* You have no more to ſay to me, Sir, have you?

Oates. No, Sir, I have not. Pray call *Sarah Batten*.

Mr. Att. Gen. Is that the ſame that was *Sarah Paine?*

Oates. I think ſo, Sir; I am not ſure it is ſhe, till ſhe come hither.

Cryer. Here is *Sarah Batten*.

Oates. Pray ſwear her, and call Sir *Thomas Doleman*. [*Which was done. But Sir* Thomas Doleman *did not appear.*

Oates. Pray was not your Name *Sarah Paine?*

Batten. My Lord, I deſire my Charges before I ſpeak.

L. C. J. What is your Name, good Woman?

Batten. My Name is *Sarah Batty*.

Oates. Was not your Name *Sarah Paine*, once?

Batty. No, my Maiden-Name was *Sarah Edmunds*.

Oates. Was not you a Witneſs at the Trial of Mr. *Ireland?*

Batty. No, Sir.

Oates. Did not you live with my Lord *Arlington?*---*Batty.* No, Sir.

Oates. Then I have been at all this Charge for nothing. Are you ſure your Name was not *Sarah Paine?*---*Batty.* No, indeed, Sir.

Oates. They told me that ſhe liv'd at *Uxbridge*, and thither I ſent.

Batty. I do live at *Uxbridge*, Sir.

Oates. Upon your Oath, were you a Witneſs at any of the Trials, or no?

Batty. No, my Lord, I was not.

Cates. Then I have nothing to ſay to her.

L. C. J. What other Witneſſes have you to call?

Oates. We have laboured all we could to find her out, and ſearched for her with all the care imaginable; and here we thought we had had her, but it ſeems it is not ſhe.

L. C. J. We cannot help it.

Batty. I hope, my Lord, you will conſider my Charges in coming up hither.

Oates. I will take care of thee, Sweet-heart.

L. C. J. Who do you call next?

Oates. Pray call Mr. *Charles Clare*.

Cryer. He is not here.

Oates. Pray call Mr. *Percival*. My Lord, I deſire Mr. *Blaney* may give an account what ſhe ſwore about *Ireland*'s being in Town, ſeeing I cannot have her here.

L. C. J. That we cannot do neither, without Mr. *Attorney* will conſent: For this, as well as the other, is an extraordinary thing.

Oates. You ſee by my bringing this Witneſs, my Lord, that I have done what I could to find her out.

L. C. J. What ſay you, Mr. *Attorney*, will you conſent?

Mr. Att. Gen. No, my Lord, it is ſo irregular, that we cannot conſent to it.

Oates. Pray call Mr. *Percival* and Mr. *Vaughan*.

Cryer. They do neither of them appear.

Oates. Then I muſt loſe the benefit of her Teſtimony.

L. C. J. Have you done?

Oates. No, my Lord, I will have done immediately.

L. C. J. Take your own Time.

Oates. I deſire Sir *Michael Wharton* may be call'd.--*Cryer.* He is not here.

Oates. Pray call Mr. *Charles Chetwind*.---*Cryer.* He is not here.

Oates. Pray call Mr. *Robert Bowes*.---*Cryer.* He is not here.

Oates. Pray call Mr. *John Saville*.----*Cryer.* He is not here.

Oates. My Lord, I have ſerved all theſe with *Subpœna*'s; and if they will not come, I cannot help it.

L. C. J. Nor we neither.

Oates. Mr. *Jenniſon* was uſed as a Witneſs in the Trial of Sir *George Wakeman*, and ſo was Mr. *Bowes*, and Mr. *Burnet*, who was produced to prove the Circumſtance of Mr. *Jenniſon*'s Evidence: But, my Lord, ſince I cannot have the benefit of his Evidence, nor of *Sarah Paine*'s, I muſt only ſum up all I have to ſay in two or three Words. My Lord, beſides that what I did deliver in Evidence at thoſe Trials, I gave in upon Oath; you have

have Mr. *Beedle*'s Evidence at the Trial of *Ireland*, teſtified by Mr. *Blaney*: and the Teſtimony of him as a dying Man, given in to my now Lord Keeper, wherein he averr'd, that what he had ſpoken of the Plot, was all true. And you hear that he ſwore, Mr. *Ireland* was here in Town in *Auguſt*, and ſo did *Sarah Paine* too; and I think upon myſelf as very hardly uſed, to have ſuch a part of my Teſtimony brought in queſtion, after Witneſſes are dead, or gone out of the way. As for Mr. *Jenniſon*, his Evidence was formerly made uſe of; and his Evidence was approv'd of too, as is well known to thoſe that ſat Judges upon the late Viſcount *Stafford*. But this is that, my Lord, I muſt needs ſay for myſelf, that as I hope to ſee the Day of Salvation in another World, whatever I have ſworn about Mr. *Ireland*'s being here in Town betwixt the eighth and twelfth of *Auguſt* 78, and in the beginning of *September*, is true, as I ſhall anſwer it before God another day. And, my Lord, as to the Evidence this day brought againſt me, I deſire you would but obſerve, though that there are many of thoſe Witneſſes, yet a great part of them do not come up to the eighth or twelfth of *Auguſt*: And I hope your Lordſhip will remember and remark to the Jury, what little credit thoſe of them had that came to teſtify in the behalf of Mr. *Ireland* at his Trial, and at the five Jeſuits Trials, of which there are two Records before you; and they do firſt juſtify this, that *Ireland* and the reſt of them were guilty of what they were accuſed of; and then, that theſe Witneſſes did not teſtify the Truth.

Beſides theſe two Trials, my Lord, you have a third Verdict, and that is at the Trial of Mr. *Langhorn*: Now the whole Popiſh Plot almoſt was laid forth in thoſe three Trials; and, my Lord, I believe verily I am the firſt Precedent in all *England*, of any one's being indicted for Perjury, that was a Witneſs for the King in ſuch a Caſe as this, after ſix Years time elapſed; after Verdict upon Verdict, and Judgment and Execution upon theſe Verdicts; and when no new Objection is now offer'd, but what was then ſtarted; and no new Circumſtance occurs now, but was as forcible then, except it be the Change of the Seaſon. And I deſire it may be conſider'd, when all the Judges of *England* were Commiſſioners of *Oyer* and *Terminer* at thoſe Trials, theſe Matters were fully diſcuſſed and debated; and then they did look upon all the Objections as fully anſwer'd and confuted.

My Lord, I am confident if I had been a Witneſs in any other Cauſe, than of a Conſpiracy of the Papiſts, I might have had fairer quarter than I have now: and I do verily believe, that at this rate, it is more ſafe for Papiſts to be Traitors, than for any Proteſtant to diſcover a Popiſh Plot.

My Lord, and Gentlemen of the Jury, I beſeech you to take my Caſe in your ſerious Conſideration, as to the Hardſhip of it; and ſince all my Witneſſes are in Places unknown, or they are ſuch as, conſidering the Times, dare not appear, ſome of them being Lawyers, and under fear they ſhall fare the worſe in their Practice; and others being Perſons that depend upon the Law, and think they ſhall be look'd ill upon, as I am now look'd upon with a hard Eye by the Popiſh Party and their Adherents: yet I hope, you that are ſworn to do Juſtice, will not let me be ruined by a number of falſe Witneſſes, by the Evidence of Papiſts that are Parties. For if your Lordſhip pleaſe to conſider that Vote of the Lords Houſe, which is a Court of Record, wherein they do declare, that they are fully ſatisfied by the Proofs they have heard, that there then was, and for divers Years laſt paſt had been a Horrid and Treaſonable Plot and Conſpiracy, contrived and carried on by thoſe of the Popiſh Religion, for the murdering of his Majeſty's Sacred Perſon, and for ſubverting the Proteſtant Religion, and the ancient and eſtabliſh'd Government of this Kingdom; which Vote of Parliament, my Lord, does make the Papiſts to be all Parties in this Caſe; and where they are Parties I hope they ſhall not be admitted as Evidence, or at leaſt not be believed; becauſe there is a turn to be ſerv'd by them againſt me, and a Revenge they are reſolv'd to take upon me; for they have hopes now of bringing in their Religion, and are to welcome that in with my Ruin; and this is the Cauſe of this Proſecution. Their Eyes do ſee now what their Hearts ſo long deſired, that is, the Death of a great Man, who died but lately, and againſt whoſe life they had conſpired ſo often, and ſo long. My Lord, if this had been the firſt Conſpiracy that ever the Papiſts were guilty of, there might have been ſome more Scruple and Objection in the caſe: But if you caſt your Eyes upon *Campian*, and others in Queen *Elizabeth*'s Time; of *Garnet*, and the Powder-Jeſuits in King *James*'s Time; and the Deſigns of the Popiſh Party in the Time of the late King *Charles* the Firſt, diſcovered to the Archbiſhop of *Canterbury*: If theſe Things do paſs for Truth, and there is no Averment againſt ſo many Records as we have of their Conſpiracies, then my Diſcovery is no ſuch improbable a thing; and I hope then the Gentlemen of the Jury will take it into their Conſiderations, who they are that are Witneſſes in this Caſe; Men whoſe very Religion is Rebellion, and whoſe Principles and Practices are pernicious to the Government, and thereby they are to be look'd upon as dangerous Perſons in Church and State. But, my Lord, if the Letters of *Coleman* be well conſider'd, they will juſtify me. That he correſponded with *Le Chaiſe* the *French* King's Confeſſor, for the promoting of Popery in *England*, is notorious to all Mankind that have either read or heard that Trial: Your Lordſhip was of Counſel for the King in that caſe, and heard how it was opened, and plainly proved upon him. And when his Letters have been made ſo publick, and proved under his own hand, nay, and confeſſed by himſelf; I think no Man will doubt but that muſt be a plain Proof of the Plot, and will be enough to vindicate me.

My Lord, I have one Word more, and then I have done, and leave it to your Lordſhip, and the Jury. My Lord, as they would now fling the Popiſh Plot upon me, ſo there is an evident Deſign to fling the Murder of *Godfrey* upon a Proteſtant Peer; and becauſe an Indictment was, upon the Teſtimony of the Traitor *Fitzharris*, againſt that noble Lord, they have reſolv'd to have profligate Villains to take his Life for that Murder: that is apparent; and ſo they will go on ſtep by ſtep, if they be let alone; and think at length to wipe their Mouths with *Solomon*'s Whore, and ſay, they have done no miſchief. My Lord, I leave theſe things to the Conſideration of the Court and Jury: I will not detain you any longer. I have called what Witneſſes I could get; but the diſtance of Time has made it impoſſible for me to have thoſe here now, that did give Evidence in this matter before.

My Lord, I have one Favour to beg of the Court; I had but a bad Night laſt Night, and am now in great pain; I deſire that you would grant me one Requeſt, that I may have Counſel aſſign'd me, to argue the Errors in yeſterday's Indictment: My Lord, I am but a poor Man, and cannot be at the Charge of feeing Counſel.

L. C. J. We did aſſign you Counſel before, you may have who you will for Counſel.

Oates. Will your Lordſhip be pleas'd to do me the Favour to let me have ſome time to prepare and inſtruct Counſel?

L. C. J. Ay, what Time would you have?

Oates. A Week's time, if your Lordſhip pleaſe.

L. C. J. Give him till this Day ſeven-night, there may be no hurt in that.

Oates. Till *Monday* come ſeven-night, if your Lordſhip pleaſe, let me have.

L. C. J. No, no, we cannot do that; we give you a Week's time, which is more than ordinary: for by the Rules of the Court there are but four Days allow'd, and thoſe would be out *Monday* or *Tueſday*.

Oates. I thank your Lordſhip for that time you have given me; but I hope you will be pleas'd to take the Particulars I have mention'd into your Conſideration; and I deſire I may have Liberty to go home, becauſe I am not well.

L. C. J. Ay, you may go, if you will.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, the Queſtion that you are to try, is a Perjury, which is charg'd on the Defendant *Titus Oates*, for ſwearing that *William Ireland* was in Town upon the firſt or ſecond of *September* 78. And likewiſe, for ſwearing, that he took his leave of him at his Chamber in *Ruſſel-ſtreet*, between the eighth and twelfth of *Auguſt* 78. And we do aſſign the Perjury in both thoſe Points, that he is forſworn in both; and the Evidence of that Perjury is, that it is impoſſible to be true what *Oates* did ſwear, becauſe Mr. *Ireland* was not in Town between the eighth and twelfth of *Auguſt*, nor the firſt or ſecond of *September*.

Gentlemen, you have heard the Evidence that has been given, and there has been no leſs than between forty and fifty Witneſſes produced, to ſhew that it is really impoſſible what *Oates* did ſwear ſhould be true: He tells you that this Matter is in a Circumſtance of Time, wherein it is difficult for a Man to be poſitive to a Day, and a Man may be allow'd ſome Latitude in ſuch a Caſe; nay, it is uſual with Witneſſes in Points of Time, to ſwear with a Latitude. But, my Lord, to ſhew that, if we ſhould grant the falſe Doctrine to be true (and falſe moſt certain it is, and of miſchievous conſequence it would be, if, when things are charged upon Men, that depend upon Circumſtance of Time and Place, the Witneſſes ſhould not be ſtrictly kept to thoſe Circumſtances), yet, I ſay, granting that Poſition, it is impoſſible it ſhould do him any ſervice in the Caſe before you: For between the beginning of *Auguſt*, and the 14th of *September*, which includes both the Times he ſwears to, and the Latitude of above twenty Days to boot) there is not any one Moment of Time, wherein his Oath could be true.

Gentlemen, you obſerve what the Witneſſes have ſaid, how they have given you an account of every particular Day of both Months, from the 3d of *Auguſt*, when he firſt left *London*, to the 14th of *September*, when he return'd back again: We did aſk the Witneſſes, that it might appear to be plainly true what they ſwear, if they had any particular Circumſtances that made them to remember it; and they have given a great many, and now it lies upon us to ſhew you that it is Demonſtration, that what they have ſaid and teſtified muſt be true; and that thoſe Days they ſpeak of, he was in the Places they named.

For take the Periods of Time, and you will find you have him from the 3d of *Auguſt* to the 16th, with my Lord *Aſton*, going from *London* to *Tixhall*; upon the 17th they give you an account of him at Mrs. *Harwell*'s to the 26th; from the 26th to the 4th of *September*, there are others that give you a particular account, by remarkable Circumſtances, where he was every day in *Staffordſhire*; from the 4th to the 7th you find him at *Wolverhampton*. For the 8th indeed, we do give no particular account where he was that Day; but we prove that upon the 9th he was at *Tixhall*, and from thence he came away with Sir *John Southcoat* towards *London*; and there you have a particular account where he was, every Day till the 14th, when he return'd to his Lodging.

And now, Gentlemen, I ſhall ſhew you, that if you believe theſe Witneſſes ſaw him in theſe Months; that certainly it was upon thoſe Days they ſpeak of that they did ſee him.

Firſt, That he went out of Town in *Auguſt*, you have theſe Witneſſes, *Anne Ireland*, *Eleanor Ireland*, Mrs. *Duddle*, Mrs. *Quino*, and my Lord *Aſton*. Well, how come they to remember it was upon the 3d of *Auguſt*? Why the four Women remember it by this particular Remark; three Days before there was a Holiday, which they keep in Memory of *Ignatius*; and upon that Day they remember Mr. *Ireland* went abroad to take a Recreation, and came home again that Night, tho' the reſt of the Company ſtaid there; becauſe he was to go out of Town upon the third Day after, which muſt be the third of *Auguſt*; for *Ignatius*'s Day, you hear, is always the laſt of *July*. And they do poſitively ſwear, that upon the 3d of *Auguſt*, he took his leave of *Anne Ireland* and *Eleanor Ireland*. Mrs. *Duddle* remembers that he went out that Day. Mrs. *Quino*, whoſe Huſband was his Taylor, ſays, he did ſtay a little to have ſomewhat in his Clothes mended; and ſhe ſaw him in his Boots, and he ſaid he was to go out of Town. Mrs. *Anne Ireland* ſays, they took the liberty to lodge a Gentlewoman in his Chamber, and ſaw him not again till a Fortnight before *Michaelmas*: And that he did go out of Town upon the 3d of *Auguſt*, is further prov'd by my Lord *Aſton*, who noted it down in his Book at that time, that *Ireland* came to his Houſe at *Standen* in *Hertfordſhire*; ſo that here is as ſtrong an Evidence as can be, that he did go on the 3d of *Auguſt*, and that they remember it to have ſo been, by all the Circumſtances that can be imagined.

Well, the third of *Auguſt* he went out of Town. The 4th of *Auguſt* we give an account where he was: he ſtaid that Day with my Lord *Aſton* at *Standen*. The 5th of *Auguſt* he ſet out with my Lord *Aſton*'s Company, and went to *St. Albans*. The 6th he went to *Northampton*. The 7th to *Coventry*. The 8th to *Tixhall*; and the Company that went with him proves it, which was Sir *Edw. Southcoat*, and Mr. *John Southcoat*; and *Harriſon* and *Hobſon* who ſaw him go in the Company; and Mr. *North*, who ſays he ſaw him every day; and *Ingletrap*, the Coachman that drove the Coach: all theſe remember it poſitively, and ſome of them ſpeak of a remarkable pretty Horſe, which he rid upon.

Now when he comes from *Tixhall*, (for we have brought him hither by manifeſt Proof, by Men that could not forget, by Men that ſaw him in the Company)

Company) there he remain'd (as they all teſtify) till the 13th of *Auguſt*, and that was the *Tueſday* after his Arrival at *Tixhall*; and from thence he went that Day a Journey into *Flintſhire*, to *Holy-Well*; and that is proved by the Witneſſes that were in his Company in that Journey. They tell you, the 13th he lay at *Nantwich*. The 14th at *Holy-Well*. The 15th at *Cheſter*. And the 16th he came back again to *Tixhall*. And ſo here you have abundance of Witneſſes, that give you a particular Account where he was, in what Cmpany they ſaw him, from the 3d of *Auguſt* to the 16th. If he were then in this Company from the 3d to the 16th, he could not be in his Chamber in *Ruſſel-ſtreet*, between the 8th and the 12th.

Then we came to the 17th, and then we find him to be at *Wolverhampton*, where he continued to the 26th; and that it muſt be between the 17th and the 26th, is plain: For after that time which Mrs. *Harwell* ſpeaks of, the other Witneſſes give ſuch Circumſtances, that it cannot be otherwiſe. You find him on the 27th at a Horſe-race, which is a remarkable Circumſtance; and theſe are things that Men do very well remember what Days of the Month they happen upon. We then give you an Account of the 29th; that at *Tixhall* he was ſeen in Company upon the Bowling-green with Perſons of Quality; Sir *Thomas Whitegrave*, and others: ſo we give you an Account where he lodged. The 28th he was at *Bellamore*. The 29th he went to Mr. *Heveningham*'s, there he lodg'd till the 1ſt of *September*; and this is remember'd by particular Circumſtances, that he went a fiſhing, and a ſetting, and a hunting. Then the next Day, which is the 1ſt of *September*; and the next Day after, the 2d of *September*, they ſaw him at Mr. *Gerrard*'s; he din'd upon the 2d at Mrs. *Crompton*'s, and lay at *Boſcobel*; there he continued the 3d, and the 4th he came to *Wolverhampton* again.

So that this ſhews, that what Mrs. *Harwell* did ſpeak of, was true; for if Mrs. *Harwell* did ſee him, as 'tis not at all doubted but ſhe did, it muſt be in that Interval of Time between the 16th and the 27th; where we give you an Account of him by other undeniable Circumſtances, that he lodged at other Places; and could not lodge at her Houſe at *Wolverhampton*.

Beſides, Gentlemen, the particular Circumſtances that they do remember him by, proves it to be on thoſe Days. Mrs. *Harwell* gives her poſitive Oath, that he did come there the 17th, and lay there every Night to the 26th, which was on the *Monday* Seven-night after; and that he came again the 4th of *September* after, and lay there till the 7th.

Then there is *Ruſhton*, another Witneſs, that ſaw him at her Houſe the 18th, 19th, 20th, 21ſt, 22d, and 25th. And, I ſay, it muſt be thoſe Days, becauſe we have given an Account, by other Witneſſes, of all the other Days. And it muſt be that very time that *Oates* ſpeaks of; for it was the Summer before *Ireland* was apprehended and executed for the Plot, which was *Michaelmas* 1678.

Mr. *Winford*, he remembers him at *Wolverhampton*, the 18th, 19th, 22d, and 24th.

Stanley remembers the 18th and 19th; and if you aſk him how he remembers it, he tells you, by a Circumſtance that moſt men would remember; he buried his Child that Day, and entertain'd *Ireland* with the Proviſion for the Funeral. Now Men uſually remark ſuch Accidents as theſe; for that is a thing a Man cannot forget, that has any Concern in the World for thoſe that are ſo nearly related to him; and therefore ſuch Circumſtances muſt of neceſſity evince the Truth of what he ſpeaks, becauſe it is brought to his Mind, by an Accident that cannot be forgotten.

Mrs. *Purcell*, which is the next Witneſs; and ſhe remembers to have ſeen him the 18th, 19th, 20th, 21ſt, 22d, and 23d; for ſhe remembers the laſt of them was the Day before *Bartholomew-day*, which was a remarkable Day.

Then there is another Man, that look'd to his Horſe whilſt he was there, but his Memory will not ſerve him to ſpeak to any particular Time; he only evidences, that he was there; and the other Witneſſes ſpeak to the Time.

Mr. *Stamford*, he remembers it to be at that Time, becauſe he ſaw him on the *Sunday* after the Aſſumption of our Lady, which is always the 15th of *Auguſt*: and the like ſays Mrs. *Gifford*. Theſe Circumſtances verify her Teſtimony.

And Mr. *Gifford* remembers, he came on the 17th Day; and he ſaw him every Day, till the 26th Day.

And Mrs. *Fowler*, who is Mrs. *Harwell*'s Daughter, ſhe remembers he came the 17th Day; and ſhe was in his Company every Day, till the 26th, except one Day, when he went to *Litchfield*; that was the Day before *Bartholomew-day*, which was *Friday*.

Mrs. *Keeling*, ſhe ſwears, that upon the 17th Day he came there, which was *Saturday*. She ſaw him on the *Sunday*, and on the *Monday*; and went on the *Monday* in the Afternoon, to the Funeral of her Mother, which is another Circumſtance that ſhe muſt needs remember; and, by that, has the Remembrance of the Day of the Month when he was there: And ſhe return'd back again on *Thurſday*, and heard him that Day, but did not ſee him. But ſhe ſaw him every Day after, till he went away; and ſhe remembers his going away was upon the 27th. And ſhe remembers likewiſe, that he return'd the 4th of *September* after.

Mr. *Richardſon*, he proves, that he ſaw him upon the 19th Day of *Auguſt* at *Wolverhampton*; as he was told, it was he: And being aſk'd, when he was told ſo? He ſays, Mrs. *Harwell* told him ſo ſome time before he was apprehended; ſo that ſhe could not tell it him then, to ſerve a Turn. And he is a Proteſtant too.

So is likewiſe *Eleanor Graves*; who gives you an Account that ſhe ſaw him there on the 20th, 21ſt, and 22d; and on the 23d, ſhe went to *Litchfield* with him; and upon the 25th, ſhe ſupp'd with him at Mr. *Winford*'s.

Now, Gentlemen, you have a full Account of it, even to a Demonſtration, that he muſt be in theſe Places at this time, if you will believe one thing, that is, that theſe Witneſſes ſaw him at all. And ſure none can doubt, but theſe Witneſſes did, upon the Circumſtances they have teſtified, ſee him in *Auguſt* and *September*: and then it muſt be thoſe particular Times, that they ſpeak of.

At *Wolverhampton* then you have him to the 26th: The 27th Day, you have an Account of him at the Horſe-race at *Etching-hill*. The 28th, Mr. *Howard* gives you an Account, he dined at *Bellamore*, at Mr. *Aſton*'s. The 29th, you find him at the Bowling-green at *Tixhall*; and from thence to Mr. *Heveningham*'s, where he lodg'd that Night, and ſtaid there the 30th; which is prov'd by the Circumſtances of fiſhing in the Morning, and ſetting in the Afternoon. And the next Day, which was *Saturday* the 31ſt, you hear he was at the killing of a *Buck*, where Mr. *Gerrard* was expected, but ſickneſs prevented his coming. And you have him the 1ſt of *September*, which was *Sunday*, at Mr. *Gerrard*'s Houſe, where ſeveral of the Witneſſes did ſee him.

And beſides, one *Proctor* tells you, he ſaw him the 31ſt of *Auguſt* at *Fulford*, at Mr. *Lowe*'s. And he very well remembers that to be the Time, by a remarkable Circumſtance: *For* (ſays he) *the laſt Day of* Auguſt *I went to pay ſome Money*, (which is a thing Men are generally very punctual in) *and when I came home again I found him there.* And he ſwears he ſaw him at Mr. *Gerrard*'s Houſe, the 1ſt of *September*, the Day after.

Mr. *King* remembers he ſaw him at Mr. *Gerrard*'s, of *Hilderſham*, the firſt of *September*; and that he dined at Mrs. *Crompton*'s the ſecond of *September*; and ſtaid there till two of the Clock in the Afternoon; and went from thence, with an Intent to go to *Boſcobel*.

Lee ſays, he ſaw him at Mr. *Gerrard*'s Houſe and at Mrs. *Crompton*'s: that he dined there, and went from thence to *Pancraſs*, and from thence to *Boſcobel*.

Mr. *Biddulph* remembers he dined with him on the ſecond of *September*, at his Aunt's; and that by this Circumſtance, he was deſired by my Lord *Cullen* to ſee a Horſe-race in *Northamptonſhire*; and promiſed my Lord *Cullen* to come: Which Horſe-Race is always on a certain Day, the firſt *Thurſday* in *September*; and that Year it happen'd to be the fifth of *September*: And it was the *Monday* before, that he dined at his Aunt's; and becauſe of his Promiſe to my Lord *Cullen*, he would not ſtay all Night. And ſo it muſt be the ſecond Day of *September* that he ſaw him there.

Mrs. *Crompton* ſays, it was the ſame Day that her Nephew, Mr. *Biddulph*, dined there: For he was a Stranger, and ſhe never ſaw him before, nor after.

And there is another Gentlewoman, Mrs. *Palmer*, that ſwears, he dined at Mrs. *Crompton*'s; but ſhe cannot tell the particular time when.

Mrs. *Gifford* ſaw him at *Pancraſs*, between the Hours of four and five in the Afternoon, upon the ſecond of *September*: and *Lee* went along with him to *Pancraſs*; and from thence he went to *Boſcobel*.

Mr. *Pendrel* ſays, he ſaw him the ſecond of *September* at Night; for he came to his Houſe. Which agrees with all that the other Witneſſes ſay, which was, that he intended to go to *Boſcobel* that Night. He and his Wife both teſtify, that there he lodged upon the ſecond of *September*, and ſtaid there the third of *September*; and went from thence the fourth to *Black-Ladies*; where Mr. *Gifford* tells you he dined.

And we have given you an Account before, where he was the Fourth at Night: For then he was returned to *Wolverhampton*; and there he lodged to the ſeventh of *September*. And after the ſeventh of *September*, though we do not give you a poſitive Evidence, That upon the ſeventh of *September*, at Night, or upon the eighth, he was at my Lord *Aſton*'s; yet we have given you that which amounts almoſt to a Demonſtration, that he muſt be there upon the eighth of *September*. For he went from thence with Sir *John Southcoat*, to go towards *London*, on the ninth. And our Evidence is the more credible, becauſe they ſwear cautiouſly all of them: Unleſs they remember ſome remarkable Circumſtance, they will not take upon them to fix upon a particular time.

Then, *Gentlemen*, we give you an Account, by the Perſons that were in his Company where he was every Day, all along from the time he left *Tixhall*, down to the time he came to Sir *John Southcoat*'s Houſe in *Surrey*. And this Journey took up the ninth, tenth, eleventh, and twelfth of *September*: There are four Days; and he ſtaid there one Day. Then he ſold Mr. *Southcoat* his Horſe. Mr. *Southcoat* lent him his Horſe to come to Town; and the next Day he did come to Town; And ſo we have brought him to *Saturday* the Fourteenth of *September*.

And now, let all the World be Judge, if there be any poſſible Room left, that any one Word Mr. *Oates* has ſaid can be true; even giving him the Latitude of Time he himſelf deſires, and ſays all Witneſſes muſt be allowed. No, there is not one Minute for him, wherein he can be verified in any one Tittle of his Evidence, as to *Ireland*'s being in Town. And this is that which I call (and ſure, well I may ſo call it) a *Demonſtrative Proof*, that what *Oates* did ſwear is utterly falſe.

Gentlemen, the Jury had not this Evidence at the Trial of *Ireland*: Some there were that went out of the Town with him; and ſome, one or two of *Wolverhampton*, were at the five Jeſuits Trials; but not above five or ſix in all of theſe forty odd, that now appear. True indeed it is, all theſe were not there; and *Ireland* upon that, unfortunately ſuffered; for ſo I may take leave to ſay, it was *Unfortunately*.

Mr. *Oates* has ſaid one thing unto you, which he lays much ſtreſs upon: He would have you look upon it as a great Hardſhip, that this Proſecution comes ſo late; and that it is ſtrange, after ſix Years time ſpent, this ſhould now be ſet on foot.

But, Gentlemen, I cannot but with much Sorrow remember to you, and I know you all remember it too well; That there was a time, when the City of *London* was ſo far corrupted, that it was become a Refuge and a Sanctuary for High-Treaſon; when there was no Juſtice to be had for the King there; when Men lodged themſelves within thoſe Walls, as a Protection for their Conſpiracies: we all remember the time, when Indictments were preferred, and a plain Evidence given to a Grand Jury, even to the publick Satisfaction of all that heard it; and yet they have refuſed to find the Bill: And not only ſo, but were ſo abetted by the Rabble, that it was ſcarce ſafe for the Judges to ſit upon the Bench. Theſe are things none of us can forget, but muſt be perpetually remembred to the ſhame of the Authors and Contrivers of them: And therefore it is no wonder an Indictment was not preferred againſt Mr. *Oates* at that Time, when the plaineſt Proof againſt Criminals could not be admitted. And this will give every Man Satisfaction, why it has been delayed; and I hope, at the ſame time, give every Man a Caution, how they fall into the like Circumſtances again.

But, Gentlemen, you have heard the Evidence that is now offered, to prove this Matter of Fact; and it is a plain Demonſtration, if you will believe that Mr. *Ireland* was ſeen by theſe Men at all, he was ſeen at thoſe very times they have particularly declared: For upon Conſideration of the Circumſtances, it is impoſſible it ſhould be at any other times; and ſo I leave it to you to judge upon the whole, whether the Defendant be perjured or no.

L. C. J. Gentlemen of the Jury, this Caſe has taken up a great deal of Time; but it is a Caſe of that moment and conſequence, that ſure no time ought

ought to be thought too long, that is employed for the discovering of the Truth, so necessary to be discovered, as the Matter now in question. For as I said at the beginning upon this Occasion, and I cannot but say it again now; I confess, I cannot without Horror and Trembling, reflect upon the many Mischiefs and Inconveniencies we have been run into, if the Testimony given this Day in this Cause against *Oates* prove true, as I cannot in the least imagine, where there should remain the least Objection against the Truth of it; I cannot, I say, but bewail, that so many innocent Persons (to the Reproach of our Nation be it spoken) have suffered Death upon this account.

God deliver me from having the least stain of *innocent Blood* imputed to me! And it is more to be lamented, when we see that Impudence, which has brought that Infamy upon our Land, continues with a brazen Face, defying all shame to this day. But by this we may be informed, how some Men's Consciences are seared, and that there are some People that do indeed live without the Fear of God in the World. For if that Man, who has assumed to himself the Habit and Character of one that should preach to others Religion, Virtue, and the Things that become true Christians, shall become such a Monster of Impiety and Impudence, in defiance of Heaven and Earth; what greater and more manifest Proof can there be of a seared Conscience?

I cannot but lament likewise the Wickedness of our Age, when I reflect upon the Testimony of that other Wretch, (indeed I cannot use Terms severe enough for him) that when he was going into another World, should persist in such gross Falsities; I mean *Bedloe*, infamous *Bedloe*; and let his Name be for ever infamous to all Mankind, that have any regard or deference for the Truth; that he should with his latest Breath dare to affirm, that every Word he had said of the *Popish Plot* was true; when it is as clear as the Sun, by the Testimony of this Day, that every Word he swore about *Ireland* was utterly false. *Good God of Heaven! What an Age have we lived in, to see Innocence suffer Punishment, and impudent Falsity reign so long!*

Gentlemen, I hope all Eyes are opened, (I wish they had been so long since;) let us lay the Burden, the Infamy and Reproach of these Things, upon them that deserve it; for we cannot but know, we are reckoned as a By-word to all our Neighbours, and shall remain Monuments of Ignominy to all succeeding Ages and Times, if we do not endeavour to discharge ourselves and our Religion, and the Justice of our Nation from these Scandals.

Gentlemen, I think I am obliged, in the first place, to take Notice of what Mr. *Sollicitor-General* has mentioned, concerning the Insolency of those Times, wherein the Faction was grown to that extravagant Height, that, in truth, a Man durst not appear, with safety of his own Life and Fortune, to testify the Truth. And, is it not a shame, that it should be remembred, what one of the Witnesses this day testifieth? That when he came to appear at the Council-Table, to attest a Matter of Fact, before this innocent Blood was spilt, (for so I must call it, if that which has been sworn this Day is true) the Rabble should be so boisterous, as to cry out, *Where is that Villain, that dares come to give Evidence against* OATES, *the* SAVIOUR *of the* NATION? Oh, horrid Blasphemy, that no less an Epithet should be given to such a profligate Wretch as *Oates*, than that which is only proper to our Blessed LORD! As though *Oates* had merited more than all Mankind; and so indeed he has, if we take it in a true Sense: He has deserved much more Punishment, than the Laws of this Land can inflict.

And I must needs say, Gentlemen, That this is an Instance, why there seems not to have been Punishment enough ordain'd in Law for Perjury, because our Law-makers did not foresee, that there could ever be such Villains, such Miscreants, as these.

We have indeed another Instance in the Law, of a Crime for which there is no adequate Punishment; and that is in the Case, where a Child kills his Father: Parricide has no peculiar Judgment assigned for it; but we are forced, because these Things have been sometimes practised, by a Construction in Law, to make that Child as a Servant to his Father, and so punish him with the Judgment of Petty-Treason: but take him immediately as he is a Child, and not as a Servant, and I say there is no particular Provision in Law to punish such an Offence: And, what is the reason of it? Because it is so unnatural, and against the Imaginations of Mankind to believe, there ever could be such a wicked Child in the World.

If that be not to be imagined, how could it be imagin'd, that there should be such horrid Villains, as should attempt the Destruction of the Government of three Kingdoms? Good Lord! What times do we live in! Surely, 'tis such an Age, as was never known from the Creation of the World to this day.

And to this must be added, what aggravates the Mischief, that all this is done under the Umbrage, Countenance, and Pretence of Law; the Proceedings of Law, the usual Methods of Justice, are made the Instruments of the most horrid Injustice. The Murder of our late blessed Sovereign, King *CHARLES* the Martyr, of ever-happy Memory, though a Crime as high in itself as the Law knows of; yet I may say, it was aggravated very much, that that unfortunate, but glorious King should be brought to the Block, by a Pretext of Law, and cut off by a colourable Method of Justice; 'tis that which makes that Murder ten times more base and infamous. So, Gentlemen, the Destruction of poor innocent Persons, by false Accusations, by the pernicious Evidence of perjured Witnesses in a Court of Justice, makes their Crime infinitely more odious, than common Murder.

Gentlemen, I cannot but speak with warmth in a Case of this nature; and I the rather speak so, because, at the time when those things were done, we all know the Nation was in a hurry, and a sort of ill-minded Men had crept in among us, who had blown us up to such an height, that nothing but what comply'd with their malicious and devilish Designs was to be believed; when the King could not get common Justice done against real Traitors; but the very Streams of Justice were all corrupted, though the Fountain (God be thanked) was preserved pure.

When the Factions (by Cabals and Intrigues) had got Sheriffs of their own Party, and laboured to get all other Officers of their own wicked Principles, then came all those Mischiefs we so long labour'd under. When those Fellows, that had so great a share in the late Rebellion, were the only fit Men to be trusted with the Government; and all the while were designing to destroy it, and to bring us into the same miserable Condition we formerly were in.

Was it ever (I speak to you, Gentlemen of the Jury, Citizens of *London*, who know its antient Constitution, and have too well experienced its late Convulsions) was it ever known, till Justice was designed to be corrupted, that there was any labouring to be Sheriffs? No; Endeavours were always used to be excused, and Fines paid to get off from that Office: And the reason is plain; for never was there a wise and wealthy Citizen, that had a mind, out of a principal Part of his Estate, to squander away so much as is necessary to defray the Charge of that Office: But it was the Design that those Rascals had upon the Government, that made them so greedy of those Places; and they thought they had now an Opportunity to effect their Design, upon these Fellows pretended Discovery: They believed, that because we were hurried into the Mischiefs of the late Times, by Pretences of *Popery*, the same Bait would be swallowed now: Therefore the Cry must be set up, *Popery was a coming in.* They concluded, if they could but make use of the same Engines, they should have the same Effect: Witness a Peer, that is now dead, one that was a main Instrument of our Confusion in the late Times, and thereby experienced in Villany, was made use of as the chief Tool in these late Contrivances.

But alas! when they found those Pretences and Projects would take no longer, then they fly to that, which was indeed the bottom of all; I mean, *The bloody Conspiracy.* When they found they could not overthrow the Government by Methods of Law, they betake themselves to downright Treason. For by this time the Eyes of the honest Citizens were opened; and they found what Interest was driving on: And it was time to have them open, when a Cause in *Guild-Hall* was always tried according to the Characters of the Client, and not the Merits of the Cause; when if a Man was blasted with the Name of a *Tory*, he was sure to lose it: But if a whining Rascal was sanctified with the Name of a *Whig*, he was sure to have it go on his side: Witness the famous Cause of Mr. *Loades* about his *Lemons*.

But when Sheriffs came to be elected in due manner, such as were fit to be trusted with the City Business; what do they, but break out into a horrid Conspiracy, to take away the Life of that blessed King, that merciful Prince, so lately deceased, to the Grief and Sorrow of all his loving and loyal Subjects? And not only so, but to rob us of his Sacred Majesty, our present most Gracious Sovereign; whom I pray GOD to preserve long to reign over us. [*To which, the Auditory gave a great Acclamation, saying,* Amen.]

Gentlemen, When these Things are thought upon, you must give me leave to observe (let others think what they please) that was the real Plot, the true Plot: For there is one thing observable, that attends this whole Affair, that every Man who suffered for the Plot, which the Witnesses truly call *Oates*'s Plot, to a Man denied it, even to the last Gasp; and took it upon their Deaths and Salvations, that they were innocent: Nay when they had not those Hopes *Bedloe* had of Life, (for I cannot believe, that he could have been so egregious a Villain, as to have attested such notorious Lyes, if he had not hoped to have recovered, and thereby increased his own Reputation) yet not a Man of the others but disowned it with their dying Breath. Now, on the other side, there was not a Man, that was concerned in the Conspiracy, of which this was to be the Blind and the Colour, had the Confidence to deny it, when they came to suffer for it. All this ought to be put in the Balance, and duly weighed.

For, Gentlemen, because it is a Matter that is not only publick here, but all the World over, we must have the Justice of the Nation vindicated, and its Dis-reputation wiped off. And having taken notice of these Things, which I could not well omit upon this Occasion, I must now put you in mind, what is necessary for you to take into your Consideration, as to the particular Case before you. And,

First, You must observe, that this Indictment against *Oates*, is for committing wilful and corrupt Perjury; which is also said to be done maliciously. And if it were false, surely it was malicious; because by his false Oath, have innocent Men been convicted, condemned, and executed.

Secondly, You are to consider, how far the Thing goes, to make it material to the Issue: For if it were upon a Nicety only, or a Catch, or any of those fine Words, that he has been pleased to make use of it were not fit to perjure him upon it. But it is certainly very material: For Time and Place are Matters substantial to discover Truth and Falshood by; as in the Case of *Susannah*, the Perjury of the *Elders*, as you may remember, was detected by those very Circumstances. But I shall shew you the Occasion of this Oath; and that will manifest it to be a material Part, in respect of the Time. For,

First, Here was a Consult held, as he testified, the 24*th* of *April*, 1678; and then he swears *Ireland* was in Town, and present at the Consult: But all that *Oates* swore would not do the Feat, because that he was but one Witness. Then comes *Bedloe*, his worthy Yoke-fellow (a Brace of such Witnesses, as the Lord deliver all Mankind from), and he assigns another Fact upon Mr. *Ireland*, in the Month of *August*, the latter end of it, or the beginning of *September*; which is material, and makes two Witnesses against *Ireland*, which *Oates* knew well enough: For he is his Arts-Master; he knows all the Tricks, and can tell the very nick that will do. And therefore, when he finds Mr. *Ireland* so positively affirming, that he was then out of Town; and if so, *Bedloe* did not swear true; then does this *Oates* come in, (and thereby makes his Testimony material to the Point then in Issue,) says he, *The first of* September, *or (at least) the second, I will swear he was in Town; for he gave me twenty Shillings.* And that is given as a Token, why he does remember it. And thus he did prop up *Bedloe*'s Testimony, against Mr. *Ireland*'s Defence. This is proved to you by Mr. *Waterhouse*, who was one of the Jury. And the same thing does the next Gentleman swear, which is Mr. *Byfield:* They do both agree in that Circumstance punctually, that he swore he had then of him twenty Shillings.

Ay, (but says he for himself, because I would remove the Objections out of the way, as they occur to me) *'tis very hard, this being now some six or seven Years ago, that I should be called to question about such a thing; when they might have had a time to disprove it before.*

Besides, Gentlemen, the Answer that has been truly given to you, concerning the Miserableness of the Times; when, the Truth of it is, there was no Justice to be had for Protestants, if we speak of the *Church-of-England Men* under that Name: For either they were Papists in Masquerade, or popishly

Popiſhly affected; or the Names of *Tory* and *Tantivy*, and I know not what, was enough to do their work for them: And no body was reckon'd of the Sober, Virtuous, Godly Party, but thoſe that were under *Aſſociations* and *Covenants*; as tho' there was no Sanctity to be found in any but thoſe who were bent to deſtroy all Virtue and Religion. I ſay, beſides that, there is another Anſwer, which I am ſorry has ſo much weight in it: Could any Man have believed that *Oates* ſhould dare ſo impudently to ſwear a Falſehood, and that in a Cauſe where Life was concern'd; and the Man hang'd upon his Teſtimony? To what purpoſe then ſhould his Relations interpoſe to diſprove *Oates*, after his Death? That would not revive him. But you find there was an Inclination that way, and I wiſh to God, with all my heart, it had taken effect: For what ſays the old Gentlewoman? As ſoon as ſhe heard what Mr. *Oates* had ſworn, which ſhe knew to be falſe, immediately ſhe diſpatch'd an Expreſs to *London*; and ſent a Petition to the King, *That either* Ireland *might have a new Trial, or his Execution might be repriev'd, till they brought up ſuch Witneſſes, as would have made it apparent, and as clear as the Light, that what this Fellow had teſtified was notoriouſly falſe.* But ſuch, ſuch, I muſt ſay, was the Misfortune of the Time we were in, that ſtopp'd the Fountain of Mercy itſelf from letting forth its wonted Streams; and even compell'd that compaſſionate Prince, rather than he would give any diſturbance to his People, to permit that Execution againſt his own Inclination; becauſe there was a Verdict, and Judgment in the Caſe. For as he was really the Fountain of Juſtice, ſo was he of Mercy too. And it is well known to thoſe that had the happineſs to be near his Perſon, how oft he expreſſed his Concern for having conſented to this Execution. And this continued with him even to his dying Day, as the buſineſs of my Lord of *Stafford* did with his Royal Father.

And, Gentlemen, I choſe to mention this Paſſage concerning his late Majeſty, for this reaſon, That when we live in ſuch tumultuous Times, when things are put ſo hard upon Princes, as to compel them to reſtrain their Mercy, where they think it due, rather than ſeem to ſtop the Current of Juſtice; this ſhould not be remember'd with any Reflection upon them, but with Infamy, to thoſe that are the Cauſes and Grounds of it: When ſuch prodigious Wretches, as *Oates* and *Bedloe*, for there appears no Evidence before you, but of thoſe two profligate Villains, who came out of Goals, and after having been guilty of Villainies almoſt of all ſorts that ever were committed, came to be ſanctified by committing more; and were therefore call'd, *The Saviours of the Nation.*

Gentlemen, the next Objection that is made againſt the Evidence for the King, is, *That they are all Papiſts; who deſign nothing but to deſtroy the Government, and ruin the Proteſtant Religion.* And this muſt be taken to be the whole Deſign of all theſe Perſons of Quality, and others, that they come to forſwear themſelves, and damn their Souls to all Eternity, on purpoſe only to deſtroy Innocent Proteſtant Mr. *Oates.* Alack-a-day! When, at the ſame time, I muſt tell you, if it were neceſſary, you have about ſeven or eight Proteſtant Witneſſes of the Church of *England* that confirm the Teſtimony of the reſt: Not that we muſt think, or ought to have any ſuch Conception among us, but that *Roman* Catholicks in point of Law are good Witneſſes, and are to be credited as much as any other Witneſſes whatſoever, unleſs there be ſome Objection made to them; which would be the ſame againſt a Proteſtant as a Papiſt: For there remains a Right in them, and they ought to have equal Credit given to their Teſtimony with thoſe of any other Perſuaſion, if a regular Objection be not ſtarted againſt them. And ſure I am, that has been always the Law; and ſhall be my Practice, while I have any thing to do with the Adminiſtration of Juſtice. Let the Sober Party, as they call themſelves, make what Reflections they pleaſe upon it, or trouble themſelves as they will about it, I value them not, nor their Opinion: Let them ſend as many Penny-Poſt Letters and Libels as they have a mind to do; two of which I received laſt Night, about yeſterday's Trial. This I am ſure of, Lying is as much the Talent and Inclination of a Preſbyterian, as ever it can be of a Papiſt: Nay, more; for it is as inſeparably incident to a Preſbyterian (and ſuch ſniveling, whining, canting Knaves) to lye, as to ſpeak. They can no more forbear Lying than they can forbear Speaking; for generally, as often as they do the one, they do the other.

Beſides, I muſt obſerve to you, with what Caution, Care, and Sobriety, both of Expreſſion and Action, all theſe Gentlemen and Women have delivered their Teſtimony, with the greateſt Tenderneſs and Care that poſſibly could be: And as well as they have given it with Caution, ſo I cannot but put it home to you, Gentlemen at the Bar, to give it its due Conſideration.

For tho' the other Juries did believe *Oates*, and not them at that time; yet that is not to be your Meaſure, becauſe you have not the ſame Reaſon to do it. Could any Perſon think, that there ſhould be ſuch Villains upon Earth, as impudently to ſwear downright Treaſon againſt their Fellow-Subjects, if there were no Truth in the Accuſation? That was the thing that guided thoſe Juries, who were all of them, no doubt, very honeſt Men; and that was it, which influenc'd the Parliament to do what they did in the matter. For it was morally impoſſible to be thought, any ſuch Wickedneſs could be ſo publickly attempted.

But, God be thanked, the Eyes of all honeſt and underſtanding Men are opened; and we ſee the fault was in our Credulity; and that theſe were Fellows ſhould not have been believed: And it concerns us, when the Truth has been ſo debauch'd, and our Credulity ſo impoſed upon, to ſhew the World our juſt Reſentment thereof.

And this I ſay to you, Gentlemen, with a purpoſe to vindicate thoſe Perſons who were concern'd as Jurors in the Trials of all thoſe Cauſes: becauſe that is the thing much harp'd upon, and aim'd at: That becauſe he was believ'd before, to diſbelieve him now would caſt a Reflection upon the Juries; whereas, if that Opinion hold, never will there be any ſuch thing as Perjury detected, ſo long as the Sun and Moon endure: For if a Verdict be obtain'd upon falſe Teſtimony, and it ſhall be enough for the Witneſs to ſay, I was believ'd at ſuch a Trial, and therefore do not you offer to proſecute me for Perjury; That would be the fineſt Doctrine that could be taught, to give a Licence to deſtroy all Truths, Juſtice, and human Society.

Therefore I leave it home upon you: Upon your Conſciences be it; for, in the preſence of the Great God of Heaven and Earth, that ſees all our Hearts, and will judge us for our inward Thoughts at the laſt Day, *Liberavi animam meam.* If you can find all theſe Perſons (in number forty-ſeven) guilty of wilful, downright, malicious, and corrupt Perjury, then you muſt acquit the Defendant.

For the Particulars of the Evidence, which abound in many material Circumſtances in point of Time and Place, I ſhall run them over as ſhort as I can, and remind you of them; not becauſe I think it extraordinary neceſſary, as tho' there were the leaſt doubt of the Fact, but for the Satisfaction of all Mankind, that are not under invincible Prejudice againſt the Truth. And I am ſure, upon yeſterday's Buſineſs, there remain'd not any doubt with any that heard it, ſave one, who I know had a great ſhare in the Deſign, that was at the bottom of it; and, I doubt, was one of thoſe Perſons that ſet this Villain on work: his Name may be conceal'd for the preſent, but a few days will diſcover it here, or in ſome other place.

Gentlemen, what Mr. *Attorney*, or Mr. *Sollicitor-General*, or any of the King's Counſel have ſaid, or what the Defendant has ſaid for himſelf, if not proved, and made plain by Evidence, is to be no Guidance at all to you, who are only to go according to the Teſtimony given to you; for that is purſuant to your Oath, which Oath is the Rule of your Enquiry.

The Witneſſes that prove, that he did ſwear ſo in both the Points in the Indictment; I need not mention, they were ſo full: They tell you he ſwore, that *Ireland* was in Town from the 8th to the 12th of *Auguſt:* but becauſe he fixed upon the 8th at firſt, there was Caution given him, *Be not ſo preciſe to a Day, conſider with yourſelf.* Then comes he to ſtab the Buſineſs to the quick, and to rivet it home: If I cannot be poſitive to the 8th, I will be poſitive between the 8th and 12th. And as to the other Point, I did obſerve before that, becauſe *Bedloe* was at a ſtand, upon *Ireland*'s denying his being in Town the latter end of *Auguſt*, or the beginning of *September*, therefore comes *Oates* up again, to fix it home; and, ſays he, I am ſure he was in Town the 1ſt or 2d of *September*, becauſe he gave me twenty Shillings. That he ſwore this, is teſtified by three Gentlemen who were Jury-men at thoſe Trials.

Now, that this is notoriouſly falſe, falſe to a tittle; and, as Mr. *Sollicitor* does obſerve, not the leaſt time left to give any ſort of countenance to what he ſwore, is thus made out to you.

Firſt, you are to take notice, that upon the 3d of *Auguſt*, being *Saturday*, it is ſworn by three or four Witneſſes, That he went out of Town; and this is not ſworn as Mr. *Oates* gave his Evidence poſitively without Circumſtances, but they give you an account how they remember it; becauſe upon the *Wedneſday* before, which was a publick Day of Note among them, and always kept as a Feſtival in memory of St. *Ignatius*, upon the laſt day of *July*, as both they and Mr. *Oates* himſelf do affirm, there went Mr. *Ireland*, Mrs. *Anne Ireland*, and their Mother out of Town to a Friend's Houſe to dinner. Mrs. *Ireland* did deſire him to ſtay there all night, as ſhe did. No, ſays he, I cannot ſtay all night, becauſe I muſt go out of Town on *Saturday*, and I muſt provide things neceſſary for my Journey: Nay, that is not all; for it goes yet further. Says his Siſter unto him, Why do you begin your Journey on a *Saturday?* That is an improper Day. Oh! ſays he, I do it, becauſe I am that Night to go to my Lord *Aſton*'s Houſe in *Hertfordſhire*; where I am to meet with Sir *John Southcoat*, and go down with them into the Country: This does the Mother ſwear, and the Siſter. And then the Maid-Servant, and the Taylor's Wife, do give you another Token, that it was *Saturday* the 3d of *Auguſt*, becauſe he had ſomething to be mended in his Clothes, and ſtaid for them; and he was to go out of Town, for he had his Boots on.

There is yet this Circumſtance further, wherein thoſe four do all agree, That as he went out of Town the 3d of *Auguſt*, ſo he did not return till the 14th of *September*; for they ſay it was the *Saturday* Fortnight before *Michaelmas*, and the ſame Day of the Week that *Michaelmas-day* was of. So that you will find, that there is a conſtant Proof, and as plain a one as any poſſibly can be in the world, as to the time of his going out and coming home; and where he was in the mean time, proved directly by a great Company of Witneſſes, except one Day. For you ſee the 3d of *Auguſt* he went to my Lord *Aſton*'s at *Standen:* Several there are that ſaw him there the 4th, and dined with him there; particularly, Sir *Edward Southcoat.* And to ſhew that it is not a thing they are poſitive in, and ſwear it roundly without Conſideration, they give you an account of the Reaſons of their Knowledge. You are to conſider alſo the Teſtimony given by my Lord *Aſton*, a Perſon of great Honour and Quality: Says he, tho' I dare venture all I am worth in the World, upon the Truth of it, that *Ireland* did go along with me all the Journey; yet, becauſe I did not take ſuch particular notice of the reſt of the time as I did of thoſe two Days, I will not take upon me to ſwear it. If Mr. *Oates* had had the fortieth part of that Caution in his Evidence, I dare ſay, you had not had the trouble of this Day's Trial.

The Fifth, you have a great many Witneſſes who give you an account that he came on *Monday* night to *St. Albans* with my Lord *Aſton*; there is Sir *Edward Southcoat*, Mr. *John Southcoat*, my Lord *Aſton*, the Coachman, and all the Servants. Sir *Edward* tells you, that *Monday* was a hot Day, and my Lord *Aſton* took him into his Coach; but he rode a horſeback all the reſt of the way, and had a fine going Horſe, which Horſe Mr. *John Southcoat* bought of him when the whole Journey was ended. They tell you likewiſe, upon the 6th and 7th Days, the very Inns they lodged at upon the Road; and particularly at *Northampton*, they lay at the *George*, which was Sir *William Farmer*'s Houſe, which was then let to an Inn-Keeper, becauſe of the Fire in that Town. And, which is moſt material of all, for Mr. *Oates*'s Satisfaction, you have for theſe times no leſs than four Witneſſes, that are Proteſtants of the Church of *England*, who give you the ſame account. There are in all no leſs in number than fourteen to this Point; and whether you will believe thoſe fourteen to be wilfully perjured, without Evidence to the contrary, is left to you; and if they do ſwear true, *Oates* that was yeſterday found perjured, muſt be convicted of Perjury again to-day: For in ſhort, the Queſtion is, Whether you will believe Perſons of Credit, that have no ſtain upon their Reputation; or *Oates*, that upon plain Evidence was found guilty of Perjury yeſterday?

When we come to *Tixhall*, we have no leſs number that teſtify where he was from day to day, and from night to night, to the 17th, and from the 17th to the 26th. You have fifteen Witneſſes more, all as direct and poſitive, as can be in the World, ſwearing where he was from time to time. It ſeems he came to *Tixhall* on *Thurſday* the 8th; there he ſtaid till *Thurſday* following, and then he went to *Holy-Well:* he lay the firſt Night at *Nantwich*; the next Night at *Holy-Well*, at the Sign of the *Star*, a notorious Inn there; he came

to

to *Cheſter* on *Thurſday*, and ſome of the Company left him there, but others came back with him to *Tixhall*; who ſay, he went away on *Saturday* Morning, which happens to be the 17th. And thus you have a full Account of him, quite from the 3d to the 17th, beyond all controverſy, plainly proved by Perſons of undoubted Credit. And if he were, where they ſay he was, from the 3d to the 17th, how could *Oates* ſwear true, that he took his leave of him here in Town, between the 8th and 12th?

Now, let us come from the 17th to the 26th, and you have no leſs than fifteen Witneſſes, four whereof are Proteſtants; which I urge not as a neceſſary Qualification to be a Witneſs, but to anſwer *Oates*'s Objection, as tho' this was a Popiſh Deſign to deſtroy him. They have given you an Account where he was from time to time, by convincing Circumſtances, which you have heard; particularly of one Day that he went to *Litchfield*; one of the Witneſſes went with him, and a Proteſtant Witneſs too, that came back with him again, and ſupp'd with him at her Father's Houſe. The Apothecary tells you, the Day that he ſaw him was a Wake-day, which is a remarkable Time in the Country. You are told of the Funeral of one Woman's Mother, that made her ſtay away from *Monday* till *Thurſday*: of another Man's Child. I mention them but ſhortly to you, becauſe I know you have taken Notes of them, and they are only uſed as Inſtances to manifeſt the Integrity of the Witneſſes, that this was not a thing contrived on purpoſe to make a Story of, but did really happen in the Order they tell it. And I muſt remember you of another Circumſtance ſome of them do ſwear, that whereas *Oates* had a mind to evade their Teſtimony by that Queſtion; whether this was the ſame *Ireland* that was tried? It was moſt certainly he; for that is made too evidently to appear, by their ſeeing him executed at *Tyburn*, I am ſorry to ſay, innocently.

From the third of *Auguſt* to the twenty-ſixth, there is not one Night but you hear where he was: And from the twenty-ſixth of *Auguſt* to the ſeventh of *September*, you hear where he was, at the Horſe-match, upon the Bowling-green, at Mr. *Heveningham*'s, Mr. *Lowe*'s, Mr. *Gerrard*'s, Mrs. *Crempton*'s, Mr. *Pendrel*'s, Mr. *Gifford*'s, and Mrs. *Harwell*'s: And from the ſeventh to the fourteenth, ſave only one Day, *viz.* the eighth, you have a particular Account too; and it does not appear by a rambling Evidence, but a faithful Account is given of all the Time, ſave that eighth Day; which ſhews the Caution of the Witneſſes. And it cannot but be eaſily preſumed, he was either at *Tixhall*, or thereabouts; becauſe he was at *Wolverhampton* the ſeventh, coming to *London* the ninth. How eaſy is it to imagine him there the eighth; and the rather, becauſe where he was the eighth, is not material to the Point in queſtion before you, but where he was the firſt and ſecond?

And, Gentlemen, if in caſe you had a mind to imagine, he was the eighth at *London*, it muſt be by a ſtrained Imagination: for you muſt take him to be at *Wolverhampton* the ſeventh, and make him ride poſt to *London* that Night, and return poſt from *London* the eighth to *Tixhall*, to be ready there early in the Morning upon the ninth, or take four Days Journey back again; or elſe you cannot give the leaſt Countenance to any other Imagination, but that he was about *Tixhall* the eighth of *September*.

Well, at *Tixhall* you have him the 9th of *September*; and from thence, you have it teſtified by all the Perſons that came along with him all the Way, that he lay one Night at *Coventry*, another at *Banbury*, a third at *Agmondeſham*: That he baited at *Uxbridge* the fourth, which was the 12th of *September*; and came to Sir *John Southcoat*'s Houſe that Night, being *Thurſday*. He ſtaid there *Thurſday* Night, and *Friday*; and upon *Saturday* the 14th of *September*, Sir *John Southcoat*'s Man went along with him to *London*, whither he rode upon the Horſe he ſold Mr. *Southcoat*: the Man ſaw him at his Lodging; and he ſays, they wondered when he came in, that he had ſtaid ſo long.

And when we return to the four Witneſſes they begun with at firſt, who make all this Teſtimony to ſtand well together; that he went away the 3d of *Auguſt*, and was never in Town till the 14th of *September*; and every Day, but the 8th of *September*, which makes nothing to the Buſineſs, is particularly ſpoke to: and he muſt be there that Day too, except you will put him upon very hard Service, to ride poſt to *London* and back again, in twenty-four Hours; for no other Reaſon, but only to commit a Treaſon, that none ever found out, but Mr. *Oates*. And, I am ſure, if he did, he took a great deal of pains, to a very little purpoſe.

Gentlemen, I have taken up much of your Time, and detained you the longer in this matter, becauſe I cannot but ſay, with grief of heart, our Nation was too long beſotted; and of innocent Blood there has been too much ſpilt, 'tis high time to have ſome account of it. 'Tis a Mercy we ought to bleſs Almighty God for, that we are prevented from ſpilling more innocent Blood! God be bleſſed, our Eyes are opened; and let us have a Care for the future, that we be not ſo ſuddenly impoſed upon by ſuch Prejudices and Jealouſies, as we have reaſon to fear ſuch Villains have too much fill'd our Heads with of late.

Gentlemen, 'tis incumbent upon you to try, according to the Evidence that has been given, Whether the Defendant be Guilty, or Not Guilty? And 'tis incumbent upon us that ſit here as Judges, to ſee the Law executed, as we will anſwer it at the Tribunal of the great Judge of Heaven and Earth; before whom we muſt appear, and receive our Trials at the Great Day. And God forbid, but we ſhould uſe our utmoſt Endeavours, to inflict the greateſt Vengeance, that the Juſtice of the Nation can permit us to inflict upon ſuch Villains as theſe are; that have contracted ſo much Miſchief and Reproach upon us, and ſo much Guilt upon themſelves.

Gentlemen, I am ſorry, I ſay, I have kept you ſo long. 'Tis a Caſe of ſuch Importance, that I could not but ſay what I have done it in. There may be other Circumſtances ariſing from the Evidence, which I may have omitted; but were very largely and fully ſpoken to by Mr. *Sollicitor*. Whatſoever has been forgotten by him, or by me, I am ſure, will be ſufficiently ſupplied by your Obſervations; for I know you to be Gentlemen of great Knowledge and Experience in Matters of this nature.

Then the Jury withdrew, to conſider of their Verdict; and, after half an Hour's Receſs, return'd to the Bar; and, anſwering to their Names, deliver'd in their Verdict, That the Defendant was Guilty of the Perjury whereof he ſtood indicted: Which being recorded, the Lord Chief Juſtice ſpoke to the Gentlemen of the Jury to this effect.

L. C. J. Look ye, Gentlemen, becauſe there has been ſome notice taken to-day, as there was yeſterday, concerning the Opinions of Judges, about Verdicts that have been given, I would ſay a Word or two to you: not that I much admire the doing of it at any time; nor would I do it now, for your ſakes; becauſe I am ſure you act according to your Conſciences; and affect not Commendation: But becauſe it may be neceſſary, for the Satisfaction of ſome People, that they ſhould know our Opinions alſo in this matter; I muſt tell you, you have given a Verdict that becomes your Honeſty, Integrity, and Loyalty. And I declare, in the preſence of Almighty God, the Searcher of Hearts, that had I been of the Jury, I muſt have given the ſame Verdict. Gentlemen, 'tis an honeſt and juſt Verdict that you have given; and, by it, you have contributed, as much as in you lies, to vindicate the Nation from the Infamy it has ſo long lain under.

Mr. Juſt. *Withins*. For my part, I think, if you had given any other Verdict, you had found againſt plain Demonſtration; the Evidence was ſo full and clear.

Mr. Juſt. *Holloway*. The Court is very well ſatisfied with the Verdict; and you have acquitted yourſelves like worthy, honeſt Gentlemen.

Mr. Juſt. *Walcot*. There is nothing can be ſaid to the Verdict, but that it is a juſt Verdict, and according to the Evidence. [*And then the Court aroſe.*]

Die Lunæ, 11 *Maii*, 1685.

THIS Day Mr. *Wallop* moved, that in regard the Court was pleas'd to give the Defendant time till *Saturday* next, to move in Arreſt of Judgment, upon the Conviction on Friday laſt; they would pleaſe to give to the ſame Day, to move in Arreſt of Judgment, upon the Conviction on *Saturday*: which the Court granted. But afterwards, upon the Motion of Mr. *Attorney-General*, they order'd, that a Note of the Exceptions to both Indictments, ſhould be ſent to the King's Counſel ſome Days before *Saturday*.

Die Sabbati, 16 *Maii*, 1685.

THIS Day being appointed for the Defendant to move what he could in Arreſt of Judgment, upon the two Convictions of Perjury; he was brought by Rule from the Priſon, to the *King's-Bench* Court.

L. C. J. Mr. *Attorney-General*, have you any thing to move?

Mr. Att. Gen. My Lord, I pray your Judgment upon *Oates*, who is convicted upon two Indictments, for two notorious Perjuries.

L. C. J. Who is Counſel for *Oates*?

Mr. Att. Gen. Mr. *Wallop* moved for him.

L. C. J. What is it that Mr. *Wallop* has to ſay?

Oates. My Lord, I deſire I may ſpeak one Word. It was *Thurſday* Night before my Attorney could make an End of examining the Records; Sir *Samuel Aſtry* knows it very well: Then I ſent the Rule to thoſe Gentlemen that were aſſign'd to be my Counſel; and the Exceptions were deliver'd in but yeſterday. I pray I may have a Day or two more, that my Counſel may be prepared to argue for me.

L. C. J. We cannot do that; we gave you beyond the ordinary Rules, in extending it 'till to-day.

Mr. Att. Gen. My Lord, he talks of examining the Records; he had Copies of them all this long Vacation.

Oates. My Lord, my Attorney will be ready to make Oath, that he finiſh'd the examining but on *Thurſday* Night.

L. C. J. We do all know they were pleaded to the laſt Term; and you have had all this Vacation to conſider of them: And we have indulg'd you beyond the ordinary Time.

Oates. My Lord, I deſire but a Day or two more.

L. C. J. No, we cannot do it; we have done more already than we ordinarily do. Perſons that are convicted, uſe to have but four Days allow'd them to move in Arreſt of Judgment; but you, inſtead of having but four Days after, had eight.

Oates. If your Lordſhip pleaſes to give me time till *Monday*.

L. C. J. I tell you, we cannot do it. If Mr. *Wallop* have any thing to ſay for you, we'll hear him?—Mr. *Wallop*. I have nothing to ſay.

Mr. Att. Gen. Here are four Exceptions deliver'd to me laſt Night, as made by Mr. *Wallop*.

L. C. J. But he ſays he has nothing to ſay. We know not whoſe theſe Exceptions are.

Oates. I do deliver in thoſe Exceptions, my Lord, pray let them be read.

L. C. J. Read them, Sir *Samuel Aſtry*.

Cl. of Cr. Reads. *Dominus Rex verſus* Oates. The Defendant's Exceptions.

I. That a Witneſs ſworn in the behalf of the King in a Proceſs of High-Treaſon, cannot be puniſh'd for Perjury by the King.

II. That it does not appear, that the Indictments of *Ireland*, &c. found in *Middleſex*, were legally tranſmitted into *London*; and conſequently, all the Proceedings thereupon were *coram non Judice*.

III. That the Perjuries aſſign'd, are in Matters foreign to the Iſſue.

IV. It is *Reſolutio Signat'* in that part of the Indictment, that mentions what the Defendant ſwore; and in the Perjury aſſign'd, 'tis *Reſolutio Signand'*; and it is no good Aſſignment of the Perjury.

Mr. Juſt. *Withins*. Theſe are doughty Exceptions indeed.

L. C. J. Mr. *Attorney*, what ſay you unto them?

Mr. Att. Gen. Truly, my Lord, I think I need not ſay much to them. The firſt Exception is a plain Miſtake of the Indictment: For had Mr. *Oates* been indicted upon the Statute, it had been ſomething; but at the Common Law, certainly he may be proſecuted by the King, tho' he was Witneſs for the King before. As to the ſecond, that it does not appear *Ireland*'s Indictment was well tranſmitted from *Middleſex* to *London*; that ſure is well enough: For after it is recited, that they were ſo and ſo indicted, it does ſet forth, that the Trials were had upon Records there depending before the Commiſſioners of *Oyer* and *Terminer*, and Goal-delivery; and it ſhall be taken, that they were well brought before them. As to the third Exception, that the Perjuries aſſign'd are foreign to the matter in Iſſue, that is not ſo: For it is apparent, one of the Indictments is in the expreſs Point of the great Treaſon charg'd againſt them, that is, the Conſult of the 24th of *April*. And as to the ſecond Indictment it appear'd upon the Evidence, that there was a treaſonable Meeting ſworn in *Auguſt*; and he ſwore *Ireland* was here in Town in the beginnig of *Auguſt*, and in the beginning of *September*.

And

And then for the fourth matter, that he ſwore he ſaw them ſign it; and the Perjury aſſigned is, that he did not carry it to be ſigned; that receives a plain Anſwer: For we alledge, he falſely and corruptly ſwore that he was preſent, and that he carried the Reſolution to be ſign'd, and he ſaw them ſign the Reſolution. Now, in theſe two things we have laid the Perjury; 1. We ſay he was not there: And, 2. He carried no ſuch Reſolution to be ſign'd. Indeed, we do not ſay that he did not ſee it ſign'd, nor we need not; for if he were not there, nor did carry it, he could not ſee them ſign it. There is nothing in the Exceptions, my Lord; and therefore, I pray your Judgment.

L. C. J. Is there any body of Counſel for Mr. *Oates*, that will ſay any thing to theſe Exceptions?

Oates. I pray, my Lord, that I may have liberty but till *Monday*, for my Counſel to prepare.

L. C. J. No, we cannot do it: Indeed, if there had been any colour, or weight in the Exceptions, it might have been ſomething; tho' we have indulg'd in this Caſe already, more than we uſed to do in Caſes of this Nature; for it is known to every body, that knows any thing of the Courſe and Practice of the Court, that after Conviction, no more than four Days are allow'd to move in Arreſt of Judgment. And being the Practice of the Court, it is the Law of the Court; and I am ſure, as little Favour ought to be ſhewn in a Caſe of Perjury, as in any Caſe whatſoever: But yet, however, becauſe he ſhould not think that the Extremity of the Law was aimed at by the Court in this Caſe, and he hinder'd in his legal Defence, the Court did indulge him more time than is uſually granted in ſuch Caſes Now, as for the Exceptions, certainly they are very frivolous.

For the *Firſt*, It would be admirable Doctrine indeed, in caſe it ſhould obtain, that if a Man be a Witneſs in any Caſe for the King, and forſwear himſelf, he ſhould not be proſecuted for Perjury at the King's Suit: For we know that no Man can be proſecuted for his Life, (except it be in Caſes of Appeal) but at the Suit of the King; and to be ſure, all Proſecutions for Treaſon muſt be at his Suit. If then Witneſſes come and forſwear themſelves, to take away Men's Lives, and they ſhould not be called in queſtion for it, criminally, by the King; that were a fine Way to ſanctify the greateſt Villainy, and make the Proceſs of Law to become an Inſtrument of the moſt infamous Cruelty in the World. I preſume, no Gentleman at the Bar would think that an Exception fit to put his Hand to.

Then as to the *Second*, That the Perjury is not aſſigned in Points material to the Iſſue, that is plainly otherwiſe; for the time muſt needs be very material, becauſe it was impoſſible that Mr. *Ireland* could be guilty of the Treaſon ſworn againſt him, at his Chamber in *Ruſſel-ſtreet*, between the 8th and 12th of *Auguſt*, if he were not in Town between the 8th and 12th of *Auguſt:* Nor could he be privy to the Treaſon ſworn by *Bedloe* the latter end of *Auguſt*, or the beginning of *September*, in *Harcourt*'s Chamber, if he were out of Town from the 3d of *Auguſt* till the 14th of *September*; and therefore both theſe Perjuries were in the very Points in Iſſue.

And then for the 24th of *April*, which is the main Perjury of all; it is not laid in this Indictment, that there was no Conſult of the Jeſuits upon that Day: nor is there any notice taken, that there was no Conſult at the *White-Horſe* Tavern; but it ſays only, that *Oates* did ſwear, there was a Conſult there, and that he was preſent at it; and that he ſaw the Reſolution written down by *Mico*, if I do not miſremember the Name: And that upon the 24th of *April*, he went with it from Chamber to Chamber, to have them ſign it. And then comes the Indictment, and aſſigns the Perjury, *Ubi revera* he was not at the *White-Horſe* Tavern that Day; and I think it is pretty plain he was not, for he was then at *St. Omers*.

Then admitting all that Matter about the ſigning of the Reſolution to be out of Doors, a plain Perjury is aſſign'd and prov'd. For it was moſt proper for them to lay it as they did; and ſo it was in the other Point too; he ſwore he carried the Reſolution from Chamber to Chamber, and ſaw it ſigned. Now, ſay they, he did not carry it from Chamber to Chamber, to be ſigned; and if ſo, then he could not ſee it ſigned; and it will all be well enough ſure. And if any one part of the Oath he ſwore proves falſe, that is ſufficient to maintain this Verdict; and 'tis notoriouſly plain, it was falſe throughout.

And of this Matter he now ſtands convicted, upon as full and plain an Evidence as ever was given in any Caſe in the World; and I am ſorry to think that any Man, who is guilty of ſuch an Offence, ſhould continue ſo obſtinate and hardened in Villainy as he appears to be.

But I think it not amiſs for me to ſay ſomething upon this occaſion, for the Satisfaction of ſome that hear me; and for an Example for the future. The Crime whereof this Man ſtands convicted is certainly a very heinous one, attended with ſuch diſmal Conſequences that enſued upon it, that I think no Man can have a true Chriſtian Spirit in him, but he muſt begin to melt with the Conſideration of the great Miſchiefs his Perjury has brought upon himſelf and us: It has brought the Guilt of innocent Blood upon many; to be ſure it hath upon his own Head, and I pray God deliver all Men from having any hand in innocent Blood.

And as the Crime is great, ſo it is to be known, that a proportionable Puniſhment of that Crime can ſcarce by our Law, as it now ſtands, be inflicted upon him. But that you may ſee we have conſidered how to puniſh it, as ſuch a Crime does deſerve; we have conſulted with all the Judges of *England*, that if the Law would allow it, he might have ſuch a Judgment for this heinous Offence, as might be proper to terrify all others from committing the like again. For Puniſhment is not intended only for the ſake of the Offender, to reward him according to his Deſerts; but it has a Proſpect alſo of Example and Terror to all others, that they ſhould take care how they offend in any ſuch manner, and that is as conſiderable a Part of the End of the Law as any other.

Gentlemen, it is known, that by the old Laws of *England* Perjury was puniſhed with Death; it grew a little more moderate afterwards, not to make the Crime the leſs, but becauſe of the Danger there might be of Malice of ſome revengeful Perſons, by endeavouring by Perjury to convict others of Perjury. But the next Step was cutting out of the Tongue, to ſhew that the Law in all Ages had an Abhorrency of falſe Oaths, and puniſhed that impious Crime of Perjury with the moſt terrible Puniſhments.

Since that time our Anceſtors have yet been more moderate, and have not extended the Judgment to Life and Member; but by the unanimous Opinion of all the Judges of *England*, whom we purpoſely conſulted with upon this Occaſion, it is conceived, that by the Law, Crimes of this nature are left to be puniſhed according to the Diſcretion of this Court, ſo far as that the Judgment extend not to Life or Member.

And I tell you this, Gentlemen, the rather, becauſe I obſerve our Law-Books are more ſilent here, in regard the Judgments for theſe Offences are not ſo ſolemnly and particularly entered up, as they are in Caſes Capital: But they are left more diſcretionary; becauſe that Crimes of this Nature may be attended with particular Circumſtances either to aggravate, or leſſen the Puuiſhment: And therefore the Puniſhment might be diſtributed accordingly.

And for that reaſon, Gentlemen, it is well known to us all, that that was the occaſion of taking away the Court of *Star-Chamber*, as the Preamble of the Act for taking it away does manifeſt: That inaſmuch as the Authority, for the Correction of all Offences whatſoever, was by the common Law of this Land originally fixed in the Court of *King's-Bench*; and the Proceeding by Information in the *Star-Chamber*, when it might be by Proceſs in this Court, was look'd upon as a double Way of Vexation; therefore that Court is aboliſhed, and the Authority of the *King's-Bench* Court left entire. And it is notoriouſly known, how Puniſhments, of all ſorts and kinds, were inflicted by the Court of *Star-Chamber* for Perjury, and ſuch like Offences, while that Court was up; and ſince that time, in *Fox*'s Caſe and others that you have heard of, it has been according to the Diſcretion of this Court, puniſhed, as ſeverely as this Court thought fit, ſo as the Sentence did not extend to Life or Member.

Now I thought it proper for me, not only for the ſake of the Caſe now before us, but alſo for your Learning ſake, to tell you, this was the Reſolution of all the Judges of *England*, upon Conſideration of the Precedents, and of all the Rules of Law; which have been fully debated, and conſidered of: And this, I declare, is their unanimous Opinion.

If then this be ſo, and it is left to the Diſcretion of the Court to inflict ſuch Puniſhment as they think fit; far be it from this Court at any time, as on the one ſide to inflict Puniſhment heavier than the Crimes deſerve, (no, we would rather uſe Commiſeration, than extraordinary and exorbitant Severity;) ſo, on the other ſide, to let go Crimes ſo notorious and heinous as theſe, without the ſevereſt Mark that can, by Law, be put upon them. When a Perſon ſhall be convicted of ſuch a foul and malicious Perjury as the Defendant here is, I think it is impoſſible for this Court, as the Law now ſtands, to put a Puniſhment upon him any way proportionable to the Offence, that has drawn after it ſo many horrid and dreadful Conſequences: We do therefore think fit to inflict an exemplary Puniſhment upon this villainous perjur'd Wretch, to terrify others for the future; which is not my part to pronounce: But what it is, my Brother will tell you.

Mr. Att. Gen. My Lord, you will be pleaſed to remember there are two Judgments.

L. C. J. There are ſo, we know it very well, Mr. *Attorney*.

Mr. Att. Gen. That which was tried firſt, was about the Conſult about the 24th of *April*; we deſire that ſome particular Mark may be ſet upon that Day.

Then the Judges conſulted a little together, and Mr. Juſtice Withins *pronounced the Sentence thus:*

Mr. Juſt. *Withins. Titus Oates*, you are convicted upon two Indictments for Perjury; I ſay, for Perjury: I muſt repeat the Word twice, becauſe you are doubly convicted; one of the greateſt Offences that our Law has cognizance of; 'tis ſo in its own Nature: But your Perjury has all the Aggravations that can be thought of to heighten it. If a Man kills another with his Sword, and there be forethought Malice in the Caſe, he is to be hang'd for it: But when a Man ſhall draw innocent Blood upon himſelf by a malicious, premeditated, falſe Oath, there is not only Blood in the Caſe, but likewiſe Perjury, corrupt, malicious Perjury: I know not how I can ſay, but that the Law is defective that ſuch a one is not to be hang'd. For, if we conſider thoſe dreadful Effects which have followed upon your Perjury, we muſt conclude our Law defective; they are ſuch, as no Chriſtian's Heart can think of, without bleeding for that innocent Blood which was ſhed by your Oath; and every knowing Man believes, and every honeſt Man grieves for. God be thanked, our Eyes are now opened; and indeed we muſt have been incurably blind, if they had not been opened, firſt by the Contradictions, Improbabilities, and Impoſſibilities in your own Teſtimony; but likewiſe by the poſitive, plain, direct, and full Proof of forty-ſeven Witneſſes to one particular Point; againſt whom you had not one Word to object, but they were Papiſts and *Roman* Catholicks; which is no Objection at all: tho', at the ſame time, it did appear, that nine or ten of them were Proteſtants of the Church of *England*. That was all you had to ſay; you had not one Word to juſtify yourſelf from that great and heinous Perjury you were accuſed of. I hope, I have not been thought a Man of Ill-nature; and, I confeſs, nothing has been ſo great a Regret to me in my Place and Station, as to give Judgment, and pronounce the Sentence of Law againſt my Fellow-Subjects, my Fellow-Creatures: But as to you, Mr. *Oates*, I cannot ſay, my Fellow-Chriſtian. Yet, in this Caſe, when I conſider your Offence, and the diſmal Effects that have follow'd upon it, I cannot ſay, I have any Remorſe in giving Judgment upon you. And therefore having told you my Thoughts ſhortly about your Crime, and how readily I pronounce your Sentence; I ſhall now declare the Judgment of the Court upon you. And it is this:

First, *The* Court *does order for a Fine, That you pay a* Thouſand Marks *upon each Indictment.*

Secondly, *That you be ſtript of all your Canonical Habits.*

Thirdly, *The* Court *does award, That you ſtand upon the* Pillory, *and in the* Pillory, *here before* Weſtminſter-Hall *Gate, upon* Monday *next, for an Hour's Time, between the Hours of Ten and Twelve; with a Paper over your Head (which you muſt firſt walk with round about to all the* Courts *in* Weſtminſter-Hall) *declaring your Crime.* And that is upon the firſt Indictment.

Fourthly, (On the ſecond Indictment) *Upon* Tueſday, *you ſhall ſtand upon, and in the* Pillory, *at the* Royal Exchange *in* London, *for the ſpace of an Hour, between the Hours of Twelve and Two; with the ſame Inſcription.*

You

You shall upon the next Wednesday *be whipp'd from* Aldgate *to* Newgate.

Upon Friday, *you shall be whipp'd from* Newgate *to* Tyburn, *by the Hands of the Common Hangman.*

But, Mr. *Oates*, we cannot but remember, there were several particular Times you swore false about: And therefore, as annual Commemorations, that it may be known to all People as long as you live, we have taken special care of you for an annual Punishment.

Upon the 24th of April *every Year, as long as you live, you are to stand upon the* Pillory, *and in the* Pillory, *at* Tyburn, *just opposite to the Gallows, for the space of an Hour, between the Hours of Ten and Twelve.*

You are to stand upon, and in the Pillory, *here at* Westminster-Hall *Gate, every 9th of* August, *in every Year, so long as you live.* And that it may be known what we mean by it, 'tis to remember, what he swore about Mr. *Ireland*'s being in Town between the 8th and 12th of *August.*

You are to stand upon, and in the Pillory, *at* Charing-Cross, *on the 10th of* August, *every Year, during your Life, for an Hour, between Ten and Twelve.*

The like over-against the Temple *Gate, upon the 11th.*

And upon the second of September, *(which is another notorious Time, which you cannot but be remember'd of) you are to stand upon, and in the* Pillory, *for the space of one Hour, between Twelve and Two, at the* Royal-Exchange: *And all this you are to do every Year, during your Life; and to be committed close Prisoner, as long as you live.*

This I pronounce to be the Judgment of the Court upon you, for your Offences. And I must tell you plainly, if it had been in my power to have carried it further, I should not have been unwilling to have given Judgment of Death upon you; for, I am sure, you deserve it.

L. C. J. Mr. *Attorney*, we will take care, that the Clerk shall distinguish the Judgments in the Entries. [*Then the Prisoner was taken away.*

This Sentence was afterwards executed with great Severity; but immediately after the Revolution, the House of Commons came to this Vote.

Tuesday the 11th of *June*, 1689.

Resolv'd, That the Prosecution of *Titus Oates*, upon two Indictments for *Perjury* in the Court of *King's-Bench*, was a design to stifle the *Popish Plot*, and that the Verdicts given thereupon were *corrupt*; and the Judgments given thereupon were *cruel* and *illegal.*

There was an Attempt to get this Judgment reversed, but still continuing his Disability as a Witness; but this Attempt did not succeed, only the House of Lords addressed the King to grant him a Pardon, which was accordingly done. See State Trials, Vol. VIII. Pag. 455. and Vol. VII. Pag. 476.

CXXXV. *The Trial of the Lady* Alice Lisle *, *at* Winton, *for* High-Treason, August 27, 1685. 1 Jac. II.

Cl. of Ar. ALICE *Lisle*, hold up thy Hand. [*Which she did.*] Thou standest here indicted by the Name of *Alice Lisle*, of the Parish of *Ellingham*, in the County of *Southampton*, Widow; for that thou, as a false Traitor against the most illustrious and most excellent Prince, *James* the Second, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, thy supreme and natural Lord, the Fear of God in thy Heart not having, nor weighing the Duty of thy Allegiance; but being moved and seduced by the Instigation of the Devil, the Love and true, due and natural Obedience, which a true and faithful Subject of our said Lord the King, towards him our said Lord the King, should, and of right ought to bear, wholly withdrawing, and with all thy Might intending the Peace and common Tranquillity of this Kingdom of *England* to disturb, and War and Rebellion against our said Lord the King, within this Kingdom of *England* to stir up and move, and the Government of our said Lord the King, within this Kingdom of *England* to subvert, and our said Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of this his Kingdom of *England* to depose, cast down, and deprive, and our said Sovereign Lord the King to Death and final Destruction to bring and put, the 28th Day of *July*, in the first Year of the Reign of our said Sovereign Lord *James* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, &c. at the Parish of *Ellingham* aforesaid, in the County aforesaid, well knowing one *John Hicks*, of *Keinsham*, in the County of *Somerset*, Clerk, to be a false Traitor, and as a false Traitor traitorously to have conspired and imagined the Death and Destruction of our said Lord the King, and War, Rebellion and Insurrection against our said Lord the King, within this Kingdom of *England* traitorously to have levied and raised: Thou the said *Alice Lisle* afterwards, to wit, the same 28th Day of *July*, in the first Year of the Reign of our said Sovereign Lord the King that now is, at the Parish of *Ellingham* aforesaid, in the County aforesaid, the said *John Hicks* in thy Dwelling-House, situate at the Parish aforesaid, in the County aforesaid, secretly, wickedly and traitorously didst entertain, conceal, comfort, uphold and maintain; and that thou the said *Alice Lisle* then and there, for the comforting, upholding and maintaining of the aforesaid *John Hicks*, Meat and Drink unto the said *John Hicks* then and there maliciously and traitorously didst give and deliver, and cause to be given and delivered, against the Duty of thy Allegiance, against the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. How sayest thou, *Alice Lisle*, art thou Guilty of the High-Treason contained in this Indictment, or not Guilty?

Lisle. Not Guilty.

Cl. of Ar. Culprit, by whom wilt thou be tried?

Lisle. By God and my Country.

Cl. of Ar. God send thee a good Deliverance.

Then Proclamation was made for the Jurors impanell'd to try the Issue between our Sovereign Lord the King, and the Prisoner at the Bar, to appear. And the Prisoner desiring, by reason of her Age and Infirmities (being thick of hearing) some Friends of her's might be allow'd to stand by her, and inform her of what pass'd in the Court; one Matthew Brown *was named, and allow'd of by the Court to give her all Assistance that he could in that matter. Then the Names of the Jurors were call'd over, and the Appearance recorded: And it being a Cause of great Expectation and Moment, the* Lord Chief Justice *order'd the Sheriff to take care, that a very substantial Jury should be returned, of the best Quality in the County.*

Then Proclamation for Information and Evidence was made in usual manner, and the Prisoner was bid to look to her Challenges, and the Jury was sworn in this Order.

Sworn.	Challenged.
Gabriel Whistler, Esq;	*Robert Barton*,
Henry Dawley, Esq;	*Godson Penton*,
Francis Morley, Esq;	*William Taylor*,
Francis Pawlett, Esq;	*Thomas Wavell*,
Richard Godfrey, Esq;	*Anthony Yalden*,
Thomas Dowse, Esq;	
Dutton Gifford, Esq;	Sworn.
	John Cager.
	Challenged.
	Robert Forder,
	Thomas Lloyd,
	Thomas ———
	Philip Rudsby.
	Sworn.
	Matthew Webber.
	Challenged.
	George Prince,
	Stephen Steele,
	Thomas Merret.
	Sworn.
	John Feilder.

So the Twelve Sworn were these:

Gabriel Whistler,	Jur'	*Dutton Gifford*;
Henry Dawley,		*John Cager*,
Francis Morley,		*Thomas Crop*;
Francis Powlett,		*Richard Suatt*,
Richard Godfrey,		*Matthew Webber*;
Thomas Dowse,		*John Feilder.*

Cl. of Ar. Alice Lisle, hold up thy Hand: You Gentlemen of the Jury that are sworn, look upon the Prisoner and hearken to her Charge: She stands indicted by the Name of *Alice Lisle*, &c. Upon this Indictment she hath been arraigned, and upon that Arraignment she has pleaded thereunto, Not Guilty; and for her Trial has put herself upon God and the Country, which Country you are: Your Charge is to enquire, whether she be Guilty of the High-Treason whereof she is indicted in manner and form as she stands indicted, or Not Guilty: If you find her Guilty, you are to enquire what Goods or Chattels, Lands or Tenements she had at the time of the High-Treason committed, or at any time since: If you find her not Guilty, you are to enquire whether she did fly for it; if you find that she did fly for it, you are to enquire what Goods or Chattels she had at the time of the Flight, as if you had found her Guilty. If you find her not Guilty, nor that she did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. *Mundy*. May it please your Lordship, and you Gentlemen that are sworn, This is an Indictment of High-Treason against *Alice Lisle*, the Prisoner at the Bar; and the Indictment sets forth, that she, as a false Traitor against our Sovereign Lord King *James* the Second, her supreme and natural Lord, not having the Fear of God in her Heart, nor regarding the Duty of her Allegiance, but being moved and seduced by the Instigation of the Devil, and withdrawing the Love and true Obedience which she owed to him as a Sovereign, and intending, as well as in her lay, to disturb the Peace of the Kingdom, and to depose the King and put him to death, the 28th day of *July*, in the first Year of this King, well knowing one *John Hicks* †, late of *Keinsham* in the County of *Somerset*, Clerk, to be a false Traitor, and to have raised War and Rebellion against the King, she did then at *Ellingham* in this County, in her Dwelling-House traitorously entertain, conceal, and comfort the said *John Hicks*, and for his maintenance and comfort then gave him Meat and Drink. This is laid to be against the Duty of her Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided: To this she has pleaded Not Guilty; if we prove this Fact, you must find her Guilty.

Mr. *Pollexfen*. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the King. The Prisoner that stands now at the Bar, *Alice Lisle*, is the Widow of one *Lisle*, who was in his Lifetime sufficiently known: The Person mentioned in the Indictment to be entertained and concealed by her, *John Hicks*, is a Conventicle-Preacher, and one, that for bringing the traitorous Purposes intended in this late horrid Rebellion to effect, was one of the greatest and most active Instruments; for he was personally in this Rebellion, and did persuade and exhort some loyal Persons, that happened to have the Misfortune of being taken Prisoners by that rebellious Crew, to quit their Duty and Allegiance to the King, their Sovereign Lord, and become Partakers with them and the rest of his traitorous Accomplices, in taking Arms under their false pretended Prince. This, my Lord, we shall prove to you by plain, evident, and undeniable Testimony of those very Persons whom this Seducer thus applied himself to. Gentlemen, after it pleased God, by his Blessing on the victorious Arms of the King, that the Rebels were defeated, their pretended Prince

* *Burn.* Hist. of his Own Times, *Vol.* I. *p.* 649. *She was the Widow of* John Lisle, *who was Lord President of the High Court of Justice in the time of* Oliver Cromwell, *one of the Lords Commissioners for the Custody of the* Great Seal, *and had been one of King* Charles *the* First's *Judges; but his Lady was very averse to it. He was basely murdered at* Lausanne *some Years before, as he was going to Church, by three* Irish *Assassins, who fled immediately into* France.

† This *Hicks* was a Dissenting Minister, and hanged afterwards at *Glassenbury.*

and Head, with ſome of the Chief of his Accomplices, were taken Priſoners, and that in a place near the Houſe where the Priſoner lived, when all the Country was full of hurry in purſuit after thoſe wicked Rebels, thus, by God's Bleſſing and Providence, diſſipated, and forc'd, like Vagabonds, to ſkulk up and down: then does this *Hicks*, having got from the Battle as far as *Warminſter* in the next County, ſend a Meſſenger, one *Dunne*, to the Priſoner's Houſe, to deſire her and requeſt her, that ſhe would receive and harbour him and his Friend (who that was, will appear by and by). Mrs *Liſle* returns an Anſwer by the Meſſenger, that ſhe would receive him, but does withal give particular Direction, that the time when they did come ſhould be late in the Evening... Accordingly he comes in the beginning of the Night, at 10 of the Clock, booted and ſpurred, and brings with him another Arch-Rebel, one *Nelthorp*, that ſtands outlaw'd for a moſt black and horrid Treaſon. When they come to the Priſoner's Houſe, they turn their Horſes looſe at the Gate; for the Danger was ſo great, and their Apprehenſions of being taken ſo urgent upon them to conceal and ſhift for themſelves, that they thought it convenient to let their Horſes go where they would. When they came there, the Meſſenger, as we ſhall prove by himſelf, was convey'd away to a Chamber; but Mrs. *Liſle* cauſes Meat and Drink to be ſet before Mr. *Hicks* and *Nelthorp*, and they ſupped with her, and afterwards they were lodg'd by her particular Order and Direction. The next Morning Colonel *Penruddock*, who had ſome intimation, in his Search after the Rebels, that ſome Perſons lay conceal'd in Mrs. *Liſle*'s Houſe, comes thither, and tells her, after he had beſet the Houſe, *Madam, you have Rebels in your Houſe, I come to ſeize them, pray deliver them up.* She denied that ſhe had any in her Houſe; but upon ſearch *Hicks*, and *Nelthorp*, and that other Fellow, the Meſſenger, were all found there, and ſhe thereupon ſecured with them. The Method wherein we ſhall give our Evidence, will be this; we ſhall firſt begin with this piece of Evidence, that we ſhall prove, that *Hicks* was actually in the Army, and in the Rebellion; and then we ſhall prove the ſeveral ſubſequent Facts as have been opened. We deſire Mr. *Pope*, Mr. *Fitzherbert*, and Mr. *Taylor* may be ſworn.

Liſle. My Lord, as for what is ſaid concerning the Rebellion, I can aſſure you, I abhorr'd that Rebellion as much as any Woman in the world——

Lord *Jefferies.* *L. C. J.* Look you, Mrs. *Liſle*, becauſe we muſt obſerve the common and uſual Methods of Trial in your Caſe, as well as others, I muſt interupt you now: You ſhall be fully heard when it comes to your turn to make your Defence, but any thing you ſay now beforehand is altogether irregular and improper. You, it may be, are ignorant of the Forms of Law, therefore I would inform you: You are firſt to hear what your Accuſation is; you ſhall aſk any Queſtions of the Witneſſes that you will, after the King's Counſel have examin'd them, as they go along; and when all their Teſtimony is delivered, you ſhall be heard to make your own Defence, and have full ſcope and Liberty to inlarge upon it as long as you can: it is a buſineſs that concerns you in point of Life and Death; all that you have or can value in the World lies at ſtake, and God forbid that you ſhould be hinder'd, either in time or any thing elſe, whereby you may defend yourſelf; but at preſent it is not your turn to ſpeak, for the Forms of Law require your Accuſers firſt to be heard; and it is abſolutely requiſite, that the uſual Forms and Methods of Law be inviolably obſerv'd, and be ſure it does the Priſoner no injury that the Law is kept ſo ſtrictly to; and we have that Charity, as well as Juſtice, that it becomes, and is not below all Courts to have for Perſons in your Condition; and we are obliged to take care, that you ſuffer no Detriment or Injury by any illegal or irregular Proceedings. For tho' we ſit here as Judges over you by Authority from the King, yet we are accountable, not only to him, but to the King of Kings, the great Judge of Heaven and Earth; and therefore are obliged, both by our Oaths, and upon our Conſciences, to do you Juſtice, and by the Grace of God we ſhall do it, you may depend upon it. And as to what you ſay concerning yourſelf, I pray God with all my heart you may be innocent. Pray call your Witneſſes.

Mr. *Pollexfen.* Swear Mr. *Pope*, Mr. *Fitzherbert*, and Mr. *Taylor*.

[*Which was done.*

L. C. J. Who do you begin with?

Mr. *Pollexfen.* Mr. *Pope*, pray will you tell my Lord and the Jury, what you know concerning this *Hicks*? Pray tell your whole Knowledge.

Mr. *Pope.* My Lord, I had the misfortune to be taken Priſoner by *Monmouth*'s Army, going about ſome Buſineſs of my own; and after I had been taken ſome few days, we happened to be brought to *Keinſham*, and we were put into Sir *Thomas Bridges*'s Stables, and kept under a Guard there. Whilſt we were there, I did ſee that Gentleman that goes by the Name of Mr. *Hicks*, who is now in *Saliſbury* Goal, and there I ſaw him yeſterday; he came and aſked for the Priſoners, which were about four or five in number, and he aſked them, how they did? They made him little reply. Then he deſired to know how we were dealt with, whether he were kindly uſed, or no? I replied, no, for we had had but a piece of Bread theſe two Days. He made me anſwer, that he was ſorry for that, for it was otherwiſe intended. And there was with him another Gentleman that was called the King's Chaplain, that is, the Duke of *Monmouth*'s; and afterwards he pretended he would do us a Kindneſs in ſpeaking to the King (as he called him) for us. He talked with us ſome little time, and by and by he began to aſk us, what was the reaſon that we were there? We told him we were taken Priſoners; upon which, ſaith he, this King (meaning, as I ſuppoſe, the late Duke of *Monmouth*) is a good King and a Proteſtant; and a great deal to that purpoſe, with ſome reflecting Words on the Government, and upon the Perſon of the King: and he told us, he wondered what we had to ſay for ourſelves, being Proteſtants, that we did what we did in ſerving a Popiſh Prince, and not obeying a Proteſtant one. This is the Subſtance of what I have to ſay upon this matter.

L. C J. Tho' you were pleaſed to phraſe it, Sir, in the beginning of your Teſtimony, a Misfortune that you were taken Priſoner by the Rebels; yet, I ſuppoſe, you could not be without the Conſolation of a good Conſcience, that you ſuffered in the way of doing your Duty.

Mr. *Pope.* My Lord, I am very well ſatisfied I did ſuffer in a good Cauſe.

L. C. J. There is one piece of happineſs in it; that by that means you are able to give this Teſtimony this day, and do the King this piece of Service. But pray, Sir, let me aſk you this Queſtion: Are you ſure the Man you ſaw yeſterday at *Saliſbury* is the ſame Man that you ſpoke with at *Keinſham*, that goes by the Name of *Hicks?*

Mr. *Pope.* Yes, my Lord; and when I was there yeſterday with him, I aſked him, whether he knew me; and told him, ſaid I, you may well remember you ſaw me at *Keinſham*. Saith he, I do not remember that ever I ſaw your Face before. Said I, you remember Sir *Thomas Bridge*'s Stables there? Said he, I remember I did ſee ſome Priſoners. Said I, was not it there you ſaw me, and had ſuch a Diſcourſe with me? He ſeemed to deny it, but I told him, a Man of your Coat ſhould not tell Untruths, you cannot but remember you ſaw me there. Saith he, I will recollect my Memory if I can; and he afterwards ſent to the *George* in *Saliſbury* for me, and then he told me, he did recollect that he ſaw and talked with ſuch a Perſon there.

Mr. *Rumſey.* Sir, I would aſk you this one Queſtion; did you ſee him in the Army about the time of the Fight?

Mr. *Pope.* I think I ſaw him about a day or two before.

L. C. J. Had he any Weapon on?—Mr. *Pope.* I think not, my Lord.

Mr. *Pollexfen.* Our next Witneſs is Mr. *Fitzherbert*. Pray, Sir, will you give an account to my Lord and the Jury, what you know of this *Hicks?*

Mr. *Fitzherbert.* My Lord, during the time that I was a Priſoner with this Gentleman at *Keinſham*, the 25th of *June*, I ſaw this Man, *John Hicks*, who held a Diſcourſe with Mr. *Pope* near an Hour's time, diſparaging the Government and his Majeſty, and extolling the Duke of *Monmouth*, what a brave Prince, and how good a Proteſtant he was.

L. C. J. Then he was among them, was he?

Mr. *Fitzherbert.* Yes, my Lord, he was, and I ſaw him yeſterday at *Saliſbury*.

L. C. J. Is that the ſame Man that you ſaw in *Monmouth*'s Army?

Mr. *Fitzherbert.* Yes, he owns himſelf to be the ſame Man.

Mr. *Pollexfen.* How often did you ſee him there beſides that time when he diſcourſed with Mr. *Pope?*

Mr. *Fitzherbert.* I ſaw him ſometimes out of the Town, but I never diſcourſed him.

L. C. J. Did you ſee him there before or after that Diſcourſe?

Mr. *Fitzherbert.* It was after.

L. C. J. Would the Priſoner aſk this Witneſs, or the other, any Queſtions?——*Liſle.* No, my Lord.

Mr. *Pollexfen.* Then, Mr. *Taylor*, what ſay you to the matter?

Mr. *Taylor.* My Lord, I ſaw him at the ſame time that theſe Gentlemen ſpeak of at Sir *Thomas Bridge*'s, at *Keinſham*.

Mr. *Pollexfen.* Were you a Priſoner there, Sir?

Mr. *Taylor.* Yes, I was.

Mr. *Pollexfen.* What Place was it you ſaw him in?

Mr. *Taylor.* It was in the Stables the firſt time that I ſaw him.

L. C. J. What Diſcourſe had you with him? What did he ſay to you?

Mr. *Taylor.* He ſaid, he wonder'd at us, that we ſhould take up Arms againſt ſo good a Prince, and a Proteſtant, as the Duke of *Monmouth*, and againſt the Proteſtant Religion, and hold up with Popery: Saith he, *York* is but a Papiſt; and a great many ſuch Words.

L. C. J. Did you ſee him afterwards?

Mr. *Taylor.* Yes, my Lord; but I cannot tell particularly the Time and Place; up and down the Army.

L. C. J. Did you ſee him at *Saliſbury.*---Mr. *Taylor.* Yes.

L. C. J. Is that the ſame Man?——Mr. *Taylor.* Yes, it is.

Mr. *Pollexfen.* Next, my Lord, we come to prove the Meſſage and Correſpondence between this ſame *Hicks*, and the Priſoner Mrs. *Liſle*.

Mr. *Jennings.* Swear Mr. *James Dunne*. [*Which was done.*

Mr. *Pollexfen.* If your Lordſhip pleaſe to obſerve, the Times will fall out to be very material in this Caſe: The Battle at *King*'s-*Edgmore* was the 6th of *July*; three or four days after was the taking of *Monmouth*, and my Lord *Grey* at *Ringwood*; upon the 26th of *July*, ten or twelve Days after the taking of *Monmouth*, was this Meſſage ſent by *Dunne* to Mrs. *Liſle:* ſo we call *Dunne* to prove what Meſſage he carried upon the 26th, and what Anſwer was return'd; he will tell you, that *Tueſday* was the time appointed for them to come, in the Night, and all the other Circumſtances. But withal, I muſt acquaint your Lordſhip, that this Fellow, *Dunne*, is a very unwilling Witneſs; and therefore, with ſubmiſſion to your Lordſhip, we do humbly deſire your Lordſhip would pleaſe to examine him a little the more ſtrictly.

L. C. J. You ſay well: Hark you, Friend, I would take notice of ſomething to you by the way, and you would do well to mind what I ſay to you. According as the Counſel that are here for the King ſeem to inſinuate, you were employ'd as a Meſſenger between theſe Perſons, one whereof has already been proved a notorious Rebel, and the other is the Priſoner at the Bar, and your Errand was to procure a Reception at her Houſe for him.

Dunne. My Lord, I did ſo.

L. C. J. Very well. Now mark what I ſay to you, Friend: I would not by any means in the world endeavour to fright you into any thing, or any ways tempt you to tell an Untruth, but provoke you to tell the Truth, and nothing but the Truth, that is the Buſineſs we come about here. Know, Friend, there is no Religion that any man can pretend to, can give a Countenance to Lying, or can diſpenſe with telling the Truth: Thou haſt a precious immortal Soul, and there is nothing in the World equal to it in value: There is no relation to thy Miſtreſs, if ſhe be ſo; no relation to thy Friend; nay, to thy Father or thy Child; nay, not all the temporal Relations in the world can be equal to thy precious immortal Soul. Conſider that the Great God of Heaven and Earth, before whoſe Tribunal thou, and we, and all Perſons are to ſtand at the laſt Day, will call thee to an account for the reſcinding his Truth, and take vengeance of thee for every Falſhood thou telleſt. I charge thee, therefore, as thou wilt anſwer it to the great God, the Judge of all the Earth, that thou do not dare to waver one tittle from the Truth, upon any account or pretence whatſoever: For tho' it were to ſave thy Life, yet the value of thy precious and immortal Soul is much greater, than that thou ſhould'ſt forfeit it for the ſaving of any the moſt precious outward Bleſſing thou doſt enjoy; for that God of Heaven may juſtly ſtrike thee into eternal Flames, and make thee drop into the bottomleſs Lake of Fire and Brimſtone, if thou offer to deviate the leaſt from the Truth,

and

and nothing but the Truth. According to the Command of that Oath that thou haſt taken, tell us who employ'd you, when you were employ'd, and where? Who caus'd you to go on this Meſſage, and what the Meſſage was? For I tell thee God is not to be mock'd, and thou can'ſt not deceive him, tho' thou may'ſt us. But I aſſure you, if I catch you prevaricating in any the leaſt tittle (and perhaps I know more than you think I do; no, none of your Saints can ſave your Soul, nor ſhall they ſave your Body neither) I will be ſure to puniſh every variation from the Truth that you are guilty of. Now come and tell us, how you came to be employ'd upon ſuch a Meſſage, what your Errand was, and what was the Iſſue and Reſult of it?

Dunne. My Lord, there came a Man to my Houſe, and deſired me to go of a Meſſage to my Lady *Liſle*'s.

L. C. J. Prithee tell me when it was? and what Hour of the Day?

Dunne. What, when the Man came to my Houſe?—*L. C. J.* Yes.

Dunne. That I will, my Lord.

L. C. J. Be ſure you do, and do not ſpeak one word but what is true, and let the Truth come out o' God's Name.

Dunne. It was *Friday* Night.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot exactly tell that.

L. C. J. Was it after the Fight at *Weſton*, or before?

Dunne. It was after the Battle, my Lord.

L. C. J. How many Days after was it?---*Dunne.* I cannot exactly tell.

L. C. J. Was it the *Friday* Seven-night after the Fight?

Dunne. No, it was not.

L. C. J. What was deſired of thee at that time?

Dunne. He deſired me to go of a Meſſage to my Lady *Liſle*'s.

L. C. J. Doſt thou know what Man it was that came to thee, and deſired thee to go on this Meſſage?

Dunne. My Lord, I can tell what manner of Man he was.

L. C. J. Give me a Deſcription of the Man.

Dunne. He was a ſhort black Man.

L. C. J. You ſay he was a ſhort Man.

Dunne. Yes, he was ſo, my Lord.

L. C. J. Was he a ſwarthy, or a ruddy complectioned Man?

Dunne. He was not ruddy, but ſwarthy.

L. C. J. And what did he ſay to thee?

Dunne. He deſired me to go to my Lady *Liſle*'s for him, for one Mr. *Hicks*; and I went accordingly.

L. C. J. What were you to ſay when you came there?

Mr. *Pollexfen.* What Reward were you to have?---*Dunne.* That Man that came to me, promis'd me that I ſhould be well rewarded for my pains.

L. C. J. Where do you live? (by the way.)

Dunne. In *Warminſter* Pariſh.

L. C. J. How far is it from my Lady *Liſle*'s?

Dunne. Six and twenty Miles, or thereabouts.

L. C. J. You did go, you ſay, When?---*Dunne.* Upon the *Saturday*.

L. C. J. Well, we are got thus far; you went to my Lady *Liſle*'s upon the *Saturday*, and from one Mr. *Hicks*: What was your Errand?

Dunne. To know of my Lady *Liſle*, whether ſhe would entertain Mr *Hicks*?

L. C. J. Well, now go on.

Dunne. When I came to my Lady *Liſle*'s Houſe, I went to the Bailiff that belong'd to my Lady *Liſle*.

L. C. J. Ay, who was that Bailiff? Tell us his Name? I love to know Men's Names.

Dunne. His Name is *Carpenter*, I think.

L. C. J. Well, and what did you ſay to him?

Dunne. I aſk'd him, whether my Lady would entertain one *Hicks*, or no? He told me, he'd have nothing to do with it, but ſent me to my Lady, and to my Lady I went; and when I came, I aſk'd my Lady, whether ſhe would entertain one Mr. *Hicks*, or no? She ſaid, ſhe did not know but ſhe might.

L. C. J. Well, what then?---*Dunne.* My Lord, I'll tell you.

L. C. J. Ay, prithee take time to recollect thyſelf; but be ſure thou ſpeak nothing but the Truth. What ſaid my Lady to thee?

Dunne. My Lady ſaid, they might come to her Houſe: And upon thoſe Terms I went away home again, and return'd that Anſwer to the Meſſenger that came to me. I came home on the *Sunday* Night, and that Meſſage I deliver'd unto him, and told him, that upon *Tueſday* Night they might come to my Lady's.

L. C. J. You told him, you ſay, they might come on *Tueſday*?

Dunne. Yes, my Lord, I did.

L. C. J. Therefore I would fain know from you, How you came to tell him, they might come upon *Tueſday*? For you ſaid juſt now, my Lady's Anſwer was, that ſhe did not know but ſhe might entertain him. Had you any ſuch Direction from *Carpenter*, or any one elſe, to tell him, that they might come on *Tueſday*?---*Dunne.* I had ſuch Directions from my Lady.

L. C. J. Very well; then let us know what were the particular Directions ſhe gave? Tell us, what further Directions you had from her?

Dunne. I will, my Lord, preſently, when I have recollected myſelf.

L. C. J. Ay, prithee compoſe thyſelf, recollect thyſelf.

[*Then he pauſed for a good while.*

L. C. J. Come now, tell us, did ſhe give you any Directions what time of the Day they might come thither? remember yourſelf well, and tell us what ſhe ſaid to you?

Dunne. My Lord, I will, as near as I can, ſpeak the Truth.

L. C. J. Ay, in God's Name, let's have the Truth, whatſoever comes on it?---*Dunne.* I will, my Lord.

L. C. J. Come then, what time did ſhe give Directions that they ſhould come?---*Dunne.* On *Tueſday* in the Evening.

L. C. J. Upon your Oath, did ſhe ſay *Tueſday* in the Evening?

Dunne. Yes, my Lord, ſhe did.

L. C. J. What time in the Evening, early or late?---*Dunne.* She did not give any Directions at all about that, but only in the Evening.

L. C. J. What elſe did ſhe ſay to you, tell us all the Diſcourſe that paſſed between you?

Dunne. She ſaid nothing elſe that I remember, my Lord.

L. C. J. Prithee, how did ſhe ſay ſhe would receive him? Tell us what Words ſhe uſed, for thou muſt needs imagine, we do ſuppoſe there muſt needs be ſome longer Diſcourſe between you, than what you talk of.

Dunne. All that ſhe ſaid was, ſhe would entertain him.

L. C. J. Him? Who?---*Dunne.* Mr. *Hicks*.

L. C. J. Juſt now you talked of them, and they: Did you mention no body to her but Mr. *Hicks*?

Dunne. My Lord, I was ſent to ſee whether ſhe would receive Mr. *Hicks*.

L. C. J. Prithee, Friend, mind what thou haſt ſaid, and recollect thyſelf, I'll repeat it to thee, becauſe thou ſhalt ſee that I remember it all very well. It ſeems that a Man, a ſhort black Man came to your Houſe in *Warminſter* Pariſh to get you to go for a Meſſage to Mrs. *Liſle*'s, to know whether ſhe would entertain one *Hicks*; and that you went upon the *Saturday*, and firſt you met with *Carpenter*, and aſk'd him that Queſtion, whether his Lady would entertain one Mr. *Hicks*? and he told you he would have nothing to do with it; and thereupon you went to Mrs. *Liſle*, and aſked her the Queſtion, and ſhe told you that you ſhould tell the Man that they ſhould come the *Tueſday* following, and come in the Evening, and ſhe would entertain him: Is not this what you have ſaid?

Dunne. Yes, my Lord, it is.

L. C. J. Well then, now let us know what other Diſcourſe you had with her?—*Dunne.* My Lord, I do not remember any thing more.

Mr. *Pollexfen.* Pray Mr. *Dunne*, did ſhe aſk you any Queſtions, whether you knew Mr. *Hicks* or no?

Dunne. Nothing at all of that, that I remember.

Mr. *Coriton.* Did ſhe believe that you knew Mr. *Hicks*?

Dunne. I cannot tell, my Lord.

Mr. *Coriton.* Do you believe that ſhe knew him before?

Dunne. I cannot tell truly.

L. C. J. Why, doſt thou think ſhe would entertain any one that ſhe had no Knowledge of merely upon thy Meſſage? [Mr. *Dunne*, Mr. *Dunne*! have a care, it may be more is known of this matter than you think for.

Dunne. My Lord, I tell you the Truth.

L. C. J. Ay, be ſure you do, do not let me take you prevaricating?

Dunne. My Lord, I ſpeak nothing but the Truth.

L. C. J. Well, I only bid you have a care, Truth never wants a Subterfuge, it always loves to appear naked, it needs no Enamel, nor any Covering; but Lying and Sniveling, and Canting, and Hickſing, always appear in Maſquerade. Come, go on with your Evidence.

Dunne. My Lord, I ſay I went back again and returned my Anſwer to the ſame Man that brought the Meſſage to me.

L. C. J. Pray let me aſk you one Queſtion; Were you got to your Houſe before you found him, or was he waiting there for you?

Dunne. He came to my Houſe after I came home.

L. C. J. It was the ſame Man, you ſay?---*Dunne.* Yes, it was.

L. C. J. Had he no Company with him neither time?---*Dunne.* No.

L. C. J. Well, and what Anſwer did you return him?

Dunne. I told him, my Lady ſaid ſhe would entertain Mr. *Hicks*; he aſked when he might come up, I told him upon *Tueſday*, and upon *Tueſday* they came to my Houſe.

L. C. J. What time did they come to your Houſe?

Dunne. About ſeven of the Clock in the Morning.

L. C. J. What Day of the Month was it?

Dunne. Truly, my Lord, I cannot readily tell what Day of the Month it was.

L. C. J. Was it one or two that came to thy Houſe?

Dunne. My Lord, there were three in all.

L. C. J. Who were thoſe three, prithee?

Dunne. My Lord, there was the little black Man that brought the Meſſage, and two other People.

L. C. J. Prithee deſcribe what two other People theſe were?

Dunne. One was a full fat black Man, and the other was a thin black Man.

L. C. J. Who was that thin black Man?

Dunne. My Lord, I did not know him.

L. C. J. Did you not fancy which was *Hicks*?

Dunne. My Lord, I never knew any of their Names.

L. C. J. How long did they ſtay at your Houſe?

Dunne. About three Hours.

L. C. J. When did you go away from thence?

Dunne. About eleven of the Clock.

L. C. J. Which way did you go then?

Dunne. We went through *Deverel*, and from *Deverel* to *Chilmark*, and from *Chilmark* to *Sutton*, and from *Sutton* to the *Plain*, and then one *Barter* met me; I knew the Way no further, and he was to ſhew me the Way from thence.

L. C. J. Prithee hold, before thou goeſt any further, I deſire to be ſatisfied about a Queſtion or two: Doſt thou ſay thou didſt not know the way?

Dunne. No, my Lord, after I came to the *Plain*.

L. C. J. How didſt thou find the way when thou wenteſt on thy Meſſage firſt?---*Dunne.* My Lord, after I came to *Saliſbury-Plain*, I met with one *Barter*, and he ſhewed me the way.

L. C. J. Where is that *Barter*?

Mr. *Pollexfen.* My Lord, we have him here; we ſhall examine him by and by, there he ſtands. [*Being a very luſty Man.*

L. C. J. Sure that was not the little Man thou ſpokeſt of?

Dunne. No, my Lord.

L. C. J. Prithee let me underſtand thee then, if I can. Thou didſt ſay at firſt there was only a little Man with a black Beard, that was concerned with thee about that Meſſage; now thou talkeſt of ſome Guide that thou hadſt, prithee who did guide thee, let us know?

Dunne. My Lord, I ſay I went ſo far as *Fovant*, and ſo to *Chalk*, but when I came upon the *Plain*, I did not know my way to my Lady *Liſle*'s Houſe at *Moyle's Court*; I aſked twenty People in the Street which was my way, but no body would tell me; at laſt I ſpoke to one *John Barter* to go with me to my Lady *Liſle*'s, and he and I did agree to go together, and he ſhewed me the way and carried me to the Houſe.

L. C. J. Thou ſhouldſt have told us this before, Man, that we might have underſtood it. Where did you lie upon the *Saturday* Night?

Dunne.

Dunne. At *Fovant.*

L. C. J. I thought you had ſaid, you had come to Mrs. *Liſle*'s on *Saturday?*

Dunne. Yes, my Lord, I did ſo, and came back to *Fovant* that Night.

L. C. J. And where did you lie on *Sunday* Night?

Dunne. I lay at my own Houſe on *Sunday* Night.

L. C. J. And *Barter* came along with you when you came on *Tueſday?*

Dunne. Yes, my Lord.

L. C. J. And did you go the ſame way upon the *Tueſday* that you went upon the *Saturday?*

Dunne. Do you mean, my Lord, the ſame way I came at firſt?

L. C. J. Ay.

Dunne. No, my Lord, we came to *Sutton*, not to *Fovant.*

L. C. J. Why did not you go the ſame way upon the *Tueſday* that you went upon the *Saturday?*

Dunne. Becauſe I had appointed to meet him at ſuch a Place.

L. C. J. Come, prithee anſwer me freely, and according to Truth: Who did deſire thee, or order thee to go another way than that thou went'ſt at firſt? How came it to paſs? Let us know the Truth?

Dunne. My Lord, I did count that to be the nearer way, and therefore I went that way.

L. C. J. That cannot be the Reaſon, for thou wouldſt have gone the neareſt way at firſt, I believe; come, tell us truly?

Dunne. My Lord, I know no other Reaſon.

L. C. J. Come, tell us what Towns and Villages you did go through then upon *Saturday?*

Dunne. My Lord, I went through ſeveral, *Chilmark* and *Fovant.*

L. C. J. And what Villages did you go through upon the *Tueſday?*

Dunne. I went through moſt of the ſame Towns.

L. C. J. What, and at Noon-day too?——*Dunne.* Yes.

L. C. J. And how chanc'd when you went that way, that you appointed *Barter* to meet you in another Place at *Fovant?*

Dunne. Becauſe I did not know the way afterwards.

L. C. J. Then let me aſk you another Queſtion: Did you go the ſame way from *Fovant* to my Lady *Liſle*'s as you went before?

Dunne. No, we did not.

L. C. J. How came that to paſs?

Dunne. I would have went the ſame way, but they would not.

L. C. J. Which way did you go then?

Dunne. We went through *Chalk*, and ſo thro' *Rockſborne*, and from *Rockſborne* to *Fording-Bridge*, and ſo to *Moyle*'s *Court.*

L. C. J. How far is this about now?

Dunne. Truly, my Lord, I cannot readily tell.

L. C. J. How many Miles is it from *Fovant* to my Lady *Liſle*'s?

Dunne. My Lord, it is about fourteen or fifteen.

L. C. J. How many Miles was it the way that you went upon the *Tueſday?*----*Dunne.* It might be twenty, my Lord, for aught I know.

L. C. J. What was the Reaſon that *Barter* went that way?

Dunne. Truly, my Lord, I cannot tell.

L. C. J. Pray let me aſk you another Queſtion then; What Diſcourſe had you with *Barter?* Or what Bargain did you make with him for ſhewing you the way? for you would not aſk him to go with you without promiſing him ſome Reward.

Dunne. My Lord, I aſked him to ſhew me the way to my Lady *Liſle*'s Houſe, and told him I was going for one *Hicks*; and ſo he took his Horſe and went with me.

L. C. J. What Reward did you promiſe him?

Dunne. Half-a-Crown, my Lord, and Half-a-Crown I gave him.

L. C. J. Well, that was the firſt time; and what did you promiſe him the ſecond time?

Dunne. The ſecond time one of the two Men gave him five Shillings.

L. C. J. What Man was it?——*Dunne.* It was the black Man.

L. C. J. What was his Name? It was not the little black Man that came firſt to deſire you to go on the Meſſage, was it?

Dunne. No, my Lord, it was not he that ſpoke to me firſt.

L. C. J. Did not that little Man that ſpoke to you firſt promiſe you a Reward for your Pains?

Dunne. No, my Lord, that Man never promiſed me any thing.

L. C. J. Did he go along with you?

Dunne. No, my Lord, he did not.

L. C. J. Who were the two Men that went with you?

Dunne. Hicks and *Nelthorp.*

L. C. J. Which of them two was it that gave *Barter* five Shillings?

Dunne. It was *Nelthorp* that gave him five Shillings.

L. C. J. How do you know his Name was *Nelthorp?*

Dunne. At my Lady *Liſle*'s, after he was taken, I knew his Name to be *Nelthorp.*

L. C. J. What Name did he go by before?

Dunne. Were I to die preſently, my Lord, I cannot tell it.

L. C. J. Well, you went ſo much about: What time did you get to my Lady *Liſle*'s upon the *Tueſday?*

Dunne. About nine or ten of the Clock at Night, my Lord.

L. C. J. Let us conſider a little; you ſay you went from your Houſe about eleven o'Clock: What time did you get to *Fovant?*

Dunne. About two or three of the Clock, my Lord.

L. C. J. Where did you ſtay by the way?

Dunne. No where, my Lord.

L. C. J. Did you ride on ſtill?——*Dunne.* Yes, my Lord.

L. C. J. Was it before nine, or after nine that you came to my Lady *Liſle*'s?——*Dunne.* I believe it was rather after nine, my Lord.

L. C. J. Who came firſt to my Lady *Liſle*'s, prithee tell us frankly?

Dunne. My Lord, we came all three together to the Gate.

L. C. J. Who knocked at the Gate, you or *Barter*, or who elſe?

Dunne. Barter, my Lord, was diſcharg'd before we came near the Houſe, about eight Miles from it.

L. C. J. Say'ſt thou ſo? How came you then to know the way without him?

Dunne. My Lord, I'll tell you; they loſt their way, and they ſent me down to *Marten*, and there I went to a Man, my Lord, and told him one *Hicks* deſired to ſpeak with him.

L. C. J. Thou ſay'ſt well, now muſt I know that Man's Name.

Dunne. The Man's Name that I went to at *Marten*, my Lord?

L. C. J. Yes, and look to it, you tell me right, for it may be I know the Man already, and can tell at what end of the Town the Man lives too.

Dunne. My Lord, I cannot tell his Name preſently.

L. C. J. O! pray now, do not ſay ſo, you muſt tell us, indeed you muſt think of his Name a little.

Dunne. My Lord, if I can mind it I will.

L. C. J. Prithee do.

Dunne. His Name, truly, my Lord, I cannot rightly tell for the preſent.

L. C. J. Prithee recollect thyſelf; indeed thou canſt tell us if thou wilt.

Dunne. My Lord, I can go to the Houſe again if I were at liberty.

L. C. J. I believe it, and ſo could I; but really neither you nor I can be ſpared at preſent, therefore prithee do us the kindneſs now to tell us his Name.

Dunne. Truly, my Lord, I cannot mind his Name at preſent.

L. C. J. Alack-a-day, we muſt needs have it! Come, refreſh your Memory a little.

Dunne. My Lord, I think his Name was *Fane.*

L. C. J. Thou ſay'ſt right, his Name was *Fane* truly, thou ſeeſt I know ſomething of the matter: Well, what didſt thou ſay to him?

Dunne. I told him I came from one Mr. *Hicks.*

L. C. J. And what didſt thou deſire of him?

Dunne. I told him that one Mr. *Hicks* deſired to ſpeak with him; and when he came out to Mr. *Hicks*, Mr. *Hicks* did deſire him to ſhew him the way to Mrs. *Liſle*'s.

L. C. J. Now tell us what kind of Man that was, that did deſire this of Mr. *Fane?*

Dunne. My Lord, it was the full fat black Man.

L. C. J. Now we have got him out, now we know which was *Hicks*: Now go on.

Dunne. My Lord, this Man went and rid along with them as far as the new Houſe that is built there, within a Mile of that Houſe *Fane* went along with us; and afterwards, whether *Hicks* or *Nelthorp*, or who knew the way, I cannot tell, but to my Lady *Liſle*'s we went.

L. C. J. Who directed you the way when *Fane* left you?

Dunne. My Lord, I cannot tell; for my part I did not know the way.

L. C. J. Who went with you?

Dunne. None but *Hicks* and *Nelthorp.*

L. C. J. How far from my Lady's Houſe was that place where *Fane* left you?——*Dunne.* My Lord, I cannot directly tell.

L. C. J. Then *Hicks* knew the way, it ſeems, from thence?

Dunne. So he might, my Lord, for aught I know, for I did not.

L. C. J. Thou art ſtrangely ſtiff; but now we are come thus far with you, tell me what Entertainment you had at my Lady *Liſle*'s, and look to it that you be ſure to tell me Truth, for I know it to a tittle, I can aſſure you that.

Dunne. They went in before me, my Lord.

L. C. J. Who went in before you?——*Dunne. Hicks* and *Nelthorp.*

L. C. J. But the Door was ſhut when you came, was it not?

Dunne. My Lord, I cannot tell truly.

L. C. J. Then tell me what Entertainment you had there?

Dunne. For my own part, my Lord, I carry'd a bit of Cake and Cheeſe from my own Houſe, and that I eat.

L. C. J. What became of your Companions *Hicks*, and *Nelthorp*, I pray you?

Dunne. I never ſaw them again till after they were taken.

L. C. J. How is that, prithee recollect thyſelf?

Dunne. Sure, my Lord, I did not ſee them till then.

L. C. J. Who came to the Door to you?

Dunne. A young Girl, my Lord, I knew not who nor what ſhe was.

L. C. J. Did they go directly into the Houſe?

Dunne. It was dark, my Lord, I did not ſee what they did.

L. C. J. Was there never a Candle there?---*Dunne.* No, my Lord.

L. C. J. It was dark, very dark, was it not?

Dunne. Yes, my Lord, it was ſo.

L. C. J. Was my Lady ſtirring then?——*Dunne.* I did not ſee her.

L. C. J. And this is as much as you know of the Buſineſs?

Dunne. Yes, my Lord, this is all that I remember.

L. C. J. Well; and what hadſt thou for all thy pains?

Dunne. Nothing but a Month's Impriſonment, my Lord.

L. C. J. Thou ſeemeſt to be a Man of a great deal of Kindneſs and Good-nature; for, by this Story, there was a Man that thou never ſaweſt before (for I would fain have all People obſerve what Leather ſome Men's Conſciences are made of) and becauſe he only had a black Beard, and came to thy Houſe, that black Beard of his ſhould perſuade thee to go 26 Miles, and give a Man half a Crown out of thy Pocket to ſhew thee thy way, and all to carry a Meſſage from a Man thou never kneweſt in thy Life, to a Woman whom thou never ſaweſt in thy Life neither; that thou ſhould'ſt lie out by the way two Nights, and upon the *Sunday* get home, and there meet with this ſame black-bearded little Gentleman, and appoint theſe People to come to thy Houſe upon the *Tueſday*; and when they came, entertain them three or four Hours at thy own Houſe, and go back again ſo many Miles with them, and have no Entertainment but a piece of Cake and Cheeſe that thou broughteſt thyſelf from home, and have no Reward, nor ſo much as know any of the Perſons thou didſt all this for, is very ſtrange.

Dunne. My Lord, the Man that came to deſire me to go on this Meſſage, ſaid that *Hicks* ſhould reward me, and pay me for my pains.

L. C. J. But why wouldſt thou take the word of a Man thou didſt not know?

Dunne. I was forced to take his word at that time, my Lord.

L. C. J. There was no neceſſity for that neither; no body could force thee to do it. Alack-a-day! Thou ſeemeſt to be a Man of ſome conſideration: I mightily wonder thou ſhould'ſt be ſo kind to People thou didſt not know, without any proſpect of Recompence whatſoever.

Dunne.

Dunne. All the Reason that induced me to it was, they said they were Men in Debt, and desired to be concealed for a while.

L. C. J. Dost thou believe that any one here believes thee? Prithee what Trade art thou?

Dunne. My Lord, I am a Baker by Trade.

L. C. J. And wilt thou bake thy Bread at such easy Rates? Upon my Word then, thou art very kind: Prithee tell me, I believe thou dost use to bake on *Sundays*, dost thou not?—*Dunne.* No, my Lord, I do not.

L. C. J. Alack-a-day! thou art precise in that; but thou can'st travel on *Sundays* to lead Rogues into Lurking-holes: It seemeth thou hast a particular Kindness for a black Beard, that's all thy Reason for undertaking all this Trouble. Thou hast told me all the Truth; hast thou?

Dunne I have, my Lord.

L. C. J. But I assure thee, thy Bread is very light Weight, it will scarce pass the Balance here.

Dunne. I tell the Truth, and nothing but the Truth.

L. C. J. No Doubt of that; but prithee tell me, whose Horse didst thou ride when thou wentest first?

Dunne. The Man's Horse that came to me to desire me to go on the Message.

L. C. J. How came he to trust thee with his Horse?

Dunne. The Lord knows, my Lord.

L. C. J. Thou say'st right, the Lord only knows, for by the little I know of thee, I would not trust thee with Two-pence: Whose Horse didst thou ride the second time?—*Dunne.* My own, my Lord.

L. C. J. And where didst thou put thy Horse when thou camest to my Lady *Lisle*'s?—*Dunne.* In the Stable, my Lord.

L. C. J. Where did they put their Horses?

Dunne. They left them without the Gate, I think, my Lord; I did not see them take them in.

L. C. J. No, thou saidst it was so dark thou could'st not see any thing: Pray were you with the two Men when they did alight?

Dunne. We did all three come together.

L. C J. What did you give *Fone* for his Pains in shewing you the way?

Dunne. He had nothing that I know of.

L. C. J. Well, you are the best-natur'd and kindest-hearted People that ever I knew: Whereabouts do you live?

Dunne. At *Warminster*, near my Lord *Weymouth*'s.

Mr. *Pollexfen.* Pray, Mr. *Dunne*, Will you answer me one Question: Was not there searching at that time upand down the Country for Rebels that were fled from the Battle?

Dunne. I did hear there was, some were taken.

Mr. *Pollexfen.* But did you hear there was searching at that time for other of the Rebels?

Dunne. I did not hear of any near me, but there were in other Places.

L. C. J. Then it being such a suspicious Time, when that little Man with the black Beard came to thee, didst thou not ask what that *Hicks* was?

Dunne. No, my Lord, I did not.

L. C. J. And when Mr. *Hicks* and the other Man that is call'd by the Name of Mr. *Nelthorp* came to thy House, didst not thou ask their Names?

Dunne No, my Lord.

L. C. J. Nor didst not thou ask upon what Occasion they were to be conducted to my Lady *Lisle*'s?

Dunne. No, my Lord: *Hicks*, the fat Man, told me they were in Debt.

L. C. J. Did not the Man that first came to you, and employ'd you to go on this Message; did not he know *Hicks*?--*Dunne.* I cannot tell, my Lord.

L. C. J. Did not he tell you, *Hicks* desired you to go, and that he was in Debt, and therefore desired to be concealed?-*Dunne.* Yes, my Lord, he did.

L. C. J. How came you to be so impudent then, as to tell me such a Lye?

Dunne. I beg your Pardon, my Lord.

L. C. J. You beg my Pardon! That is not because you told me a Lye, but because I have found you in a Lye. Come, Sirrah, tell me the Truth; What did *Hicks* and *Nelthorp* with their Horses, when they came to my Lady *Lisle*'s?—*Dunne.* My Lord, I cannot tell.

L. C. J. Why you impudent Rascal, did not you tell me just now that they left them at the Door?

Dunne. My Lord, I said I believ'd they might, but cannot directly tell what they did with them; I know not but one or other might have them away, but I did not see it.

Mr. *Pollexfen.* Prithee, Friend, tell the Truth; what did become of the Horses?

Dunne. I cannot tell truly, my Lord; if any body had them away, I did not see them.

L. C. J. Where didst thou lie that Night?

Dunne. In one of the Chambers.

L. C. J. Who shewed thee the Way to thy Lodging?—*Dunne.* The Girl.

L. C. J. Who else didst thou see in the House?-*Dunne.* I saw no body at all.

L. C. J. Then who shewed thee the Way to the Stable, and help'd thee with Horse-meat?—*Dunne.* No body help'd me to Horse-meat.

L. C. J. Why, thy Horse did not feed on thy Cake and Cheese, did he?

Dunne. There was Hay in the Rack, my Lord.

L. C. J. Was the Stable-Door lock'd or open?

Dunne. The Stable-Door was latch'd, and I pluck'd up the Latch.

L. C. J. How came you to know the Way to the Stable then?

Dunne. Because I had been there before, my Lord.

L. C. J. Thou hadst need to know it very well, for it seems thou wentest without a Candle or any thing in the World, and put in thy Horse. Didst thou see that Man *Carpenter* the Bailiff that thou spokest of?

Dunne. Mr. *Carpenter* gave my Horse Hay.

L. C. J. Was there any Light in the Stable?

Dunne. Not when I put in my Horse first.

L. C. J. Who brought the Light thither?—*Dunne.* Goodman *Carpenter*.

L. C. J. Did not he give thy Horse Hay?—*Dunne.* Yes, he did.

L. C. J. And did he not give him Oats too?

Dunne. No, my Lord, he did not.

L. C. J. Did not he conduct you into the House?

Dunne. Who, my Lord?—*L. C. J.* That same Goodman *Carpenter*.

Dunne. No, my Lord.

L. C. J. Did you see any body else but that Girl you speak of?

Dunne. My Lord, I did see the Girl there.

L. C. J. But, you Blockhead, I ask you whether you did see any body else?

Dunne. I do not know but I might see Goodman *Carpenter*.

L. C. J. Why, thou saidst he brought the Light, and gave thy Horse Hay; but I see thou art set upon nothing but Prevarication: Sirrah, tell me plainly, did you see no body else?—*Dunne.* No, my Lord.

L. C. J. Not any body?—*Dunne.* No, my Lord, not any one.

L. C. J. Did you not drink in the House?

Dunne. No, my Lord, not a Drop.

L. C. J. Did not you call for drink?

Dunne. No, my Lord, I did not, I had nothing but my Cake and Cheese that I brought thither myself.

L. C. J. Who went up to the Chamber with you?

Dunne. The Girl, my Lord.

L. C. J. And no body else?— *Dunne.* No, my Lord.

L. C. J. Was the Bed made?—*Dunne.* Yes, my Lord, it was.

L. C. J. You eat nothing in the House, you say?

Dunne. Nothing but my own Cake and Cheese, my Lord.

L. C. J. But you did not drink in the House at all?

Dunne. No, my Lord, I did not.

L. C. J. Did you drink at *Marton*, where you did call upon *Fane*?

Dunne. Yes, I did, but not afterwards.

L. C. J. Did you see any body there the next Morning before they were taken?

Dunne. No, my Lord; but after the House was beset, I saw my Lady and Mr. *Hicks*, and I think I saw Goodman *Carpenter*.

L. C. J. They and you were taken there together, were not you?

Dunne. Yes.

L. C. J. Did you see *Carpenter*'s Wife, upon your Oath, that Night?

Dunne. My Lord, I did not.

L. C. J. Nor no Woman kind besides the Girl you speak of?

Dunne. No, my Lord.

L. C. J. Nor no Man besides *Carpenter*?---*Dunne.* No, my Lord.

L. C. J. You are sure of this?---*Dunne.* I am so, my Lord.

L. C. J. You are sure you did not drink there?--*Dunne.* I am, my Lord.

L. C. J. And you say he brought the light into the Stable, and gave your Horse Hay?---*Dunne.* He did, my Lord.

L. C. J. Now prithee tell me truly, where came *Carpenter* unto you? I must know the Truth of that; remember that I gave you fair warning, do not tell me a Lye, for I will be sure to treasure up every Lye that thou tellest me, and thou may'st be certain it will not be for thy Advantage: I would not terrify thee to make thee say any thing but the Truth; but assure thyself, I never met with a lying, sneaking, canting Fellow, but I always treasur'd up Vengeance for him: and therefore look to it, that thou dost not prevaricate with me, for to be sure thou wilt come to the worst of it in the End.

Dunne. My Lord, I will tell the Truth as near as I can.

L. C. J. Then tell me where *Carpenter* met thee.

Dunne. In the Court, my Lord.

L. C. J. Before you came to the Gate, or after?

Dunne. It was after we came to the Gate, in the Court.

L. C. J. Then tell me, and I charge you tell me true, who was with you when *Carpenter* met you?---*Dunne. Hicks* and *Nelthorp*.

L. C. J. Was there any body else besides them two in the Court?

Dunne. There was no body but *Hicks* and *Nelthorp*, and I and Mr. *Carpenter*.--*L. C. J.* You are sure of that?--*Dunne.* Yes, my Lord.

L. C. J. Consider of it, are you sure there was no body else?

Dunne. Truly, my Lord, I did not mind that there was any body else.

L. C. J. Recollect yourself, and consider well of it.

Dunne. Truly, my Lord, I do not know of any body else.

L. C. J. Now upon your Oath tell me truly, who it was that opened the Stable Door, was it *Carpenter* or you?--*Dunne.* It was *Carpenter*, my Lord.

L. C. J. Why, thou vile Wretch, didst not thou tell me just now, that thou pluck'dst up the Latch? Dost thou take the God of Heaven not to be a God of Truth, and that he is not a Witness of all thou say'st? Dost thou think because thou prevaricatest with the Court here, thou canst do so with God above, who knows thy thoughts? And it is infinite Mercy, that, for those Falshoods of thine, he does not immediately strike thee into Hell! Jesus God! there is no sort of Conversation nor human Society to be kept with such People as these are, who have no other Religion but only in Pretence, and no way to uphold themselves but by countenancing Lying and Villainy! Did not you tell me that you opened the Latch yourself, and that you saw no body else but a Girl? How durst you offer to tell such horrid Lyes in the Presence of God and of a Court of Justice? Answer me one Question more: Did he pull down the Hay, or you?

Dunne. I did not pull down any Hay at all.

L. C. J. Was there any Hay pull'd down before the Candle was brought?

Dunne. No there was not.

L. C. J. Who brought the Candle?

Dunne. Mr. *Carpenter* brought the Candle and Lanthorn.

L. C. J. It seems the Saints have a certain Charter for Lying; they may lye and cant, and deceive, and rebel, and think God Almighty takes no notice of it, nor will reckon with them for it: You see, Gentlemen, what a precious Fellow this is, a very pretty tool to be employ'd upon such an Errand, a Knave that no body would trust for half a Crown between Man and Man, but he is the fitter to be employ'd about such Works; what Pains is a Man at to get the Truth out of these Fellows! and it is with a great deal of Labour, that we can squeeze one Drop out of them! A Turk has more Title to an Eternity of Bliss than these Pretenders to Christianity, for he has more Morality and Honesty in him. Sirrah, I charge you in the Presence of God, tell me true, What other Persons did you see that Night?

Dunne. My Lord, I did not see any than what I have told you already.

L. C. J. Then they went out and brought Word that thou wert come, and so he came out to meet thee. Very well: I would have every body that has but the least Tang of Saintship to observe the Carriage of this Fellow, and see how they can cant, and snivel, and lye, and forswear themselves, and all

the Good Old Cauſe: They will ſtick at nothing, if they think they can but preſerve a Brother or Siſter-Saint forſooth; they can do any thing in the World but ſpeak Truth, and do their Duty to God and their Governors: I aſk you again, Did not *Carpenter* meet you before you left *Hicks* and *Nelthorp*?----*Dunne.* No, he did not.

L. C. J. Then I aſk you again once more, did not *Carpenter* aſk you to drink?----*Dunne.* No, he did not.

L. C. J. Did not he light you with a Lanthorn and Candle into the Houſe?--- *Dunne.* I went into the Houſe.

L. C. J. Doſt thou believe we think any body thruſt thee in? Did he light thee in, I aſk thee?

Dunne. I went in along with Mr. *Carpenter.*

L. C. J. What Room did he carry you into?

Dunne. My Lord, he carried me into no Room, the young Woman ſhew'd me into a Room.

L. C. J. What Room was it?

Dunne. Into the Chamber.

L. C. J. Was not thou in the Hall or Kitchen?

Dunne. No, my Lord.

L. C. J. It is hard thou hadſt not one Cup of Drink to thy Cake and Cheeſe.----*Dunne.* My Lord, I had never a Drop.

L. C. J. No, nor did nobody aſk you to eat or drink?

Dunne. No, my Lord.

L. C. J. Thou art the beſt-natur'd Fellow that ever I met with, but the worſt rewarded. Come, I will aſk thee another Queſtion: When was the firſt time thou heard'ſt *Nelthorp*'s Name?

Dunne. Not till he was taken.

L. C. J. What Name did the Fellow with the black Beard tell thee he had?

Dunne. My Lord, he never told me any Name.

L. C. J. Didſt thou never aſk him his Name?

Dunne. No, my Lord, that Man that was afterwards found to be *Nelthorp*, I did not know to be *Nelthorp* till he was taken, nor what his Name was, nor any Name he had.

L. C. J. No, prithee tell the Truth, did not *Nelthorp* go by the Name of *Crofts*?----*Dunne.* He did, my Lord.

L. C. J. Then prithee, when did he firſt go by that Name in thy Hearing?

Dunne. My Lord, I only heard *Hicks* ſay he went by the Name of *Crofts.*

L. C. J. When was that?---*Dunne.* When they were taken.

L. C. J. Did you not hear him call'd by that Name any time of the Journey?----*Dunne.* I cannot recollect, my Lord, that I ever did.

L. C. J. Thou can'ſt recollect nothing of Truth: Is this as much as you can ſay?---*Dunne.* It is, my Lord.

Mr. *Jennings.* You ſay *Carpenter* met you very civilly, and took care of your Horſe: Did he make no Proviſion for *Hicks* and *Nelthorp*'s Horſes? What became of them?

Dunne. I cannot tell, my Lord.

Mr. *Rumſey.* Did you ſee their Horſes afterwards?

Dunne. No, my Lord, I did not.

Mr. *Rumſey.* When they alighted from them, were they ty'd faſt to the Gate, or how?---*Dunne.* They were not ty'd at all, as I know of.

Mr. *Jennings.* Did you tell *Carpenter* that their Horſes were there?

Dunne. I did not tell him any ſuch thing.

L. C. J. Thou art a ſtrange prevaricating, ſhuffling, ſniveling, lying Raſcal.

Mr. *Pollexfen.* We will ſet him by for the preſent, and call *Barter*, that is the other Fellow.

L. C. J. Will the Priſoner aſk this Perſon any Queſtions?--*Liſle.* No.

L. C. J. Perhaps her Queſtions might endanger the coming out of all the Truth, and it may be ſhe is well enough pleaſed to have him ſwear as he does; but it carries a very foul Face, upon my Word.

[*Then* Barter *was ſworn.*

L. C. J. Is this *Barter?*

Mr. *Pollexfen.* Yes, my Lord, for his part we have his Examination before two Juſtices of Peace; but we hope he is an honeſt Fellow, and will tell the Truth.

L. C. J. That is all one whether you have his Examination or not; I expect he ſhould tell me the Truth, and the whole Truth here. Friend, you know your Soul is at pawn for the Truth of what you teſtify to us; the other Fellow thou ſeeſt has been prevaricating with us all this while, and ſwearing off and on, and ſcarce told one Word of Truth, I know very well: Now I know as much of thee as I do of him, therefore look to thyſelf, and let the Truth, and nothing but the Truth, come out.

Barter. May it pleaſe your Honour, my Lord, this Man *Dunne* came to my Houſe upon the *Saturday*, and ſpoke to me to ride along with him to *Moyle's-Court*, where my Lady *Liſle* liv'd; and I having no other Buſineſs at that time, did go along with him: He had a Letter in his Pocket, and I ſaw him produce the Letter to my Lady's Bailiff, Mr. *Carpenter*, but he would not meddle with it, ſo I ſuppoſe he went in with it to my Lady; and while I was in the Kitchen, my Lady came thither, and aſked me, ſaith ſhe, What Countryman art thou? Said I, Madam, I am a *Wiltſhire* Man. Saith ſhe, Do'ſt thou make Bricks? No, ſaid I, Madam, I cannot, I can help in Huſbandry-work. Saith ſhe, If thou could'ſt make Bricks, I will give the ten Acres of Ground in ſuch a Place. I told her no, I could not: And then ſhe goes to this Man *Dunne*, and there ſhe was laughing with him, and look'd upon me; and afterwards when we were going along, I aſked him what ſhe laughed at?

L. C. J. Ay, and now tell me what he ſaid to thee about it?

Barter. He told me, my Lord, my Lady aſked, whether I knew any thing of the Concern? And that he anſwered her, no; this the Fellow told me was that ſhe laugh'd at. After this, I could not eat, nor drink, nor ſleep for trouble of mind, till I had diſcovered this to ſome Juſtice of the Peace; and I reſolved at laſt to go to Colonel *Penruddock*, and conſult him about it, ſo I went over and told him of it.

L. C. J. What did you tell Colonel *Penruddock*, let us hear?

Barter. Where I had been the *Saturday* before, and where I ſhould meet them again upon *Saliſbury-Plain* upon the *Tueſday*, for I did expect to meet them there according to appointment, and we did agree he ſhould come and take them there; but afterwards miſſing them there, or for ſome other reaſon, I do not know what, his Mind altered, and he came to take them in the Houſe: So when I met them, we rode on about ten Miles, and they would have had me to have led them a private way over the fording Bridge towards *Moyle's-Court*, but I told them, in caſe they intended to have me for their Guide, they muſt go the way that I could tell; but they would go that private way, and ſo loſe their way; then they ſent back this *Dunne* to *Marton* to one *Fane*, that was the fat Man that ſent him: but I finding that I was of no more value then, rode away from them, and having a Relation that liv'd on that ſide of the country, I went to let Colonel *Penruddock* know that they were at the Houſe. But before I went away from them, *Nelthorp* gave me five Shillings, half a Crown, and two Shillings and a Six-pence.

L. C. J. Now thou ſay'ſt *Nelthorp* did: Didſt thou hear his Name named?

Barter. I never could find any of their Names till they were taken.

Mr. *Pollexfen.* Pray, *Barter*, what Diſcourſe had you with *Dunne* the firſt time you were going to and from my Lady *Liſle*'s concerning the Men that he was to bring thither, and what Eſtates they had?

Barter. My Lord, he ſaid they had half a Score of Thouſands of Pounds a Year a-piece.

Mr. *Pollexfen.* Did he tell you they were to come to my Lady's?

Barter. Yes, he told me they were to come upon the *Tueſday*, and they were to come ſuch a Way, and were to come to my Lady's in the Evening.

L. C. J. What wer't thou to have for thy pains?

Barter. I made no Bargain, my Lord.

L. C. J. You are all very free, kind-hearted People, I ſay that for you.

Mr. *Pollexfen.* What did *Dunne* ſay about his Gains?

Barter. He told me he had a very fine Booty for his part, and that he ſhould never want Money again, and that I ſhould be very well paid, and gave me half a Crown.

L. C. J. Then let my honeſt Man, Mr. *Dunne*, ſtand forward a little. Come, Friend, you have had ſome time to recollect yourſelf; let us ſee whether we can have the Truth out of you now: You talked of carrying a Meſſage from *Hicks* to my Lady *Liſle*; Did not you carry a Letter?---*Dunne.* No, my Lord, I did not.

L. C. J. Did not you ſhew a Letter to the Bailiff, *Carpenter?*

Dunne. No, my Lord, I did not.

L. C. J. What ſay you, *Barter*, to that?

Barter. My Lord, I did ſee him produce the Letter to the Bailiff.

L. C. J. Then I will aſk you another Queſtion: Did you not tell *Barter* that you ſhould be at *Saliſbury-Plain*, with two People, upon the *Tueſday*?---*Dunne.* No, my Lord, I ſaid between *Compton* and *Fovant.*

L. C. J. Did not you tell him, that they were brave Fellows, and had God knows how many Thouſand Pounds a year a-piece?

Dunne. No, my Lord, I did not.

L. C. J. Then one thing more: Did not you tell him, that you told my Lady, when ſhe aſked whether he was acquainted with the Concern, that he knew nothing of the Buſineſs?

Dunne. My Lord, I did tell him ſo.

L. C. J. Did you ſo? Then you and I muſt have a little further Diſcourſe: Come now, and tell us, what Buſineſs was that? and tell it us ſo, that a Man may underſtand and believe that thou doſt ſpeak Truth.

Dunne. Does your Lordſhip aſk what that Buſineſs was?

L. C. J. Yes, it is a plain Queſtion; What was that Buſineſs that my Lady aſked thee, whether the other Man knew; and then you anſwered her, that he did know nothing of it? [*Then he pauſed a while.*

L. C. J. Remember, Friend, thou art upon thy Oath; and remember withall, that it is not thy Life, but thy Soul that is now in danger: therefore I require from thee a plain Anſwer to a very plain Queſtion; What was that Buſineſs my Lady enquired after, whether the other Fellow knew, and thou told'ſt her, he did not?

[Dunne *made no Anſwer, but ſtood muſing a while.*

L. C. J. He is ſtudying and muſing how he ſhall prevaricate; but thou had'ſt better tell the Truth, Friend: remember what thou haſt ſaid already; thou haſt ſaid, That thou didſt tell that Man, that the Lady aſked you, whether he knew any thing of the Buſineſs, and thou told'ſt her, he did not? Now I would know what that Buſineſs was.

[*Still he made no Anſwer, but ſeemed to muſe.*

L. C. J. Look thee, if thou canſt not comprehend what I mean, I will repeat it to thee again; for thou ſhalt ſee what Countryman I am, by my telling my Story over twice: Therefore I aſk thee once again: Thou ſaid'ſt thy Lady aſked thee, whether he knew of the Buſineſs; and thou told'ſt her, he did not. Now let us know what that Buſineſs was?

Dunne. I cannot mind it, my Lord, what it was.

L. C. J. But mind me, prithee: Thou didſt tell that honeſt Man there, that my Lady *Liſle* aſked thee, whether he knew any thing of the Buſineſs, and thou ſaid'ſt, no. What was that Buſineſs?

Dunne. That Buſineſs that *Barter* did not know of?

L. C. J. Yes, that is the Buſineſs; be ingenuous, tell the Truth: Oh! how hard the Truth is to come out of a lying Preſbyterian Knave. Prithee, Friend, conſider the Oath that thou haſt taken, and that thou art in the preſence of a God that cannot endure a Lye, nor whoſe Holineſs will not admit him to diſpenſe with a Lye: Conſider that that God is an infinite Being of Purity, Holineſs, and Truth; and it would be inconſiſtent with his Being to diſpenſe with the leaſt Untruth; and thou haſt called him to witneſs, that thou would'ſt teſtify the Truth, the whole Truth, and nothing but the Truth. I charge thee, therefore, as thou wilt anſwer it to that God of Truth, and that thou may'ſt be called to do, for ought I know, the very next Minute, and there thou wilt not be able to palliate the Truth; what was that Buſineſs you and my Lady ſpoke of?

[*Then he pauſed for half a quarter of an Hour, and at laſt ſaid:*

Dunne. I cannot give an Account of it, my Lord.

L. C. J. Oh bleſſed God! Was there ever ſuch a Villain upon the Face of the Earth; to what Times are we reſerved! Doſt thou believe that there is a God?

Dunne. Yes, my Lord, I do.

L. C. J. Doſt thou believe, that that God can endure a Lye?

Dunne. No, my Lord, I know he cannot.

L. C. J. And doſt thou believe then that he is a God of Truth?

Dunne. Yes, my Lord, I do.

L. C. J. Doſt thou think, that that God of Truth may immediately ſink thee into Hell-Fire if thou telleſt a Lye?-----*Dunne.* I do, my Lord.

L. C. J. Doſt thou believe, that he does obſerve every thing that thou thinkeſt, ſayeſt, or doeſt; knows the Secrets of thy Heart, and knows whether thou telleſt a Lye or not, tho' perhaps it may be hid from us; and knows whether thou doſt prevaricate or not?

Dunne. I know, the Lord does know all things.

L. C. J. Doſt thou believe, that he knows the Buſineſs that you and my Lady the Priſoner were talking of, as well as you do; that he hath an Almighty Power over all his Creatures, an all-piercing Eye, that looks into the Hearts of every one of them, and from which nothing can be concealed? Doſt thou believe it poſſible to conceal that very Diſcourſe of your's from the knowledge of that infinite Being?

Dunne. My Lord, I do believe that there is a God above.

L. C. J. I aſk thee then again; doſt thou believe, that that God above, who is a God of Truth himſelf, is omniſcient, omnipreſent, to whom all Truth is naked and open, that he knows every thing that is either thought, ſaid, or done by any of his Creatures, ſees and knows the Hearts of all Men; Doſt thou believe all this? [*He ſtood ſilent for a good while.*

L. C. J. Friend, deceive not thyſelf; the great God does obſerve and know the ſecret workings of thy Thoughts now, and how Truth ſtruggles to get out, but Baſeneſs and Villany keep it in: All the private Imaginations of thy Heart are not only known to him, but regiſtred by him, and thy Conſcience will bear witneſs to thy Accuſation when thou art called to anſwer for them, and anſwer for them thou muſt; for the Scripture, that is the Word of God, tells us, *That every vain Thought we muſt account for.* Doſt thou then believe, that any Diſcourſe between you, tho' never ſo private, is private from the Almighty, All-knowing God?

Dunne. My Lord, I know it is not, nor cannot be.

L. C. J. I therefore once more adjure thee, as thou wilt anſwer it to that God, that is the Searcher of the Hearts and Trier of the Reins, to whom all Hearts are open, and from whom no Secrets are hid, that thou make me a plain Anſwer to my Queſtion; and as thou haſt called God to bear Witneſs to the Truth of the Evidence thou giveſt here in this Court, ſo I charge thee, in his Name, to declare the Truth, and nothing but the Truth. Now tell us what was the Buſineſs you ſpoke of?

But he made no Anſwer.

William Montague, Eſq; *L. C. Baron.* Friend, mind what my Lord ſays to you, and conſider, how eaſy a thing it is for a Man to ſpeak Truth, and give a plain Anſwer to a plain Queſtion. You cannot but underſtand what my Lord aſks of you; you ſaid even now, that you did tell the other Witneſs, *Barter*, that my Lady aſked you, whether he knew any thing of the Buſineſs; and you told her, he did not. Now my Lord would have you tell us, what that Buſineſs was?

[*He ſeemed to turn his Head on one ſide, but returned no Anſwer.*

L. C. J. He is going to aſk that Man there, whether he ſhall tell the Truth.

Dunne. No, my Lord, I aſk no Man any ſuch Queſtion.

L. C. J. Prithee tell us the Truth then now: Thou art to know, that thou ſtandeſt in the Preſence of the God of Truth, and haſt called him to witneſs, that thou would'ſt tell the Truth.

Dunne. My Lord, I do tell the Truth, as far as I can remember.

L. C. J. Then what was that you told my Lady *Liſle*, *Barter* did not know?

Dunne. What *Barter* did not know, my Lord?

L. C. J. Ay, is not that a plain Queſtion? Of all the Witneſſes that ever I met with, I never ſaw thy fellow.

[*He ſtood a good while, and made no Anſwer.*

L. C. J. I hope, Gentlemen of the Jury, you take notice of the ſtrange and horrible Carriage of this Fellow; and withal, you cannot but obſerve the Spirit of that ſort of People, what a villainous and deviliſh one it is: Good God! that ever the thing called Religion (a Word that People have ſo much abuſed) ſhould ever wind up Perſons to ſuch a height of Impiety, that it ſhould make them loſe the Belief that there is a God of Truth in Heaven, that ſees and knows, obſerves and regiſters, and will puniſh and take vengeance of Falſhood and Perjury. It may well make the reſt of Mankind, that have any ſort of Faith in a Deity and a future Life, to abhor and deteſt both the Men and their Religion, if ſuch abominable Principles may be called ſo. A *Turk* is a Saint to ſuch a Fellow as this, nay a *Pagan* would be aſhamed to be thought to have no more Truth in him. O bleſſed *Jeſus!* What an Age do we live in, and what a Generation of Vipers do we live among? Sirs, Is this that you call the *Proteſtant Religion!* Shall ſo glorious a Name be applied to ſo much Villany and Hypocriſy? Is this the Perſuaſion you hope to live, and die, and find Salvation in? Will any of you all, Gentlemen, be contented to die with a Lye in your Mouth? Do not you all expect, according to the Orthodox Doctrine of the true Church of *England*, that eternal Damnation will be the Portion of Lyars? And thou wicked Wretch, how durſt thou appear to give Teſtimony before even an earthly Tribunal with ſo much Impudence and Falſhood, when every Lye will coſt thee ſo dear, except a ſincere and hearty Repentance, and the infinite Mercy of the great God interpoſe? I charge you once more, as you will anſwer it at the Bar of the great Judge of all the World, that you tell me what that Buſineſs was you and the Priſoner talked about: do you conſider what a Condition thou bringeſt thyſelf into by all this Shuffling and Prevarication, even as to any thing of Mercy in this Life; for indeed it is not fit thou ſhoud'ſt have the leaſt Hopes of Mercy on this ſide Eternity, and truly there is no Man can imagine leſs than infinite Mercy can pardon ſo flagitious a Sin, one that ſo impudently tells and ſtands in a Lye. [*Still he would make no Anſwer.*

L. C. J. Jeſus God! Was there ever ſuch a Fellow in the World as thou art? Prithee let me aſk thee once again, Doſt thou believe that there is a God, that this God is ſpotleſs Truth and Purity itſelf? Doſt thou believe thou haſt a precious and immortal Soul, that is to live in everlaſting Bliſs or eternal Miſery after this Life, accordingly as thou carrieſt it here; if thou doſt believe it, ought not the Concerns of that precious and immortal Soul of thine to be much dearer to thee than ten thouſand Worlds? Does not the bleſſed Word of Truth tell thee, *What will it profit a Man to gain the whole World, and loſe his own Soul? or what ſhall a Man give in exchange for his Soul?* Is not this the Voice of Scripture itſelf? And wilt thou hazard ſo dear and precious a thing for a Lye, and an unprofitable Lye too? Thou Wretch! all the Mountains and Hills in the World heaped upon one another, will not cover thee from the Vengeance of the Great God for this Tranſgreſſion of falſe Witneſs-bearing: What hopes can there be for ſo profligate a Villain as thou art, that ſo impudently ſtands in open defiance of the Omnipreſence, Omniſcience, and Juſtice of God, by perſiſting in ſo palpable a Lye? I therefore require it of you, in his Name, to tell me the Truth.

Dunne. I cannot tell what to ſay, my Lord.

L. C. J. Good God! Was there ever ſuch an impudent Raſcal! Well, I will try once more, and tell thee what I mean; you ſaid you told that honeſt Man (for truly he ſeems ſo to be) that my Lady aſked you whether he knew of the Buſineſs; and you told her, he did not: Prithee be ſo free as to tell us what that Buſineſs was?

[Dunne *pauſed and would make no Anſwer.*

L. C. J. Prithee what didſt thou mean, or thy Lady mean, by that Buſineſs? [*He pauſed again, but would make no Anſwer.*

L. C. J. Why, prithee, doſt thou think thou doſt her a Kindneſs by this way of proceeding? Sure thou can'ſt not think ſo; for ſuch a ſort of Carriage were enough to convict her, if there were nothing elſe.

Dunne. Truly, my Lord, I do not think to do her any Kindneſs at all.

L. C. J. Then prithee let me perſuade thee to have ſome kindneſs for thyſelf; look to thy own Soul that is in great peril of everlaſting Ruin and Deſtruction by theſe means; doſt thou call this Religion? It is a prodigious piece of Religion! Come, pray tell me what Buſineſs it was you talked of? You ſhould not have aſked me a Queſtion ſo often, but I would have given you a plain Anſwer, though I were not under the Obligation of an Oath, as you are.

Dunne. My Lord, pray aſk the Queſtion over again once more, and I will tell you.

L. C. J. I will ſo, and I will aſk it you with all the Calmneſs, and Seriouſneſs, and Candour, that I can; if I know my own Heart, it is not in my Nature to deſire the Hurt of any body, much leſs to delight in their eternal Perdition; no, it is out of tender compaſſion to you that I uſe all theſe Words: I would have thee to have ſome regard to thy precious and immortal Soul, which is more valuable than the whole World; reflect upon that Scripture again which I mentioned before, which muſt be true, becauſe it is the Words of him that is Truth itſelf: *What ſhall it profit a Man to gain the whole World, and loſe his own Soul? or what ſhall a Man give in exchange for his Soul?* If that Soul of thine be taken away, what is the Body fit for, but, like a putrid Carcaſe, to be thruſt into and covered with the Duſt with which it was made: Therefore I aſk you, with a great Deſire that thou may'ſt free thyſelf from ſo great a Load of Falſhood and Perjury, tell me what the Buſineſs was you told the Priſoner, the other Man *Barter* did not know?

Dunne. My Lord, I told her, he knew nothing of our coming there.

L. C. J. Nay, nay, that can never be it, for he came along with thee.

Dunne. He did not know any thing of my coming there till I met him on the way.

L. C. J. Prithee mind my Queſtion; ſure enough thou hadſt told him whither thou wert going, or elſe he could not have been thy Guide; ſo that he muſt needs know of thy coming there: but what was the Buſineſs that thou told'ſt her, he did not know?

Dunne, She aſked me, whether I did not know that *Hicks* was a Nonconformiſt?

L. C. J. Did my Lady *Liſle* aſk you that Queſtion?

Dunne. Yes, my Lord; I told her I did not.

L. C. J. But that is not my Queſtion: What was that Buſineſs that he did not know?

Dunne. It was the ſame thing: whether Mr. *Hicks* was a Nonconformiſt.

L. C. J. That cannot be all; there muſt be ſomething more in it.

Dunne. Yes, my Lord, it is all; I know nothing more.

L. C. J. What did ſhe ſay to you when you told her, he did not know it?

Dunne. She did not ſay any thing, my Lord.

L. C. J. Why, doſt thou think, that after all this pains that I have been at to get an Anſwer to my Queſtion, that thou can'ſt banter me with ſuch ſham Stuff as this? Hold the Candle to his Face, that we may ſee his brazen Face.

Dunne. My Lord, I tell you the Truth.

L. C. J. Did ſhe aſk thee whether that Man knew any thing of a Queſtion ſhe had aſked thee, and that was only of being a Nonconformiſt?

Dunne. Yes, my Lord, that was all.

L. C. J. That is all Nonſenſe; doſt thou imagine that any Man hereabouts is ſo weak as to believe thee?

Dunne. My Lord, I am ſo baulked, I do not know what I ſay myſelf; tell me what you would have me to ſay, for I am cluttered out of my Senſes.

L. C. J. Why, prithee Man, there's no body baulks thee but thy own ſelf; thou art aſked Queſtions that are as plain as any thing in World can be: it is only thy own depraved naughty Heart that baulks both thy Honeſty and Underſtanding, if thou haſt any; it is thy ſtudying how to prevaricate, that puzzles and confounds thy Intellect: but I ſee all the pains in the World, and all Compaſſion and Charity is loſt upon thee, and therefore I will ſay no more to thee.

Mr. *Pollexfen.* My Lord, becauſe he pretends to Ignorance what *Hicks* was, I deſire to aſk *Barter* one Queſtion: Pray, what did he tell you concerning his Carriage towards theſe People?

Barter. My Lord, he told me that he had concealed them in his Houſe ten Days before.

Dunne. That I never did in my Life.

Barter. I know not whether you did or no, but you told me ſo; and I made anſwer to him again, my Lord, I wonder how he were able to keep them without being diſcovered, there being ſuch ſearch; and he anſwered, He did keep them in a Chamber all day, and then they walked out at night; for the Searches of the Houſes were uſually at night.

Dunne. My Lord, I can bring teſtimony to the contrary.

L. C. J. But really I believe it will be no ſtrange thing for me to ſay, I do believe him rather than thee; I would I had half as much reaſon to believe

lieve thee, as I have to believe him: I would fain have thee ſpeak truth, if I could. What ſay you to the Queſtion I aſked you?

Dunne. I cannot tell what to ſay, my Lord.

L. C. J. Say the Truth, Man.

Dunne. I do, as I hope for mercy, my Lord.

L. C. J. Doſt thou hope for mercy? Thou haſt very little reaſon for it, I aſſure thee. Well, I will try thee with another Queſtion: Didſt thou tell that Man, that it was the beſt Jobb thou ever hadſt in thy Life?

Dunne. No, my Lord, I did not.

L. C. J. Nor nothing to that purpoſe?--------*Dunne.* No, my Lord.

L. C. J. What ſay you, *Barter*, did not he tell you ſo?

Barter. Yes, my Lord, he did; and that he ſhould never lack Money again as long as he liv'd.

L. C. J. Then I aſk you one Queſtion more, *Barter*; did you tell this to Col. *Penruddock?*——*Barter.* Yes, I did, my Lord.

L. C. J. Then that will fortify his Teſtimony; therefore ſwear him, becauſe I would make theſe concealed Wretches (for in my conſcience I know there are ſome ſuch in the bottom of this Buſineſs) know, that the Truth will out one way or other. And as for this Fellow, I expect it from all you Gentlemen of the King's Counſel, and others that are concerned, that you take notice and remember what has paſſed here, and that an Information of Perjury be preferred againſt this Fellow.

[*Then Col.* Penruddock *was ſworn.*

L. C. J. Col. *Penruddock*, upon the Oath you have taken, did that Man, *Barter*, come to you; and what did he ſay to you?

Col. *Penruddock.* My Lord, that Man, *Barter*, came to my Houſe in the Morning, upon *Monday*, and told me, he had been with one *Dunne*, upon a Journey to Mrs. *Liſle*'s Houſe, to get Entertainment for ſome People; and that they had appointed to meet him the *Tueſday* following, between nine and eleven, upon *Saliſbury-Plain*, and there, if I pleaſed, I might take them. I ordered him to go according to the Appointment, and withal, I ſent a Servant of my own to watch when they came by; but it happen'd, I ſuppoſe, by their taking another way, that he miſſed of them: but *Barter* left word, that in caſe he did not find them there, we muſt conclude, that he was gone with them to my Lady *Liſle*'s Houſe; and he told me withal, ſays he, I believe they are Rebels, becauſe he that deſired me to be their Guide, ſaid the ſame to me. So early the next Morning I took ſome Soldiers with me, and beſet my Lady *Liſle*'s Houſe; it was a pretty while before I could get any body in the Houſe to hear: at length that Man that they ſay was the Bailiff, *Carpenter*, came out; and I ſaid to him, Friend, you had beſt be free and ingenuous, and diſcover who are in your Lady's Houſe, for I am ſure there were ſome Strangers came hither laſt Night; let me know who they are, and ſhew me what part of the Houſe they are in. He did confeſs to me there were Strangers in the Houſe, and pointed to ſuch part of the Houſe; but pray, ſays he, do not tell my Miſtreſs of it. Accordingly we went in, and immediately we took Mr. *Hicks* and this ſame *Dunne* in the Malt-houſe.

L. C. J. Was *Dunne* taken in the Malt-houſe?------Col. *Penruddock.* Yes, he had covered himſelf with ſome ſort of Stuff there.

L. C. J. Well, what did you do then?

Col. *Penrudduck.* My Lady afterwards coming to us, I told her, Madam, you have done very ill in harbouring Rebels, and giving Entertainment to the King's Enemies. Saith ſhe, I know nothing of them; I am a Stranger to it. Pray, ſaid I, Madam, be ſo free and ingenuous with me, and ſo kind to yourſelf, as if there be any other Perſon that is concealed in any part of your Houſe, (for I am ſure there is ſome body elſe) as to deliver him up, and you ſhall come to no further trouble. She denied it, and ſaid, I know nothing of them: But we went on, and ſearched, and at laſt diſcovered the other man *Neltborp*, hid in a Hole by the Chimney.

L. C. J. Dunne, how came you to hide yourſelf in the Malt-houſe?

Dunne. When I heard the ſtir and buſtle, I went thro' the Chamber where I lay, and came into that Room where I was taken.

L. C. J. When thou heard'ſt a ſtir and a buſtle, why wert thou afraid of any thing?----------*Dunne.* My Lord, I was frighted at the noiſe.

L. C. J. Prithee, what need ſt thou be afraid, for thou didſt not know *Hicks*, nor *Neltborp*; and my Lady only aſked thee, whether *Hicks* were a Nonconformiſt Parſon: Thou art a very innocent Soul, and ſurely needeſt no occaſion to be afraid. I doubt there was ſomething of that *Buſineſs* in the Caſe that we were talking of before, if we could but get out of thee what it was.

Dunne. My Lord, I heard a great noiſe in the Houſe, and I did not know what it meant; and ſo I went and hid myſelf.

L. C. J. Alack-a-day! That is very ſtrange, that thou ſhould'ſt hide thyſelf for a little noiſe, when thou kneweſt nothing of the Buſineſs, nor wert acquainted with any thing of the matter at all. But Col. *Penruddock*, I would aſk you one Queſtion more: Did that honeſt Man tell you, that *Dunne* had told him, that it was the beſt Jobb that ever he had in his life, and that he ſhould want no Money?--------Col. *Penruddock.* I cannot tell that truly, my Lord; I do not remember that: but he ſaid, he apprehended them to be Rebels, and that *Dunne* told him as much.

L. C. J. What do you ſay to that, *Dunne?* It ſeems you told *Barter*, that you apprehended them to be Rebels?

Dunne. I apprehend them for Rebels, my Lord!

L. C. J. No, no, you did not apprehend them for Rebels, but you hid them for Rebels. But did you ſay to *Barter*, that you took them to be Rebels?--------*Dunne.* I take them to be Rebels!

L. C. J. You Blockhead, I aſk you, did you tell him ſo?

Dunne. I tell *Barter* ſo!

L. C. J. Ay, is not that a plain Queſtion?--------*Dunne.* I am quite cluttered out of my ſenſes; I do not know what I ſay.

A Candle being ſtill held nearer his Noſe.

L. C. J. But to tell the Truth, would rob thee of none of thy Senſes, if ever thou hadſt any; but it ſhould ſeem that neither thou, nor thy Miſtreſs the Priſoner had any, for ſhe knew nothing of it neither, though ſhe had ſent for them thither.

Mr. *Pollexfen.* Pray, Col. *Penruddock*, did you tell her you came to ſearch for Rebels?

Col. *Penruddock.* Yes, Sir, I told her as ſoon as I ſaw her; but we had a good while beſet the Houſe before any body anſwered us; at length, there were ſome Ladies, or Gentlewomen, I imagined them to be her Daughters, that upon our noiſe looked out at the Window; and I told them there were Rebels in the Houſe, and I required them in the King's Name to be deliver'd to me; but I ſaw not my Lady till after I had brought out *Hicks* and *Dunne.*

L. C. J. What ſaid ſhe to you?

Col. *Penruddock.* She ſaid, ſhe knew nothing of their being in the Houſe; but I told her there was ſome body elſe beſides, and ſhe would do well to deliver him without trouble: but ſhe denying of it, we ſearch'd further, and found *Neltborp*, as I told you.

L. C. J. But ſhe denied it firſt, it ſeems?--- ----*Liſle.* My Lord, I hope I ſhall not be condemned without being heard.

L. C. J. No, God forbid, Mrs. *Liſle*; that was a ſort of practice in your Huſband's time; you know very well what I mean: But God be thanked, it is not ſo now; the King's Courts of Law never condemn without hearing. Col. *Penruddock*, have you any more to ſay?

Col. *Penruddock.* No, my Lord; but here is one Mr. *Dowding*, that was with me when I ſearched the Houſe.

L. C. J. Swear him. [*Which was done.*

Mr. *Pollexfen.* Mr. *Dowding*, pray did you go with Col. *Penruddock* to Mrs. *Liſle*'s Houſe?

Mr. *Dowding.* Yes, my Lord: We came to the Houſe, and beſet the Houſe round, ſome to the back Gate, and ſome to the fore Gate; we called almoſt half an hour before we got in; and had found two, and we came to my Lady; ſhe ſaid, ſhe knew nothing of any body being in the Houſe------

Liſle. My Lord, this Fellow that now ſpeaks againſt me, broke open my Trunk, and ſtole away a great part of my beſt Linen; and ſure, my Lord, thoſe Perſons that rob me, are not fit to be Evidences againſt me, becauſe it behoves them that I be convicted, to prevent their being indicted for Felony.

L. C. J. Look you, Friend, you ſay you went with Col. *Penruddock* to ſearch the Houſe, did you find any body there?

Dowding. Yes, my Lord, I found this ſame *Dunne* in a little hole in the Malt-houſe.

L. C. J. Was he covered, or not?

Dowding. He had taken ſome ſtuff or other to cover him.

L. C. J. Did you find *Hicks* there?---------*Dowding.* Yes, my Lord, we did find one that ſaid his Name was *Hicks.*

L. C. J. Is that the ſame *Hicks* that is in *Saliſbury* Goal?

Dowding. Yes, my Lord, it is; I ſaw him yeſterday at the *George* in *Saliſbury*, when he had that Diſcourſe with thoſe other Gentlemen.

Mr. *Pollexfen.* Swear *Carpenter* and his Wife. [*Which was done.*

Dowding. My Lord, *Hicks* acknowledged before me, that he was at *Keinſham*, in the Duke of *Monmouth*'s Army.

Mr. *Pollexfen.* Come, Mrs. *Carpenter*, tell my Lord and the Jury, did you know the Time when theſe Men came to your Lady's Houſe?

L. C. J. Is this the Bailiff's Wife?

Mr. *Pollexfen.* Yes, my Lord, it is.

L. C. J. Well then, what ſay you to the Queſtion? Do you know the Time when they came?

Mrs. *Carpenter.* Yes, my Lord, they came at night.

L. C. J. Did you ſee them there?---------Mrs. *Carpenter.* Yes.

L. C. J. Were they lodged there?

Mrs. *Carpenter.* Yes; but I never made the Bed.

L. C. J. Who did?-------Mrs. *Carpenter.* My Lord, I cannot tell.

L. C. J. Had they any Supper or Victuals there?

Mrs. *Carpenter.* Yes, they had.

L. C. J. Who dreſs'd it?---------Mrs. *Carpenter.* I did.

L. C. J. By whoſe Order did you dreſs it?

Mrs. *Carpenter.* By my Lady's Order.

L. C. J. Prithee where did they eat their Meat?

Mrs. *Carpenter.* In the Chamber, my Lord, where they lay.

L. C. J. Who was with them?---------Mrs. *Carpenter.* My Lord, I cannot tell, for I did not ſtay in the Room.

L. C. J. Didſt thou ſee them when they came into the Room?

Mrs. *Carpenter.* My Lord, I dreſs'd the Meat, and carried it within the Door, and my Huſband ſet it upon the Table.

L. C. J. Prithee tell me who was with them? Was thy Lady there?

Mrs. *Carpenter.* My Lady was in preſence there then.

L. C. J. How long did they ſtay below ſtairs before they went up?

Mrs. *Carpenter.* Truly, my Lord, I cannot tell.

L. C. J. Did your Lady uſe to ſup below ſtairs or above?

Mrs. *Carpenter.* She uſed to ſup below, my Lord.

Mr. *Pollexfen.* My Lord, if your Lordſhip pleaſe, this Woman and her Huſband are both unwilling Witneſſes; but we will examine the Huſband, and ſee what we can get out of him. Hark you, *Carpenter*, did you meet with this Fellow, *Dunne*, at his firſt coming to your Lady's Houſe?

Mr. *Carpenter.* Yes, my Lord, I did ſee him there on the *Saturday.*

L. C. J. Well then, let me aſk you a Queſtion; and beſure you tell me the Truth, for it may be I know it already; Did he offer you a Letter to be deliver'd to your Lady?---------Mr. *Carpenter.* No, my Lord

L. C. J. What do you ſay, *Barter?*----------*Barter.* I ſaw him produce it to Mr. *Carpenter*, but he refuſed to meddle with it.

Mr. *Carpenter.* My Lord, he aſked me, if my Lady would give Entertainment to one *Hicks*, and another Perſon, but he did not know who that Perſon was.

L. C. J. Did he ſpeak of another Perſon?

Mr. *Carpenter.* Yes, he did.

L. C J. Who was that other Perſon?

Mr. *Carpenter.* I did aſk his Name, but he ſaid, he did not know him.

L. C. J. Well then, when they came there on the *Tueſday*-night, how did you receive them?---------Mr. *Carpenter.* I did not receive them.

L. C. J. Did not you light the Candle, and bring it in a Lanthorn, to light him into the Stable?

Mr. *Carpenter.* My Lord, that was afterwards.

L. C. J. Did not you bring the Men into the Houſe?

Mr. *Carpenter.* No, my Lord, indeed I did not.

L. C. J. Did not you ſee them all night?

Mr. *Carpenter.* Yes, my Lord.

L. C. J. Then where did you ſee them firſt?

Mr. *Carpenter.* In the Room where they ſupp'd and lay.

L. C. J. Did not you meet them in the Court-yard?

Mr. *Carpenter.* No, my Lord.

L. C. J. Who gave you Directions to light *Dunne* into the Stable?
Mr. *Carpenter*. They told me his Horſe was out in the Yard.
L. C. J. Who told you ſo?—Mr. *Carpenter*. The Men did.
L. C. J. Where did they ſup?--Mr. *Carpenter*. In the Room above ſtairs.
L. C. J. Who ſupp'd along with them?
Mr. *Carpenter*. I cannot ſay any body ſupp'd with them.
L. C. J. Was not my Lady there?—Mr. *Carpenter*. She was in the Room, but I did not ſee her eat any thing.
L. C. J. What time of the night did they come?
Mr. *Carpenter*. About Ten of the Clock.
L. C. J. And where did they lie?
Mr. *Carpenter*. In the Room where they ſupped.
L. C. J. Who lay there?—Mr. *Carpenter*. *Hicks* and *Neltherp* lay there.
L. C. J. Was *Neltherp* named there?
Mr. *Carpenter*. No, I never heard of his Name till after he was taken.
L. C. J. What kind of Man was he?
Mr. *Carpenter*. A tall, thin, black Man.
L. C. J. Well, what can you ſay more?
Mr. *Carpenter*. My Lord, this Perſon has ſwore, that a Letter was offered me, but I refuſed it: but I aſſure your Lordſhip I never ſaw any Letter.
Barter. I am ſure he met you, and, as I remember, there was a Letter produced.
L. C. J. Thou ſhould'ſt not be angry with him, for he ſpoke very kindly of thee, that thou refuſed'ſt to meddle in it, and thereupon *Dunne* went in to thy Lady, and deliver'd his Meſſage to her.
Mr. *Carpenter*. That, my Lord, I acknowledge.
L. C. J. Then, prithee let me aſk thee another Queſtion: Did you carry any Beer up into the Room?
Mr. *Carpenter*. My Lady gave order for the Proviſion.
L. C. J. Did you make *Dunne* drink?—Mr. *Carpenter*. No, I did not.
L. C. J. Did you offer him any Drink?
Mr. *Carpenter*. My Lord, I did not ſee him drink at all.
L. C. J. What ſay you, good Woman; Did not your Lady ſup there?
Mr. *Carpenter*. My Lord, my Wife was little there at all.
Mr. *Rumſey*. Now, my Lord, *Dunne* ſays he will tell all, whether it make for him or againſt him.
L. C. J. Let him but tell the Truth, and I am ſatisfied.
Dunne. Sure, my Lord, I never entertained theſe Men a night in my Houſe in my Life; but this *Hicks* ſent that Man to me, to go to my Lady *Liſle*'s, to know whether ſhe would pleaſe to entertain him: And when I came, my Lady aſked me, whether he had been in the Army or no? I told her, I could not tell, I did not know that he was. She then aſk'd me, if he had no body elſe with him? I told her, I believed there was: This is the very Truth of it, my Lord. I aſked her, might the Men be entertain'd? She ſaid they might. So when we came to my Lady *Liſle*'s, on the *Tueſday* night, ſomebody took the two Horſes, I cannot tell who, if I were to die; the two went in; and after I had ſet up my Horſe, I went in along with *Carpenter* up into the Chamber to my Lady, and to this *Hicks* and *Neltherp*; and when I came there, I heard my Lady bid them welcome to her Houſe; and Mr. *Carpenter*, or the Maid, I cannot tell which, brought in the Supper, and ſet it on the Table.
L. C. J. And didſt thou eat or drink with them in the Room, or not?
Dunne. My Lord, I will tell every thing that I know; I confeſs I did both eat and drink there in the Room.
L. C. J. I pity thee with all my Soul, and pray to God Almighty for thee to forgive thee, and to the bleſſed Jeſus to mediate for thee; and I pray for thee with as much earneſtneſs, as I would for my own Soul; and I beg of thee once more, as thou regardeſt thy own eternal Welfare, to tell all the Truth.
Dunne. My Lord, I did never know theſe Men were in the Army when I carried the Meſſage to my Lady *Liſle*'s, nor never did entertain them in my Houſe in my life-time, ſo much as one Night.
L. C. J. Prithee, I do not aſk thee what thou didſt not, but what thou didſt?—*Dunne*. My Lord, I will tell all I know.
L. C. J. What Diſcourſe had you that Night at the Table in the Room?
Dunne. I cannot tell what Diſcourſe truly, my Lord, there was.
L. C. J. Was there nothing of coming from beyond Seas, who came from thence, and how they came? Come, I would have it rather the Effect of thy own Ingenuity, than lead thee by any Queſtions that I can propound; come, tell us what was the Diſcourſe.
Dunne. I do not remember all the Diſcourſe.
L. C. J. Prithee, let me aſk thee one Queſtion, and anſwer me it fairly; Didſt thou hear *Neltherp*'s Name named in the Room?
Dunne. My Lord, I cannot tell whether he were called *Neltherp*, but it was either *Croſts* or *Neltherp*, I am ſure one of them.
L. C. J. Prithee be ingenuous, and let's have the Truth on't.
Dunne. My Lord, I am ingenuous, and will be ſo.
L. C. J. I will aſſure you, *Neltherp* told me all the Story before I came out of Town.—*Dunne*. I think, my Lord, he was called *Neltherp* in the Room, and there was ſome Diſcourſe about him.
L. C. J. Ay, there was unqueſtionably, and I know thou wert by, and that made me the more concern'd to preſs upon thee the Danger of forſwearing thyſelf.
Dunne. My Lady aſk'd *Hicks* who that Gentleman was, and he ſaid it was *Neltherp*, as I remember.
L. C. J. Very well, and upon that Diſcourſe with *Neltherp*, which I had in Town, did I give particular Direction, that the Outlawry of *Neltherp* ſhould be brought down hither, for he told me particularly of all the Paſſages and Diſcourſes of his being beyond Sea, and coming from beyond Sea*: I would not mention any ſuch thing as any piece of Evidence to influence this caſe, but I could not but tremble to think, after what I knew, that any one ſhould dare ſo much to prevaricate with God and Man, as to tell ſuch horrid Lyes in the Face of a Court.
Dunne. What does your Lordſhip aſk me?
L. C. J. Come, I will aſk thee a plain Queſtion; Was there no Diſcourſe there about the Battle, and of their being in the Army?
Dunne. There was ſome ſuch Diſcourſe, my Lord.
L. C. J. Ay, prithee now tell us what that Diſcourſe was.
Dunne. My Lord, I will tell you when I have recollected it, if you will give me time till to-morrow Morning.
L. C. J. Nay, but we cannot ſtay ſo long, our Buſineſs muſt be diſpatched now; but I would have all People conſider what a Reaſon there is, that they ſhould be preſſed to join with me in hearty Prayers to Almighty God, that this Sin of Lying and Perjury may never be laid at thy door. What ſay'ſt thou? Prithee tell us what the Diſcourſe was.
Dunne. My Lord, they did talk of Fighting, but I cannot exactly tell what the Diſcourſe was.
L. C. J. And thou ſaidſt thou didſt eat and drink with them in the ſame Room?---*Dunne*. I did ſo, my Lord, I confeſs it.
L. C. J. And it was not a little Girl that lighted thee to Bed, or conducted thee in?---*Dunne*. It was not a little Girl.
L. C. J. Who was it then?---*Dunne*. It was Mr. *Carpenter*, my Lord.
L. C. J. And why didſt thou tell ſo many Lyes then? Jeſu God! that we ſhould live to ſee any ſuch Creatures among Mankind, nay, and among us too, to the Shame and Reproach be it ſpoken of our Nation and Religion: Is this that that is called the Proteſtant Religion, a thing ſo much boaſted of, and pretended to? We have heard a great deal of Clamour againſt Popery and Diſpenſations; What Diſpenſations, pray, does the Proteſtant Religion give for ſuch Practices as theſe? I pity thee with all my Soul, and pray for thee, but it cannot but make all Mankind to tremble and be filled with Horror, that ſuch a wretched Creature ſhould live upon the Earth: Prithee be free, and tell us what Diſcourſe there was.
Dunne. My Lord, they did talk of Fighting, but I cannot remember what it was.
L. C. J. Did you lie with them?---*Dunne*. No, my Lord, I did not.
L. C. J. Well, I ſee thou wilt anſwer nothing ingenuouſly, therefore I will trouble myſelf no more with thee: Go on with your Evidence, Gentlemen.
Mr. *Jennings*. My Lord, we have done, we have no more Witneſſes.
L. C. J. Then you that are for the Priſoner at the Bar, now is your time to make your Defence; you hear what is charged upon you, and what a kind of Shuffling here has been to ſtifle the Truth; and I am ſorry to find the Occaſion to ſpeak it, that under the Figure and Form of Religion ſuch Practices ſhould be carried on. What have you to ſay for yourſelf?
Liſle. My Lord, that which I have to ſay to it, is this: I knew of no body's coming to my Houſe but Mr. *Hicks*, and for him I was inform'd that he did abſcond, by reaſon of Warrants that were out againſt him for preaching in private Meetings, but I never heard that he was in the Army, nor that *Neltherp* was to come with him; and for that Reaſon it was, that I ſent to him to come by night: but for the other Man, *Neltherp*, I never knew it was *Neltherp*, I could die upon it, nor did not know what Name he had, till after he came into my Houſe; but as for Mr. *Hicks*, I did not in the leaſt ſuſpect him to have been in the Army, being a Preſbyterian Miniſter, that uſed to preach, and not to fight.
L. C. J. But I will tell you, there is not one of thoſe lying, ſniveling, canting, Preſbyterian Raſcals, but one way or other had a hand in the late horrid Conſpiracy and Rebellion; upon my Conſcience I believe it, and would have been as deep in the actual Rebellion, had it had any little Succeſs, as that other Fellow *Hicks*; their Principles carry them to it; Preſbytery has all manner of Villany in it, nothing but Preſbytery could lead that Fellow *Dunne* to tell ſo many Lyes as he has here told; for ſhew me a Preſbyterian, and I will engage to ſhew a lying Knave.
Liſle. My Lord, I abhorred both the Principles and Practices of the late Rebellion.
L. C. J. I am ſure you had great reaſon for it.
Liſle. Beſides, my Lord, I ſhould have been the moſt ungrateful Perſon living, ſhould I have been diſloyal, or acted any thing againſt the preſent King, conſidering how much I was obliged to him for my Eſtate.
L. C. J. Oh then! Ungrateful! Ungrateful adds to the Load which was between Man and Man, and is the baſeſt Crime that any one can be guilty of.
Liſle. My Lord, had I been try'd in *London*, I could have had my Lady *Abergavenny*, and ſeveral other Perſons of Quality, that could have teſtified how much I was againſt this Rebellion, and with what Deteſtation I ſpoke againſt it, during the time of it; for I was all that time at *London*, and ſtaid there till after the Duke of *Monmouth* was beheaded; and if I had certainly known the time of my Trial in the Country, I could have had the Teſtimony of thoſe Perſons of Honour for me. But, my Lord, I am told, and ſo I thought it would have been, that I ſhould not have been try'd as a Traitor for harbouring him, till he was Convict for a Traitor. My Lord, I would take my Death of it, that I never knew of *Neltherp*'s coming, nor any thing of his being *Neltherp*; I never aſk'd his Name, and if he had told it me, I had then remember'd the Proclamation. I do aſſure you, my Lord, for my own part, I did abhor thoſe that were in that horrid Plot and Conſpiracy againſt the King's Life; I know my Duty to my King better, and have always exerciſed it; I defy any body in the world that ever knew the contrary, to come to give Teſtimony.
L. C. J. Have you any more to ſay?
Liſle. As to what they ſay of my denying *Neltherp* to be in my Houſe, I was in great Conſternation and Fear of the Soldiers, who were very rude and violent, and could not be reſtrained by their Officers from Robbery, and plundering my Houſe. And I beſeech your Lordſhip to make that Conſtruction of it; and I humbly beg of your Lordſhip not to harbour an ill Opinion of me, becauſe of thoſe falſe Reports that go about of me, relating to my Carriage towards the old King, that I was any ways conſenting to the Death of King *Charles* I. for, my Lord, that is as falſe as God is true; my Lord, I was not out of my Chamber all the day, in which that King was beheaded, and I believe I ſhed more Tears for him, than any Woman then living did; and this the late Counteſs of *Monmouth*, and my Lady *Marlborough*, and my Lord Chancellor *Hyde*, if they were alive, and twenty Perſons of the moſt eminent Quality, could bear witneſs for me. And I do repeat it, my Lord, as I hope to attain Salvation, I never did know *Neltherp*, nor never did ſee him before in my Life, nor did I know of any body's coming, but Mr. *Hicks*, and him I did know to be a Nonconformiſt Miniſter; and there being, as is well known, Warrants out to apprehend all Nonconformiſt Miniſters, I was willing to give him ſhelter from theſe Warrants. I

* *This was very unfair dealing, to ſit as Judge and yet to give Evidence himſelf againſt the Priſoner, for ſo in truth it was, and would have the ſame Influence, though in Words he diſclaimed it.*

was come down but that Week into the Country, when this Man came to me from Mr. *Hicks*, to know if he might be received at my Houſe; and I told him, if Mr. *Hicks* pleaſed, he might come upon *Tueſday* in the Evening, and ſhould be welcome; but withal I told him, I muſt go away the *Monday* following from that place, but while I ſtaid I would entertain him. And I beſeech your Lordſhip to believe, I had no intention to harbour him but as a Nonconformiſt, and that I knew was no Treaſon: It cannot be imagined, that I would venture the hazard of my own Life, and the Ruin both of myſelf and Children, to conceal one that I never knew in my life, as I did not know Mr. *Nelthorp*, but had heard of him in the Proclamation. And for that white-headed Man that ſpeaks of my denying them, as I ſaid before, he was one of them that rifled and plunder'd my houſe, and tore open my Trunk; and if I ſhould not be convicted, he and the reſt of them may be call'd to an account for what they did, for they ought not to have meddled with my Goods: Beſides, my Lord, I have a Witneſs that can teſtify what Mr. *Nelthorp* ſaid, when he was examined before——

L. C. J. Look you, Mrs. *Liſle*, that will ſignify little; but if you have any Witneſſes, call them, we will hear what they ſay: Who is that Man you ſpeak of?

Liſle. George Creed his Name is; there he is.

L. C. J. Well, what do you know?

Creed. I heard *Nelthorp* ſay, that my Lady *Liſle* did not know of his coming, nor did not know his Name, nor had he ever told his Name, till he named himſelf to Col. *Penruddock*, when he was taken.

L. C. J. Well, this is nothing; ſhe is not indicted for harbouring *Nelthorp*, but *Hicks*: Have you any more Witneſſes?

Liſle. No, my Lord.

L. C. J. Have you any more to ſay for yourſelf?

Liſle. My Lord, I came but five days before this into the Country----

L. C. J. Nay, I cannot tell when you came into the Country, nor I don't care; it ſeems you came time enough to harbour Rebels.

Liſle. I ſtaid in *London* till all the Rebellion was paſt and over; and I never uttered a good Word for the Rebels, nor ever harbour'd ſo much as a good Wiſh for them in my Mind: I know the King is my Sovereign, and I know my Duty to him; and if I would have ventured my Life for any thing, it ſhould have been to ſerve him. I know it is his due, and I owed all I had in the World to him: But tho' I could not fight for him myſelf, my Son did; he was actually in Arms on the King's ſide in this Buſineſs; I inſtructed him always in Loyalty, and ſent him thither; it was I that bred him up to fight for the King.

L. C. J. Well, have you done?-----*Liſle.* Yes, my Lord.

L. C. J. Have you a mind to ſay any thing more?--*Liſle.* No, my Lord.

L. C. J. Then command Silence. [*Which was done by Proclamation.*

Liſle. My Lord, may I ſpeak one Word more? My Lord, I beſeech you afford me your Patience and your Advice; *Keinſham*, where Mr. *Hicks* is ſaid to be in Arms, does not lie in this County.

L. C. J. That is nothing: But the Treaſon you committed was in this County.

Liſle. But I aſſure your Lordſhip I never knew he was in the Army; and for any Talk or Diſcourſe in private, about his or *Nelthorp*'s being there, I never heard any; indeed one of them aſked me, whether the Duke of *Monmouth* was beheaded? And I told them, yes, for ſo he was before I came out of town: And that is all the Diſcourſe that I can remember, wherein he is concerned.

L. C. J. Well, have you any more to ſay now?---*Liſle.* No, my Lord.

L. C. J. Then, Gentlemen of the Jury: * This is a Caſe of very great Example, and withal of very great Weight and Moment; wherein the Intereſt of the Publick, and the Life of a Perſon of Quality and Fortune are put into your Hands. And the great Buſineſs which has detained both us and you ſo long, has been an endeavour (if it were poſſible) to find out the Truth: which indeed is the Buſineſs of all Enquiries of this nature: We ſit not here, nor are you there upon any other Errand; nor is any thing deſired by the Court, or required of you, but that the Truth may be made manifeſt. 'Tis that you are bound to, by the Oaths you have taken in this Service; and in that Inquiry you are to be guided by the Evidence that has here been given forth unto you; for your Oath is, *That you ſhall well and truly try, and true deliverance make, between our Sovereign Lord the King, and the Priſoner at the Bar, according to your Evidence, as you ſhall anſwer it to God.* So that, Gentlemen, this Oath of yours, being your Direction what is your Duty, and you being all Perſons of Quality and Reputation in your Country, Men of great Underſtanding and known Integrity, it is to be hoped, that not any thing can move you, either to Compaſſion of the Priſoner on the one hand, or her Allegations and Proteſtations of Innocence; nor, on the other hand, to be influenced by any thing that comes from the Court, or is inſinuated by the learned Counſel at the Bar: but that you will entirely conſider what Evidence has been given to you, and being guided by that Evidence alone, you that are Judges of the Fact, will let us know the Truth of that Fact, by a ſincere and upright Verdict.

And inaſmuch, Gentlemen, as the Evidence has been long in giving (tho' the ſubſtantial part of it, perhaps, be in a narrow compaſs) I will repeat it to you, as near as I can, with all Faithfulneſs and Integrity, as I ſhall anſwer it to the Great Judge of Heaven and Earth, before whom you, and we, and all muſt ſtand to be judged; without any Aggravation or Alteration on the one ſide, and without any Omiſſion on the other: And I ſhall do it, purely to help your Memories who are to determine the Fact; and I do pray and adjure, that you would do equally, according to the Truſt repoſed in you, and according to the Oath that you have taken. And I would repeat it once more, that you are not to be led by any Inſinuations of the Priſoner, nor by any Allegations from the Learned Counſel, whoſe Buſineſs it is to open the Fact; but that Fact ſo opened, is no further to guide you in your Enquiry than as it is proved.

Gentlemen, before I come to the particular Evidence of this Fact, I muſt crave leave to ſay ſomething of a Matter in general that is very well known. It was very well obſerved by that learned Gentleman that opened the Cauſe at the beginning, that we are all of us here unſpeakably oblig'd to bleſs the great God of Heaven, the Father of Mercies, and praiſed for ever be his holy Name, for his infinite Goodneſs in preſerving and protecting us from the imminent ruin which the late horrid and deteſtable Rebellion would (had it ſucceeded) have inevitably brought upon us; had not he of his own infinite Mercy and gracious Goodneſs protected and delivered us from our Enemies, they had undoubtedly ſwallowed us up quick: But as the Attempts of our Enemies were very malicious, ſo the Preſervation and Deliverance of our good God was very great and ſignal.

And we have reaſon to bleſs that great God for many Deliverances he has been pleaſed to give us; we are by no means to forget his Mercy towards our late Sovereign of bleſſed Memory, and with him towards us, when he brought him out of Exile and Bondage, and us out of that State of Confuſion and Miſery, which our Country had for many Years groaned under: When all Religion as well as Sovereignty, and all Obedience, Duty and Deference to Superiors were quite loſt, God of his infinite Mercy, and of his own moſt gracious bountiful Diſpoſition brought our bleſſed Sovereign (now in Heaven), and his gracious Majeſty that now reigns, and all the Royal Family, after a long and tedious Rebellion, into a quiet and peaceable Poſſeſſion of their undoubted Rights and Inheritances, and with him reſtored to us our Religion, the beſt of Religions, the true Proteſtant Reformed Religion, the Religion eſtabliſhed by Law, which now is, and I hope will ever remain eſtabliſhed among us, as now profeſſed and practiſed in the Church of *England*: and when we reflect on that Deliverance, we are to this Circumſtance to heighten both our Admiration and our Gratitude, that it was brought about without the leaſt drop of Bloodſhed, by a miraculous Providence, and by the Strength of an Almighty Arm.

Beſides, Gentlemen, we cannot be ſufficiently thankful to our God for the Mercies we enjoy'd under that bleſſed King; for we are to conſider we liv'd in all the Affluence of Peace and Plenty; we ſafely and uninterruptedly enjoy'd our Religion, the greateſt Bleſſing on this ſide Immortality; our Lives, Liberties, and Properties inviolably were ſecured; every Man ſafe under the Shadow of his own Vine, and eat the Fruit of his own Labour; and while our Neighbours ſuffered the Calamities of War, we were ſurrounded with all the Bleſſings of Peace, and ſlept ſecurely under the Government of a gracious and merciful King: Every one of us had even what our own Hearts could deſire, and if we wanted any thing, it could be only thankful and dutiful Hearts to our God and our Prince, during whoſe Life we continued in a happy State and Condition.

But it having pleaſed God, the King of Kings, the great Ruler both of Heaven and Earth, to take that bleſſed Prince to himſelf, what Thanks ought we to pay him for his gracious Goodneſs, in leaving ſo great and ſo glorious a Succeſſor as his Royal Brother, our preſent Sovereign, whom I pray Almighty God may long live and happily reign among us! This gracious Prince, as ſoon as ever he came to the Poſſeſſion of his undoubted Right and Inheritance, upon his Brother's Death, in the Imperial Crown of this Realm, to entitle himſelf to the good Opinion of his People, and to engage them to the Expreſſion of that Duty which the Chriſtian Religion, and I am ſure particularly the Religion of the true Church of *England* does oblige all its Followers to; what does he? Even before he was ask'd, in the very firſt Minutes of his Reign, he begins with Bounty to his Subjects, and declares his Reſolution to preſerve them ſafe in their deareſt and moſt precious Enjoyments, in their Religion; and not only in that, but in the Laws, Liberties, Rights and Properties, with the moſt inviolable Security to their Lives, and all that is dear unto them: And this gracious Declaration came from his Royal Mouth without any Solicitation or any Inducement, ſave only the generous and gracious Inclination of his own Royal Heart: And to give it the greater Edge, to the Honour of the Church of *England*'s Religion be it ſpoken, he was pleas'd to tell what Opinion he had of our Religion and its true Profeſſors, that they were the true Friends and faithful Supporters of the Government; an Opinion which I hope every honeſt Church-of-*England*-Man will endeavour to cheriſh by a ſuitable Practice of what is certainly the Doctrine of that Religion, Loyalty and Obedience.

But alas! without Horror and Confuſion, we cannot but remember, that inſtead of making good Returns of Reſpect and Duty to ſo gracious a Sovereign for his great Bounty, Faction and Sedition, Hypocriſy and Malice had beſotted and bewitched a great Part of his Subjects, and corrupted, blinded, and bigotted them to ſuch an height of Impiety, that a Rebellion muſt begin his Reign, and all the poiſonous Arts of Diſobedience are made uſe of to inſtigate the King's Subjects, with all the Rancour and Vengeance in the world to riſe againſt him.

Bleſſed God! What is the way that this Devil of Sedition comes to bewitch People to ſuch a height, when Almighty God had ſo lately delivered us from the Miſery and Confuſion of a Civil War? It is that way ſurely, we find it but too plain, which he had always found very ſucceſsful, the Pretence of Saintſhip, Conſcience, and that glorious Name, Religion. What Religion can it be? The Chriſtian Religion had this Form of its great Ruler; *Render to Cæſar the things that are Cæſar's, and to God the things that are God's.* But theſe Men act as though that were not Scripture, when yet pronounced by our bleſſed Lord himſelf, and both joined in one Sentence as indiſpenſible Duties; and they will hardly be brought to believe that Rebellion is the Sin of Witchcraft, though the Scriptures have directly given it that Character. Good God! that we ſhould live to ſuch an Age; when Men can call God to aſſiſt and protect them in a Rebellion: for not to reflect upon what was done in former times, it is late enough for us to remember, but not without Horror, that Men have been ty'd by all the Bonds and Contracts Hell could invent, in a Combination and Confederacy to murder both the late King and his preſent Majeſty, and all this while this muſt be ſanctified with the Name of Religion. So that a Man that is a Murderer by the Law of God, and an Offender againſt the firſt Precept that God Almighty enjoined, not to ſhed innocent Blood, ſhall yet be a Saint for an Aſſaſſination upon the account of Religion, and this ſhall be accounted a pious Cauſe to obtain Heaven.

Who did theſe Miſcreants, that were juſtly by Law condemned for that barbarous Conſpiracy, when they came to die, invocate? The Great God, to teſtify for them, that they died for the ſake of Religion? When they come to ſuffer for Treaſon, they can bleſs God Almighty for the Honour he does them in dying in his Cauſe, and call themſelves Martyrs for it.

Nay, is it not yet more ſtrange and horrid, that ſome Men, who call themſelves Miniſters of the Goſpel, ſhall come to be Bell-wethers of Rebellion,

* *The Lady* Liſle, *who was then paſt Seventy, was ſo little moved, that ſhe ſlept during great part of this Charge.*

and

and cry out, they are fighting the Lord's Battle, when they are attempting *to kill* the Lord's Anointed?

Jesus God! that ever we should have such a Generation of Vipers among us, that can plunge themselves into the most horrid Impieties, and yet think to escape Confusion here, and purchase a Crown of Glory hereafter!

When we consider, Gentlemen, the Ring-leader of this late Rebellion, the Center of all our Trouble, the Arch-Rebel and Traitor *Monmouth* I mean, should arrive to such a Height of Impudence and Villany, as to bless God that he could with Satisfaction reflect upon a two Years Life very regularly spent; but how? In manifest Adultery and Uncleanness; nor can it be spoke or thought of without inexpressible Horror.

Alack! Gentlemen, when we find Religion made use of as a Subterfuge and Cloak for such impious Practices, it gives too much occasion for our Enemies to think us Atheists: the very *Turks* will hate us, and *Pagans* detest us, as the most irreligious, prophane People in the World; when we, who profess Love and Duty to Jesus Christ as our Holy and Blessed Redeemer, do these things, and even boast of them, whom they that deny him blush at the very thoughts of, and never so much as name, much less act without Horror and Confusion.

Gentlemen, I do not speak this for the sake of speaking, but I would fain deliver my own Soul and yours from having any hand in such horrible Impieties, and that, by testifying our Abhorrence of them, by publickly declaring ourselves to be Enemies to those Hypocrites, the Nonconformist Parsons; I mean, that pretend indeed pure Religion to be their great Aim and End, and through a Scrupulosity of Conscience, cannot conform to that Decency and Duty which is required of them in the Church; but yet, without remorse, can kill, or be the occasion of the Death of ten thousand People, as in the Consequence of this late Rebellion perhaps it may prove. For do but consider how many Families by this means are utterly ruined, how many innocent Babes starved, or exposed to the utmost Penury and Want; how many Widows left in a distressed desolate Condition, destitute of all manner of Provision and Maintenance; and all this by the Instigation of these Villains that have preached and prayed them into it, gilding the bait that had drawn them into it, by the specious Pretence of Religion and Conscience!

Consider, Gentlemen, this is that which has brought this poor unfortunate Gentlewoman, the Prisoner at the Bar, into this deplorable Condition: What could prevail upon her to run such a hazard as this, but only her Affection and deluded Zeal for that Wretch, that had nothing but the name of Religion; for his Soul is blacker in the Eyes of God, and the Thoughts of all honest Men, than ever his Coat was? You see by the Proofs what an impudent unsanctified Villain he was; for when these Gentlemen that have given Evidence, were in the Custody, and under the Power of the Rebels, he must tempt and provoke them to leave off and forsake their Duty to their natural Lord and lawful Sovereign the King, whom God had set over them, and submit to an Usurper, a King of their own making; and such a King too, that I dare boldly affirm, the meanest Subject within the Kingdom that is legitimate, has a better Title to the Crown, than he had; and this all under the pretence of Religion, and the Protestant Religion too! And that same Prince of their's must have the Title of a Protestant Prince; and an excellent Protestant he lived and died, living in the open Violation of the Law of God, and in manifest Rebellion against his lawful Sovereign: and he died without any Remorse for either, boasting of his own Wickedness beyond the bounds of common Modesty and Humanity.

Gentlemen, Let us all join in hearty Prayers to our God, the God of infinite Mercy, that as he has yet once more delivered our Sovereign, and us with him, out of the Jaws of these Lions and ravenous Wolves; so he would still please to preserve him and us from the hands of all our Enemies: and I pray God it may have that good effect upon all of us, as to make us more careful and conscientious in our Duty to him, and his Vicegerent the King. To him alone must all the Glory be ascribed; it was not our Hands or Arms of the King, that could have saved or protected us, had not the special Interposition of the Divine Power and Goodness wrought this Deliverance for us.

But now, Gentlemen, to come to the particular Case here before you; and the Fact, upon the Evidence, stands thus: It is very notorious this Fellow *Hicks* was actually in this Rebellion; you have it sworn by three several Persons that saw him, and they particularized to you such Tokens of their Knowledge and Remembrance, that sure, if any thing can, must make him blush at the Repetition of them; for they tell you, when they were in Prison he would have corrupted them from their Duty; and yesterday they saw him in Prison, and upon discourse of some Circumstances, he could not deny but he was there.

This Person, Mrs. *Lisle*, the Prisoner at the Bar, she is accused for receiving and harbouring this Person: And, Gentlemen, I must tell you for Law, of which we are the Judges, and not you, That if any Person be in actual Rebellion against the King, and another Person (who really and actually was not in Rebellion) does receive, harbour, comfort, and conceal him that was such, a Receiver is as much a Traitor, as he who indeed bore Arms: We are bound by our Oaths and Consciences, to deliver and declare to you what is Law; and you are bound, by your Oaths and Consciences, to deliver and declare to us, by your Verdict, the Truth of the Fact.

Gentlemen, that he was there in Rebellion, is undeniably and unquestionably proved: That there are sufficient Testimonies to satisfy you that this Woman did receive and harbour him, is that which is left to your Consideration; and, for that, the Proofs lie thus: And truly I am sorry to have occasion for repeating the Circumstances of the Proof; I mean, the great Art that has been used to conceal it; how difficult a thing it was to come at it; what time has been spent in endeavouring to find out Truth in a Fellow, that in defiance of all Admonition, Threats and Persuasion, would prevaricate and shuffle to conceal that Truth; nay, lye and forswear himself to contradict it. But out of true Christian Charity, as I told him, so I tell you, I do heartily pray (and all good Christians I hope will join with me in it) to the God of infinite Mercy that he would have mercy upon his Soul, upon which he hath contracted so great a Guilt by the Impudence of his Behaviour, and pertinacious Obstinacy in those Falsehoods which he hath made use of in this Case.

Gentlemen, I would willingly forget all his Prevarications, but I must take notice of them, in short, to come to the Truth. First, he says, he came upon an Errand from a Man, he knows not whom, to my Lady *Lisle*'s House; and thither he is brought by one *Barter*; and when he comes there, he tells her, he comes in the Name of one *Hicks*, who desired to be entertained there. Then she asks the Question, whether *Hicks* had been in the Army; and he told her he did not know; and he swears now he did not: But at last it came out, that it was to entertain *Hicks* and another Person; but it should seem that other Person was not named; and *Barter* tells you, that *Hicks* and another Person (who afterwards proved to be *Nelthorp*) are promised to be entertained, and ordered to come in the Evening. But not to go backward and forward, as he has done in his Evidence, denying what he afterwards acknowledged, that he saw any body besides a little Girl; that he pulled down the Hay out of the Rack for his Horse; that he eat any thing but Cake and Cheese that he brought with him from home; that he was ever made to drink, or to eat or drink in the House, or ever meddled or made with any body in the House: At last we are told that *Carpenter* met with him; and came out with a Lanthorn and Candle, took care of his Horse, carried him into the Room where *Hicks* and *Nelthorp* were, and the Prisoner at the Bar Mrs. *Lisle*; there they all supp'd together; there they fell into Discourse; there *Nelthorp*'s Name was named, and they talked of being in the Army, and of the Fight: and so it is all come out, and makes a full and positive Evidence.

But then, suppose there was no more than the other Evidence, and that the Fellow remain in an hard-hearted Obstinacy, then you are to consider the Circumstances even from his first Evidence, that this was after the Rebellion was all over; for it seems during the Rebellion she was in *London*, and it was notoriously known the King's Forces were in pursuit of the Rebels, and this without any positive Proof, would be in itself a sufficient Testimony to convince any considerate Person, that she was to conceal those she ought not to conceal; because she directed the particular time wherein they should come, and that was at Night; and no prudent Person would receive Strangers in the Night, and give such Directions in such a Season, without some extraordinary ground for it. When they came there, she provided a Supper for them; and you see what care is taken, that the Woman only is permitted to bring that Supper to the Door, and the Husband must set it on the Table; no body is permitted to attend there but he. Works of Darkness always desire to be in the Dark: Works of Rebellion and such like are never done in the Light.

But then comes that honest Fellow *Barter* (I call him so, because he appears so to be, and he ought to be remembred with a great Remark for his Honesty), he tells you, he conducted him to the House, and what Discourse pass'd there in his hearing. The Prisoner asked him, what Countryman he was, and whether he was a Brick-maker, and promised him so many Acres of Land in *Carolina*. The Fellow, upon Observation and Consideration, found himself under a great Load, could not sleep nor eat quietly, as Men that have honest Minds are uneasy under such things; Falshood, and Treason, and Hypocrisy are a heavy Load; and, blessed be God, things were by this means discovered: for he goes and tells Col. *Penruddock*; and withal, *Dunne* swears to *Barter*, it was the bravest Job that ever he had in his Life; whereas in the beginning of his Story, he would have told you a strange Story of a black Beard, and I do not know what, and that he got not one Groat by it; that he gave the Man Half a Crown out of his own Pocket, and was so industrious, as when he knew the Way no farther, then he would hire one himself to shew him the Way, and all for nothing, but only for the kindness he had for a black Beard.

Besides, Gentlemen, I am sorry to remember something that dropped even from the Gentlewoman herself; she pretends to Religion and Loyalty very much, how greatly she wept at the Death of King *Charles* the Martyr, and owns her great Obligations to the late King and his Royal Brother; that she had not had a Being, nor any thing to maintain it for twenty Years last past but from their Bounty, and yet no sooner is one in the Grave, but she forgets all Gratitude, and entertains those that were Rebels against his Royal Successor. I will not say what Hand her Husband had in the Death of that blessed Martyr *, she has enough to answer for of her own Guilt; and I must confess it ought not one way or other to make any Ingredient into this Case what she was in former Times: And I told a Relation of her's, Mr. *Tipping* by Name, that came to me last Night, to desire that she might not lie under some Imputations that were gone abroad of her, that she rejoic'd at the Death of King *Charles* I. nor that any false Report of that Nature might influence the Court or Jury against her, that it should not: Be the thing true or false, it is to be of no weight one way or other in the Trial of this Case, nor is she to be accountable for it.

But I must remember you of one Particular, that is plain upon this Evidence, and is of very great moment in this Case; That after all these private Messages and Directions given to come by Night, and the kind Reception they met with when they came, and after all this Care to lodge them and feed them, when Colonel *Penruddock*, after the Discovery made by *Barter*, came to search her House, then she had no body in it truly, which is an Aggravation of the Offence testify'd by Colonel *Penruddock* himself, whose Father likewise was a Martyr, and died for his Fidelity to the Crown; and who was the Judge of that Father, we all very well know. God Almighty is a just God, and it may be worth considering (especially by her) how God has been pleased to make use of him as the Instrument in this Business; and she would likewise do well to consider the Finger of God in working upon the Heart of that Man *Barter*, who was employ'd in all this Affair, and that all the Truth has been told by *Nelthorp*, that blackest of Villains *Nelthorp*, that would have murdered the late King and his royal Brother; that he, that was one of those barbarous, malicious Assassinates in that black Conspiracy, and outlaw'd, should be harbour'd by one that pretends a Love for the Royal Family, and entertained and discoursed with at Night about being in the Army;

* *This was an unjust Insinuation, only to prejudice the Jury, being, as the Chief Justice own'd, nothing to the purpose: for which Reason it should have been let alone, and tho' be said, it ought not to influence the Case, yet he knew it was very likely to do so.*

yet

yet that he and that other Villain *Hicks*, who pretends to Religion and to be a Preacher of the Goſpel, but is found in Rebellion and in the Company of Traitors, ſhould be deny'd the next Morning.

I hope they themſelves are all by this time ſatisfied Truth will come out, and I hope you will not be deceived by any ſpecious Pretences. Our Fore-fathers have been deluded, but the Deception, I hope, is now at an End: and I muſt needs ſay, if all theſe Witneſſes that have freely diſcovered their Knowledge, joined to that Truth which is at length drawn from that *Dunne*, be worthy of any Credit, it is as plain a Proof as can be given, and as evident as the Sun at Noon-day.

Gentlemen, upon your Conſciences be it: The Preſervation of the Government, the Life of the King, the Safety and Honour of our Religion, and the Diſcharge of our Conſciences as loyal Men, good Chriſtians, and faithful Subjects, are at ſtake; neither her Age nor her Sex are to move you, who have nothing elſe to conſider but the Evidence of the Fact you are to try. I charge you, therefore, as you will anſwer it at the Bar of the laſt Judgment, where you and we muſt all appear, deliver your Verdict according to Conſcience and Truth. With that great God, the impartial Judge, there is no ſuch thing as Reſpect of Perſons; and in our Diſcharge of our Duty in Courts of Juſtice, he has enjoined us, his Creatures, that we muſt have no ſuch thing as a Friend in the Adminiſtration of Juſtice; all our Friendſhip muſt be to Truth, and our Care to preſerve that inviolate.

Liſle. My Lord, if your Lordſhip pleaſe——

L. C. J. Miſtreſs, you have had your Turn, you cannot now be heard any more after the Jury is charged.

Liſle. My Lord, I did not know *Nelthorp*, I declare it, before he was taken.

L. C. J. You are not indicted for *Nelthorp*, but we are not to enter into Dialogues now, the Jury muſt conſider of it.

Jury-man. Pray, my Lord, ſome of us deſire to know of your Lordſhip, in point of Law, whether it be the ſame thing, and equally Treaſon, in receiving him before he was convicted of Treaſon, as if it had been after.

L. C. J. It is all the ſame, that certainly can be no Doubt; for, if in caſe this *Hicks* had been wounded in the Rebels Army, and had come to her Houſe and there been entertained, but had died there of his Wounds, and ſo could never have been convicted, ſhe had been nevertheleſs a Traitor.

Then the Jury *withdrew, and ſtaying out a while, the Lord* Jefferies *expreſſed a great deal of Impatience, and ſaid, he wonder'd that in ſo plain a Caſe they would go from the Bar, and would have ſent for them with an Intimation, that if they did not come quickly, he would adjourn, and let them lie by it all Night; but after about half an Hour's ſtay the* Jury *returned, and the Foreman addreſſed himſelf to the Court thus:**

Foreman. My Lord, we have one thing to beg of your Lordſhip ſome Directions in, before we can give our Verdict in this Caſe: We have ſome Doubt upon us, whether there be ſufficient Proof that ſhe knew *Hicks* to have been in the Army.

L. C. J. There is as full Proof as Proof can be; but you are Judges of the Proof, for my part I thought there was no Difficulty in it.

Foreman. My Lord, we are in ſome doubt of it.

L. C. J. I cannot help your Doubts: Was there not proved a Diſcourſe of the Battle and of the Army at Supper-time?

Foreman. But, my Lord, we are not ſatisfy'd that ſhe had Notice that *Hicks* was in the Army.

L. C. J. I cannot tell what would ſatisfy you; Did ſhe not enquire of *Dunne*, whether *Hicks* had been in the Army? And when he told her he did not know, ſhe did not ſay ſhe would refuſe him if he had been there, but order'd him to come by Night, by which it is evident ſhe ſuſpected it; and when he and *Nelthorp* came, diſcourſed with them about the Battle and the Army. Come, come, Gentlemen, it is a plain Proof.

Foreman. My Lord, we do not remember that it was proved that ſhe did aſk any ſuch Queſtion when they were there.

L. C. J. Sure you do not remember any thing that has paſſed? Did not *Dunne* tell you there was ſuch Diſcourſe, and ſhe was by, and *Nelthorp*'s Name was named? But if there were no ſuch Proof, the Circumſtances and Management of the Thing is as full a Proof as can be; I wonder what it is you doubt of?

Liſle. My Lord, I hope——

L. C. J. You muſt not ſpeak now.

Then the Jury *laid their Heads together for near a Quarter of an Hour, and at length agreed; and being call'd over, deliver'd in this Verdict by the Foreman.*

Cl. of Ar. Alice Liſle, Hold up thy Hand. Gentlemen of the Jury, look upon the Priſoner: How ſay ye? Is ſhe guilty of the Treaſon whereof ſhe ſtands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands, or Tenements had ſhe?

Foreman. None that we know of.

Cl. of Ar. Look to her, Jaylor, ſhe is found guilty of High Treaſon; and prepare yourſelf to die.

Then the Verdict was recorded.

L. C. J. Gentlemen, I did not think I ſhould have had any Occaſion to ſpeak after your Verdict, but finding ſome Heſitancy and Doubt among you, I cannot but ſay, I wonder it ſhould come about; for I think in my Conſcience, the Evidence was as full and plain as could be, and if I had been among you, and ſhe had been my own Mother, I ſhould have found her Guilty.

Then the Court adjourn'd till the next Morning.

Dies Veneris 28 Auguſti, 1685.

THIS Day *Alice Liſle* was brought to the Bar, and being aſked what ſhe had to ſay for herſelf, why Judgment of Death ſhould not paſs upon her, being convicted of High Treaſon; but offering nothing, ſhe was, with the reſt of the Priſoners that were to receive the Sentence of Death, condemn'd by the Lord *Jefferies*, who paſſed Sentence thus:

L. C. J. Alice Liſle, and you the ſeveral Priſoners now at the Bar, you have been ſeverally Indicted, Arraigned, and now ſtand ſeverally Convicted of Crimes that by the Laws of the Land are to be puniſhed with Death; you ſtand convicted by your Equals, by a Jury of your Country, againſt whom you might have had, and were allow'd to make (and one of you did make) what Challenges you could: but upon full Evidence, by that Jury of your own Country-men, you have been found guilty of thoſe Crimes for which you are to die; and there remains now no more with the Court but to perform their Duty, which is to pronounce that Sentence, that diſmal Sentence of Death, which the Law has provided for ſuch Offenders.

And ſure I am, it cannot but be thought uneaſy, and far from pleaſant, not only to me, but to every body elſe that ſees ſuch a lamentable Object, ſuch a Number of Perſons that might have acquired to themſelves an honeſt Livelihood by Diligence in their lawful Callings, being dutiful to God, and obedient to their Sovereign and the Laws of the Land, who yet in defiance of all theſe, have brought themſelves to a ſhameful untimely End by their own wicked Courſes.

Particularly, I cannot but lament the deplorable Condition of you, Mrs. *Liſle*, a Gentlewoman of Quality and of Fortune, ſo far ſtricken in Years, therefore ought to have had more Diſcretion: One, who all your Lifetime have been a great Pretender to, and Profeſſor of, Religion, and of that Religion which bears a very good Name, the Proteſtant Religion; but that Name has been perverted to very ill Purpoſes by ſome People, who have had nothing but the Name to protect themſelves under.

There is no Religion whatſoever (except that hypocritical Profeſſion of theirs which deſerves not the Name of Religion, I mean the canting, whining, Preſbyterian, Phanatical Profeſſion) that gives the leaſt Countenance to Rebellion or Faction; and I cannot but lament to find you involved in that Herd.

And I cannot but deplore it withal, as a moſt ſad and diſmal thing, that in this little Caſe ſo many Perjuries ſhould be added to the Crime of Treaſon, ſuch as for my part I cannot but tremble to remember; Perjuries in defiance of all the Inſtruction and Admonition that true Chriſtian Charity could expreſs, and in defiance of the Omniſcience and Juſtice of the All-ſeeing God of Truth: You ought to reflect upon whoſe Account thoſe Perjuries were committed, and to lay them ſeriouſly to Heart, for ere long, in a few Hours (deceive not yourſelf) you are to give an Account at a greater Bar for all your Thoughts, Words, and Actions.

You would likewiſe do well to bethink yourſelf with all Seriouſneſs and Remorſe, of your own falſe Aſſeverations and Proteſtations, that you upon your Salvation ſhould pretend Ignorance in the Buſineſs, when ſince that Time, even ſince the laſt Night, there has been but too much diſcover'd how far you were concern'd; no, 'tis not unknown who were ſent for upon the *Monday* Night, in order to have that rebellious, ſeditious Fellow to preach to them, what Directions were given to come thro' the Orchard the back and private Way, what Orders were given for Proviſion, and how the Horſes were appointed to be diſpoſed of. I only ſpeak this, that you ſhould bethink yourſelf in this ſhort time that you have left here upon Earth, to get theſe Sins of your's duly repented of, and truly pardoned; and not only ſo, but conſider you have it now in your Power to make ſome Recompence to the publick Juſtice of the Nation, by diſcovering the Truth in this Matter, and all Religion enjoins you to do what you can: For without the infinite Mercy of the great God you are in a deplorable Condition, and without true Contrition and Repentance, of which all the Recompence you can make, both for publick and private Injuries, is a part, you can never hope for the Mercy of that God to be extended to you.

Sirs; It is not in my Province to adviſe you in your Preparation for that Eternity you are all ſuddenly to enter into: but out of pure Charity, and hearty Compaſſion to you, and the miſerable Condition you have brought yourſelves into, and out of a tender Regard to your precious immortal Souls, I cannot but aſſure you of my own, and recommend you to the earneſt and fervent Prayers of all good Chriſtians, to the God of infinite Mercy, that he would be merciful unto you all.

And the great God of his gracious Goodneſs grant, that all we that are here may learn ſuch Leſſons, as are proper from ſuch Examples! From that Woman the ſad and diſmal Effects of Diſloyalty and Treaſon; and from all the reſt, the deplorable Miſchiefs that attend Licentiouſneſs and Debauchery: For, by the Courſe of Nature, moſt of theſe might have lived a much longer Time, and that with Comfort to themſelves and their Relations; but now, to the Anguiſh of their own Hearts, and the unſpeakable Grief of all their Friends, they have ſhortened their own Days, and brought a diſmal Sentence upon themſelves.

And I recommend them not only to myſelf and others, but chiefly and eſpecially to the Pious, Orthodox and Learned Miniſtry, to give the beſt Aſſiſtance they can, during the ſhort Remainder of their Time; for their Abode here upon Earth is but ſhort, and God grant they may meet with a bleſſed Immortality.

There remains no more for me to do, I ſay, but to pronounce the Sentence of the Law, which is this; and the Court does award,

That you, Mrs. Liſle, *be conveyed from hence to the Place from whence you came, and from thence you are to be drawn on a Hurdle to the Place of Execution, where your Body is to be burnt alive till you be dead. And the Lord have Mercy upon your Soul.*

The reſt of the Priſoners had the uſual Judgment as in Caſes of Felony.

L. C. J. Look you, Mrs. *Liſle*, when I left his Majeſty, he was pleaſed to remit the Time of all Executions to me; that where-ever I found any Obſtinacy or Impenitence, I might Order the Executions with what ſpeed I ſhould think beſt: Therefore, Mr. Sheriff, take notice, you are to prepare for the Execution of this Gentlewoman this Afternoon. But withal, I give you, the Priſoner, this Intimation: We that are the Judges, ſhall ſtay in Town an Hour or two; you ſhall have Pen, Ink, and Paper brought you, and if in the mean time you employ that Pen, Ink, and Paper, and this Hour or two well, (you underſtand what I mean) it may be you may hear further from us, in a deferring the Execution.

Then the Priſoner was taken away.

But afterwards, upon the Interceſſion of ſome Divines of the Church of Winchester, *ſhe was reprieved till* Wedneſday *the Second of* September.

* *Biſhop* Burnet *ſays, the Jury at firſt brought her in Not Guilty.* Hiſt. of his Own Times, *p.* 650. *The Truth was, ſhe knew not* Nelthorp *at all, only* Hicks *whom ſhe entertained without knowing of his having been in the Army; but* Hicks *telling where he had been, ſhe immediately left the Room, and order'd her Servant to ſend Information to the next Juſtice, and in the mean time to let them eſcape, but was prevented by a Party of Soldiers inveſting the Houſe.*

On Sunday *the Thirtieth of* August, *the following Letter was sent to the Right Honourable the Earl of* Clarendon, *Lord Privy Seal, at* Windsor; [*which the Earl did then read to the King*] *who answered*, That he would do nothing in it, having left all to the Lord Chief Justice *.

My Lord,

" UNderstanding that Mrs. *Lisle* is condemned, and that many false " Things are reported of her, that may hinder the King from shew- " ing her Mercy; particularly, that she was an Enemy to the King's " Friends in the Time of the late Wars: As to that, we can assure your " Lordship, that she was a Favourer of them in their greatest Extremities; " and particularly of us, and of some others that are since dead: And for " these late Years we have often been in her Company, and never heard " her say any Thing but what became a loyal Subject. This we desire " your Lordship would be pleased to represent to the King, and to inter- " ceed for her Reprieve; which will be a great Obligation to your Lord- " ship's humble Servants,

M. St. John.
E. Abergavenny.

On Monday *the Thirty-first of* August *the following Petition was presented to the King.*

To the King's most Excellent Majesty,

The Humble Petition of Alicia Lisle,

Humbly Sheweth,

' THAT your Petitioner lieth under a Sentence of Death, for har- ' bouring one *John Hicks*, and is sentenced to be burnt on *Wednes- ' day* next.

' That she is the daughter of Sir *White Beconsaw*, descended of an an- ' tient and honourable Family, and related to several of the best Families ' of the Nobility of this Kingdom.

' Wherefore your Petitioner humbly begs your Majesty, that Execu- ' tion may be altered from Burning to Beheading, and may be respited ' for four Days:

And your Petitioner shall ever pray, &c.

To which his Majesty answered: *That he would not reprieve her one Day; but for altering the Sentence he would do it, if there were any Precedents for it.*

Thereupon the following Precedents, for the altering of the Sentence, were offered to the King.

That Execution may vary from the Judgment, see the Register, *Fol.* 165. in Felony, where the Judgment always is *Suspendatur per collum*; *Parl.* 8. E. 3. yet the Party may be beheaded, which is no Part of the Sentence. So was the Duke of *Somerset* in the Time of *Edw.* VI. for Felony: So was the Lord *Audley*, 7 *Car.* I. for Felony (Rape).

Queen *Katherine Howard* for Treason, *Hen.* VIII. and *Jane Gray*, *primo Mariæ*. The Countess of *Salisbury*, being attainted for Treason, *Anno* 1541. was beheaded 32 *Hen.* VIII. *See* 3 Co. Inst. *p.* 211, 212.

Whereupon his Majesty was pleased to sign the following Warrant.

JAMES R.

WHERAS we are informed that *Alicia Lisle* has received Sentence of Death for High Treason at the Sessions of *Oyer* and *Terminer*, and *Gaol-Delivery*, held at our City of *Winchester*, for harbouring of *John Hicks* a Rebel, and that the Sentence is to be executed upon her the second of *September* next, by burning her alive: And whereas the said *Alicia Lisle* has humbly petitioned us to alter the Manner of the said Execution, by causing her Head to be severed from her Body: We, being graciously pleased to condescend to her Request, have thought fit hereby to signify Our Will and Pleasure accordingly. And our further Will and Pleasure is, that you deliver the Head and Body to her Relations to be privately and decently interred: And for so doing this shall be your Warrant.

Given at our Court at *Windsor*, the Thirty-first Day of *August*, 1685. in the First Year of our Reign.

SUNDERLAND.

To our Trusty and Well-beloved the High-Sheriff of our County of Hants, *and to all others whom it may concern.*

Which Warrant being delivered to the Sheriff, she was, on *Wednesday* the second of *September*, in the Afternoon, brought to Execution; which was performed upon a Scaffold erected in the Market-place of the City of *Winchester*, where she behaved herself with a great deal of Christian Resolution. She then deliver'd a Paper to the Sheriff, a Copy of which follows; and after some little Time was executed, having her Head sever'd from her Body.

A Copy of the Paper delivered to the Sheriff.

Gentlemen, Friends, and Neighbours,

' IT may be expected that I should say something at my Death, my ' Birth and Education being near this Place. My Parents instructed ' me in the Fear of God, and I now die of the Reformed Religion, always ' being instructed in that Belief, That if Popery should return into this ' Nation, it would be a great Judgment. I die in the Expectation of ' Pardon of my Sins, and Acceptation with the Father, by the imputed ' Righteousness of Jesus Christ, he being the End of the Law for Righ- ' teousness to every one that believes. I thank God, through Jesus Christ, ' I depart under the Blood of Sprinkling, which speaketh better Things ' than the Blood of *Abel*, God having made this Chastisement an Ordi- ' nance to my Soul.

' I did as little expect to come to this Place on this Occasion as any ' Person in this Nation; therefore let us learn not to be high-minded, but ' fear the Lord: The Lord is a Sovereign, and will take what way he ' sees best to glorify himself by his poor Creatures; therefore do humbly ' desire to submit to his Will, praying him, that in Patience, I may possess ' my Soul.

' My Crime was entertaining a Nonconformist Minister, who is since ' sworn to have been in the late Duke of *Monmouth*'s Army. I am told, ' if I had nor denied them, it would not have affected me. *I have no Ex- ' cuse but Surprize and Fear*; which I believe my Jury must make Use of ' to excuse their Verdict to the World.

' I have been told, the *Court ought to be Counsel for the Prisoner, instead ' of which, there was Evidence given from thence; which, though it were but ' Hearsay, might possibly affect my Jury. My Defence was such as might be ' expected from a weak Woman: but such as it was, I did not hear it re- ' peated again to the Jury.* But I forgive all Persons that have done me ' wrong, and I desire that God will do so likewise.

' *I forgive Col.* Penruddock, *though he told me, he could have taken those ' Men before they came to my House.*

' As to what may be objected, that I gave it under my Hand that I had ' discoursed with *Nelthorp*, that could be no Evidence to the Court or ' Jury, it being after my Conviction and Sentence.

' I acknowledge his Majesty's Favour in altering my Sentence; and I ' pray God to preserve him, that he may long reign in Peace, and the ' true Religion flourish under him.

' Two things I have omitted to say, which is, that *I forgive him that ' desired to be taken from the Grand Jury to the Petty Jury, that he might be ' the more nearly concerned in my Death.*

' Also I return humble Thanks to Almighty God, and the Reverend ' Clergy that assisted me in my Imprisonment.

Sept. 2, 1685. ALICE LISLE.

Her Attainder was afterwards reversed 1st of William *and* Mary.

Primo Gulielmi & Mariæ, Anno 1689.

An ACT for annulling and making void the Attainder of *Alicia Lisle*, Widow.

WHereas Alicia Lisle, Widow, in the Month of August, in the first Year of the Reign of the late King James the Second, at a Sessions of Oyer and Terminer, and Gaol-Delivery, holden for the County of Southampton, at the City of Winchester in the said County, by an irregular and undue Prosecution, was indicted for entertaining, concealing and comforting John Hicks, Clerk, a false Traitor, knowing him to be such; Though the said *John Hicks* was not, at the Trial of the said *Alicia Lisle*, Attainted or Convicted of any such Crime: And, by a Verdict injuriously extorted and procured by the Menaces and Violences, and other illegal Practices of George Lord Jefferies, Baron of Wem, then Lord Chief Justice of the King's Bench, and Chief Commissioner of Oyer and Terminer and Gaol Delivery, within the said County, was convicted, attainted, and executed for High-Treason: May it therefore please your most excellent Majesties, at the humble Petition of Triphena Lloyd and Bridget Usher, Daughters of the said Alicia Lisle, That it be declared and enacted by the Authority of this present Parliament: And be it Enacted by the King and Queen's most excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That the said Conviction, Judgment and Attainder of the said *Alicia Lisle* be, and are hereby repealed, reversed, made and declared null and void to all Intents, Constructions and Purposes whatsoever, as if no such Conviction, Judgment or Attainder had ever been had or made; And that no Corruption of Blood, or other Penalty or Forfeiture of Honours, Dignities, Lands, Goods, or Chattels, be by the said Conviction or Attainder incurred: any Law, Usage or Custom to the contrary notwithstanding.

Joh. Brown, Cleric' Parliamentor'

Ex.

CXXXVI. *Trials of* John Fernley, William Ring, Elizabeth Gaunt †, *and* Henry Cornish ‡, *Esq*; *at the* Old-Bailey, *for* High-Treason, October 19, 1685. 1 Jac. II.

MONDAY, *Octob.* 19*th*, 1685, at the *Sessions-House*, in the *Old-Bailey*, *London*, the Court being met, and Proclamation made for Attendance, the Proceedings were as follow.

Clerk. Set *John Fernley* to the Bar. [*Which was done.*

Cryer. O Yes, All Manner of Persons are commanded to keep Silence, upon Pain of Imprisonment.

Cryer. John Fernley, hold up thy Hand. [*Which he did.*

Thou standest indicted by the Name of *John Fernley*.

* *The Earl of* Feversham *having been offered a thousand Pounds to obtain her Pardon, sollicited the King to grant it; but the King told him, he had promised the* Chief Justice *that he would not pardon her.*

† Burn. *Hist. Own Times. Vol. I. p.* 649. ‡ *Ibid.* 651.

Middleſex. THE Jurors for our Sovereign Lord the King upon their Oaths do preſent, That *John Fernley*, of the Pariſh of St. *Mary Matfellon*, otherwiſe *White-Chapel*, in the County of *Middleſex*, Barber, as a falſe Rebel and Traitor againſt the moſt illuſtrious and moſt excellent Prince King *James* the Second, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, and his natural Lord, not having the Fear of God in his Heart, nor his due Obedience any wiſe regarding, but being mov'd and ſeduced by the Inſtigation of the Devil; and his faithful Duty and natural Obedience which a true and loyal Subject ought to have towards his ſaid Lord the King, and by Law ought to obſerve, utterly withdrawing; and intending with all his Endeavours the Peace and Tranquility of this Kingdom of *England* to diſturb, and War and Rebellion againſt our ſaid Lord the King to incite and move, and the Government of our ſaid Lord the King in this Kingdom of *England* to ſubvert, and our ſaid Lord the King from his Title, Honour, and regal and imperial Crown of this his Kingdom of *England* to depoſe and deprive, and our ſaid Lord the King to Death and utter Deſtruction to bring; the 20th Day of *Auguſt* in the Year of the Reign of our Sovereign Lord *James* the Second, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* the firſt, and divers other Days as well before as after, at the Pariſh of St. *Mary Matfellon*, otherwiſe called *White-Chapel*, in the County of *Middleſex*, falſely, maliciouſly, deviliſhly, and traiterouſly, with divers Rebels and Traitors to the Jurors aforeſaid unknown, did conſpire, imagine, and intend our ſaid Sovereign Lord the King, now his ſupreme and natural Lord, not only of his royal State, Title, Power, and Government of this his Kingdom of *England*, to deprive and depoſe, but alſo the ſame Lord the King to kill and murder, and the ancient Government of this Kingdom of *England* to change, alter, and totally ſubvert, and a miſerable Slaughter amongſt the Subjects of our Lord the King throughout all this his Kingdom of *England* to cauſe and procure; and an Inſurrection and Rebellion againſt our Lord the King to procure, promote, and aſſiſt: And the ſame his moſt wicked, moſt inhuman, and moſt deviliſh Treaſons and Conſpiracies, Purpoſes and traitorous Imaginations to fulfil and to effect, he the ſaid *John Fernley*, as a falſe Traitor, then and there, *viz.* on the ſaid 20th Day of *Auguſt*, in the Year of the Reign of our ſaid Lord the King, the firſt as aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid, well knowing one *James Burton* to be a falſe Traitor, and as a falſe Traitor traitorouſly to have conſpired and imagined the Death and utter Deſtruction of our ſaid Lord the King, and War and Rebellion againſt our ſaid Lord the King within this Kingdom of *England* traitorouſly (with divers other Rebels to the Jury unknown) to have levied and ſtirr'd up; he the ſaid *John Fernley* afterwards, *viz.* on the ſaid 20th Day of *Auguſt*, in the Year of the Reign of our ſaid Lord the King, now the firſt aforeſaid, at the Pariſh aforeſaid, in the County aforeſaid, the ſaid *James Burton* in the Manſion-Houſe of him the ſaid *John Fernley*, ſituate in the Pariſh and County aforeſaid, knowingly, ſecretly, wickedly, deviliſhly, and traitorouſly, did harbour, conceal, comfort, ſuſtain, and keep; and then and there, for the Comforting, Suſtentation, and Maintenance of the ſaid *James Burton*, the ſaid *John Fernley* Meat and Drink to the ſaid *James Burton* maliciouſly and traitorouſly did give and deliver, and did cauſe to be given and delivered, againſt the Duty of his Allegiance, againſt the Peace of our ſaid Lord the King, his Crown and Dignity, and alſo againſt the Form of the Statute in the like Caſe made and provided, *&c.*

Clerk. How ſayeſt thou *John Fernley*, art thou guilty of the High-Treaſon whereof thou ſtandeſt indicted, or not guilty? —— *Fernley.* Not guilty.

Clerk. Culprit, how wilt thou be tried?—*Fernley.* By God and my Country.

Clerk. God ſend thee a good Deliverance.

Set *William Ring* to the Bar. [*Which was done.*

William Ring, hold up thy Hand. [*Which he did.*

Thou ſtandeſt indicted by the Name of *William Ring*, of the Pariſh of *St. Clement's Danes*, in the County of *Middleſex*, Taylor.

Middleſex. THE Jurors for our Sovereign Lord the King do preſent upon their Oaths, That *William Ring*, late of the Pariſh of *St. Clement's Danes*, in the County of *Middleſex*, Taylor, as a falſe Traitor againſt the moſt illuſtrious and excellent Prince *James* the Second, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, and his natural Lord, not having the Fear of God in his Heart, nor the Duty of his Allegiance any ways weighing, but being mov'd and ſeduced by the Inſtigation of the Devil, and the true, due, and natural Obedience which true and faithful Subjects of our ſaid Lord the King towards our ſaid Lord the King ſhould and of right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſquiet, moleſt, and diſturb, and War and Rebellion againſt our ſaid Lord the King within this his Kingdom of *England* to incite and ſtir up, and the Government of our ſaid Lord the King in this his Kingdom of *England* to ſubvert, and our ſaid Lord the King from his Title, Honour, and regal Name of his Imperial Crown of this his Kingdom of *England* to depoſe and deprive, and our ſaid Lord the King to Death and final Deſtruction to bring and put, the 20th Day of *July*, in the firſt Year of the Reign of our Sovereign Lord *James* the Second, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, and divers other Days and Times, as well before as after, at the Pariſh of *St. Clement's-Danes*, in the County of *Middleſex*, falſely and maliciouſly, deviliſhly, and traitorouſly, with divers other Rebels and Traitors to the Jurors unknown, did conſpire, imagine, and intend, our ſaid Lord the King, our ſupreme and natural Lord, not only from his State, Title, Power, and Government of his Kingdom of *England* to deprive and depoſe, but alſo our ſaid Lord the King to kill and put to death, and the ancient Government of this Kingdom of *England* to change and alter, and wholly to ſubvert; and a miſerable Slaughter among the Subjects of our ſaid Lord the King throughout this whole Kingdom of *England* to cauſe and procure; and Inſurrection and Rebellion againſt our ſaid Lord the King to procure, move, and aſſiſt: And his ſaid moſt wicked and deviliſh Treaſons and traitorous Conſpiracies, Compaſſings, Imaginations, and Purpoſes aforeſaid to fulfil, effect, and perfect, he the ſaid *William Ring*, as a falſe Traitor, then and there, to wit, the ſaid 20th Day of *July*, in the ſaid firſt Year of the Reign of our ſaid Lord the King that now is, aforeſaid, at the Pariſh and County aforeſaid, well knowing *Joſeph Kelloway* and *Henry Lawrence* to be falſe Traitors, and as falſe Traitors traitorouſly to have conſpired and imagined the Death and final Deſtruction of our ſaid Lord the King, and War and Rebellion againſt our ſaid Lord the King within this his Kingdom of *England*, traitorouſly, with divers other Traitors to the Jurors unknown, to have levied, and raiſed, and ſtirred up. And he the ſaid *William Ring* afterwards (to wit) the ſaid 20th Day of *July*, in the firſt Year of the Reign of our ſaid Sovereign Lord the King aforeſaid, at the Pariſh aforeſaid, the ſaid *Joſeph Kelloway* and *Henry Lawrence*, in the Dwelling-Houſe of him the ſaid *William Ring* ſituated in the Pariſh and County aforeſaid, knowingly, ſecretly, wickedly, deviliſhly, and traitorouſly, did harbour, conceal, comfort, ſuſtain, and maintain; and then and there, for the comforting, ſuſtaining, and maintaining of the ſaid *Joſeph Kelloway* and *Henry Lawrence*, he the ſaid *William Ring* Meat and Drink to the ſaid *Joſeph Kelloway* and *Henry Lawrence* maliciouſly and traitorouſly did give and deliver, and did cauſe to be given and delivered, againſt the Duty of his Allegiance, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in this Caſe made and provided, *&c.*

How ſayeſt thou *William Ring*, art thou guilty of the High-Treaſon whereof thou ſtandeſt indicted, or not guilty?——*Ring.* Not guilty.

Clerk. Culprit, how wilt thou be tried?—*Ring.* By God and my Country.

Clerk. God ſend thee a good Deliverance.

Set *Henry Corniſh* to the Bar——*Henry Corniſh*, hold up thy Hand.

Mr. *Corniſh.* My Lord, I have been confined without any notice given me until Saturday about Noon of my Trial. My Lord, I do hope, ſeeing I appear before your Lordſhips and this honourable Bench who have known ſomething of my Converſation, that you will be pleaſed to conſider me, and grant me what is cuſtomary, and commonly done to Perſons in my Circumſtances.

Mr. *Jones.* Mr. *Corniſh*, if you pleaſe you ſhall have your time of ſpeaking hereafter, but now you are only to plead without any more ado.

Mr. *Corniſh.* My Lord, I beſeech you hear me a little; I have been ſo confined——

Lord Mayor. Mr. *Corniſh*, you muſt obſerve the Rules of the Court.

Mr. *Corniſh.* My Lord, I hope I ſhall be allowed what is cuſtomary in ſuch Caſes.

Lord Mayor. What is it you would have?

Mr. *Corniſh.* My Lord, I do deſire, if your Lordſhip will pleaſe to conſider me——

Mr. *Jones.* Wou'd you not be arraigned, Mr. *Corniſh?* After you are arraigned and have pleaded, you may ſpeak.

Mr. *Corniſh.* Let me tell your Lordſhip what my Caſe is: Is it reaſonable not to have above half a day's time for Preparation for my Trial, and no Counſel allowed me?

Mr. *Recorder.* Nor ought, without Leave of the Court, or by his Majeſty's ſpecial Appointment. *Sir Thomas Jenner.*

Mr. *Corniſh.* I have not had a Friend to come to me, but in the preſence of Major *Richardſon.*

Mr. *Recorder.* None have in your Circumſtances.

Mr. *Corniſh.* My Lord, ought not I to have a Copy of the Pannel? It is a thing never denied.——*Recorder.* It hath been denied very often*.

Mr. *Corniſh.* My Lord, it is a matter wherein my Life is concern'd; and therefore I hope your Lordſhip will hear me.

Mr. *Jones.* After you are arraign'd you may ſpeak, and put off your Trial if you can.

Mr. *Corniſh.* My Lord, I cannot go from this before I poſſeſs your Lordſhip with a right Underſtanding of it; it is beyond Precedent: no ſuch Precedent, that any Man ſhould be kept with that Strictneſs I have been.

Recorder. Mr. *Corniſh*, I wonder you will ſay ſo: I tell you there is no Man accuſed of your Crime but is ſo kept.

Mr. *Corniſh.* If your Lordſhip pleaſes to allow me a little time, I do not queſtion but I can very well ſatisfy your Lordſhip, and this honourable Court, that I am a very innocent Perſon.

Mr. *Recorder.* You will have your proper time for that, but now you muſt plead, that you may hear the particulars of your Charge, and have an Opportunity to make out your Innocence; for we muſt keep the ſame Method with you we do with all other Perſons in your Circumſtances; and therefore you muſt plead as other Perſons do.

Mr. *Jones.* Will you, or will you not, Sir, without any more ado? The Law gives you Advantage, you may challenge any body; there are fourſcore returned, honeſt Men, and you may challenge who you pleaſe.

Mr. *Corniſh.* Alas! my Lord, what can I do?

Counſel. He diſputes out of time; he is to be arraign'd.

Recorder. Come, Mr. *Corniſh*, you muſt plead.

Mr. *Corniſh.* I did underſtand laſt Night his Majeſty was graciouſly pleaſed to refer theſe matters, as to my Trial, to my Lords the Judges; and, my Lord, I do hope that the Judges, when they hear this matter, that I ſhall have ſome time allow'd.

Recorder. Pray, Mr. *Corniſh*, take the Rule of the Court, your Buſineſs is now to plead; when you have pleaded, what you have to offer for the putting off your Trial may be heard then.

Clerk. Henry Corniſh, hold up thy Hand.

Mr. *Corniſh.* My Lord, I would do nothing that ſhould be a diſhonour to your Lordſhip and the Court.

Sir *James Smith.* You know the way of the Court, Mr. *Corniſh*; you muſt plead.

Mr. *Jones.* If you will not plead, I will move the Court to record your ſtanding mute.

Mr. *Corniſh.* I have known that this Court hath heard what the Priſoner hath to ſay at the Bar; and I have more to ſay, perhaps, than any Man that ever ſtood at this Bar.

Recorder. Mr. *Corniſh*, when you have pleaded, you have time to ſpeak for yourſelf.——*Clerk. Henry Corniſh*, hold up thy Hand. [*Which he did.*

Thou ſtandeſt indicted by the Name of *Henry Corniſh.*

THAT *Henry Corniſh*, late of the Pariſh of St. *Michael Baſſiſhaw*, *London*, Merchant, as a falſe Traitor againſt the moſt illuſtrious Prince *Charles* the Second, late King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, then his natural Lord, not having the Fear of God in his Heart, not weighing the Duty of his Allegiance, but moved and ſeduced by the Inſtigation of the Devil, and the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our late Sovereign Lord the King towards our late Sovereign Lord

* *It was indeed denied to* Stephen Colledge, *but it was allow'd Lord* Ruſſell.

Lord the King ſhould and of right ought to bear, altogether withdrawing; and minding, and with all his Strength intending, the Peace and common Tranquillity of this kingdom of *England* to diſquiet, moleſt, and diſturb, and War and Rebellion againſt our late Sovereign Lord the King, within this Kingdom of *England* to ſtir up, move, and procure; and the Government of our ſaid late Sovereign Lord the King of this Kingdom of *England* to ſubvert, change, and alter, and our ſaid late Sovereign Lord the King from the Title, Honour, and kingly Name of the Crown Imperial of this Kingdom of *England* to depoſe and deprive; and our ſaid late Sovereign Lord the King to Death, and final Deſtruction to bring and put: the 30th Day of *May*, in the 35th Year of the Reign of our ſaid Sovereign Lord the King, and divers other Days and Times, as well before as after, at the Pariſh of *St. Michael Baſſiſhaw*, *London*, falſely, maliciouſly, deviliſhly, and traitorouſly, with divers falſe Traitors to the Jurors unknown, did conſpire, compaſs, imagine, and intend, our ſaid late Sovereign Lord the King, his ſupreme and natural Lord, not only of his kingly State, Title, Power and Government of this Kingdom of *England* to deprive and throw down; but alſo the ſaid late King to kill and put to death, and the ancient Government of this his Kingdom of *England* to change, alter, and altogether ſubvert, and a miſerable Slaughter amongſt the Subjects of our late Lord the King thorough this Kingdom of *Englrnd* to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid late Lord the King to procure, promote, and aſſiſt: And the ſame moſt wicked and deviliſh Treaſons and traitorous Compaſſings, Imaginations, and Purpoſes aforeſaid to fulfill, perfect, and bring to effect, he the ſaid *Henry Corniſh*, as a falſe Traitor, then and there, to wit, the ſaid 30th Day of *May*, in the Year aforeſaid, at the Pariſh and Ward aforeſaid, falſely, maliciouſly, and traitorouſly, knowing *James* the late Duke of *Monmouth*, *William Ruſſel*, Eſquire, and *Thomas Armſtrong*, Knight, and divers other Rebels and Traitors, then lately before in the Pariſh and Ward aforeſaid within the ſaid City of *London*, falſely, unlawfully, deviliſhly, and traitorouſly, to have conſpired the Death and final Deſtruction of our ſaid late Sovereign Lord the King; he the ſaid *Henry Corniſh*, as a falſe Traitor, then and there, to wit, the ſaid 30th Day of *May* in the Year aforeſaid, within the Pariſh and Ward in the ſaid City of *London*, falſely, unlawfully, wickedly, and traitorouſly, did promiſe to the ſaid divers falſe Traitors and Rebels, then and there preſent, That he the ſaid *Henry Corniſh* would be aiding and aſſiſting in the Treaſons aforeſaid, to be done, perfected, and brought to effect, againſt the Duty of his Allegiance, againſt the Peace, and againſt the Form of the Statute, *&c.*

Clerk. How ſayeſt thou, *Henry Corniſh*, art thou guilty of this High-Treaſon whereof thou ſtandeſt indicted, or not guilty?

Mr. *Corniſh.* This is an heinous Charge.

Counſel. Anſwer; you know you muſt anſwer.

Mr. *Corniſh.* I am perfectly innocent.

Council. Are you guilty or not guilty? You muſt take the Words.

Mr. *Corniſh.* Not Guilty.

Clerk. Culprit, how wilt thou be try'd?

Mr. *Corniſh.* By the Great God of Heaven, and my Country.

Clerk. God ſend thee a good Deliverance.

L. C. J. Jones. I don't know in what State things are here in the Court; I can'tell whether there be a Jury return'd or not.

Clerk. He is arraign'd.

L. C. J. Jones. Why don't you go on with the Jury?

Mr. *Corniſh.* My Lord, I humbly pray your Lordſhip: I have ſome ground for it—

L. C. J. Jones. You ſhall be heard in good time, Sir.

Mr. *Corniſh.* My poor Children laſt Night preferr'd a Petition to his Majeſty, and he was pleaſed to refer it moſt graciouſly to my Lords the Judges; and I now make my Application to your Lordſhips.

L. C. J. Jones. Have you any Anſwer to the Petition from the King?

Mr. *Corniſh.* It was referr'd to your Lordſhips the Judges, to conſider my Caſe.

L. C. J. Jones. We may hear more of your Buſineſs anon, when Mr. Attorney and Mr. Solicitor do come: we will ſtay here till they come, to know whether there be any Order from the King to them concerning you.

Mr. *Corniſh.* My Lord, I hope it will not be offenſive if I ſhould acquaint your Lordſhips what Uſage I have met with ſince I have been under Confinement. I have been under very cloſe Confinement, I had no Notice of my Trial till about twelve a-clock on *Saturday*; no Friend came to me till eight a-clock at Night; and I had no time for Preparation for my Trial. My Lord, theſe are hard things; but though I am denied Counſel, I truſt in God I ſhall not need Counſel, for I hope, if your Lordſhip pleaſes to allow me time, to clear myſelf of all Matters; and I hope with ſuch Satisfaction to your Lordſhips, that you will acquieſce in whatſoever I ſhall lay before your Lordſhips. I do not come to make an Harangue and Talk; my Caſe was ſuch, that I had neither Pen, Ink, nor Paper.

Mr. Juſt. *Withins.* Mr. *Corniſh*, Mr. Attorney and Mr. Solicitor will come, we muſt hear them.

L. C. J. Jones. You ſhall be heard in your proper time; it is a ſtrange thing you won't be ſatisfied; you ſhall be heard, I tell you, in your proper time.

Mr. *North.* We have arraigned one *Fernley*, if you pleaſe to try him, who (with *Ring*) was brought to the Bar.

Clerk. You the Priſoners at the Bar, thoſe Perſons you ſhall hear call'd, and appear, are to paſs between our Sovereign Lord the King and you, upon your ſeveral Lives and Deaths: if you will challenge them or any of them, your time is to challenge them when they come to the Book to be ſworn, before they be ſworn.

Cryer. O-Yes! All manner of Perſons are commanded to keep ſilence upon pain of Impriſonment.

The *Middleſex* Jury.

Nehemiah Arnold,	*John Vigures*,	*Samuel Peacock*,
Francis Stevens,	*Samuel Birch*,	*Richard Fitz-gerrard*,
Richard Fiſher,	*William Thompſon*,	*Richard Bromfield*,
John Howlet,	*William Read*,	*John Haynes.*

Cryer. O-Yes! If any one can inform my Lords the King's Juſtices, the King's Serjeant, or the King's Attorney, before this Inqueſt be taken between our Sovereign Lord the King and *John Fernley* and *William Ring*, the Priſoners at the Bar, let them come forth, and they ſhall be heard; for now the Priſoners ſtand at the Bar upon their Deliverance: and all Perſons that are bound by Recognizance to give Evidence againſt either of the Priſoners at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizance, and all Jury-men of *Middleſex* that have appear'd and are not ſworn, let them depart.

Clerk. Set *William Ring* to the Bar, and ſet by the other.

William Ring, hold up thy Hand. You that are ſworn, look upon the Priſoner, and hearken to his Charge; he ſtands indicted by the Name of *William Ring*, &c. *(preut ante.)* Your Charge is, to enquire whether he be guilty of the Treaſon whereof he ſtands indicted, or not guilty, *&c.*

Mr. *Phipps.* You, the Gentlemen that are ſworn, the Priſoner at the Bar is indicted for that knowing one *Joſeph Kelloway*, and one *Henry Lawrence*, to be falſe Traitors, and to have levied War againſt the King; on the 20th of *July*, did harbour conceal, and relieve thoſe Traitors, againſt the Duty, *&c.* Upon this he hath pleaded, Not guilty, *&c.*

Mr. *At. Gen.* Gentlemen of the Jury, the Courſe of our Evidence will be thus: *Kelloway* and *Lawrence* were in the late Rebellion in the Weſt, in the late Duke of *Monmouth*'s Army; and after that Battle when they were overthrown, they came up to *London*, and the Priſoner at the Bar receiv'd and comforted them, and not only provided a Lodging, and Meat and Drink for them, but afterwards provides another Lodging for them: and this he knew, for they were very merry, telling the whole Story of the Fight; and notwithſtanding this he entertains them. We will firſt ſhew you the Record of the Conviction of *Kelloway* and *Lawrence*, and then call Witneſſes to prove the other things upon the Priſoner. (The Record produced) Mr. *Harcourt* ſworn. *Sir Robert Sawyer.*

L. C. J. Jones. Is that a true Copy of the Record?

Mr. *Harcourt* anſwered yes: whereupon the Clerk reads;

Joſeph Kelloway ſtands indicted by the Name of *Joſeph Kelloway* of *Taunton*, in the County of *Somerſet*, Yeoman; and *Henry Lawrence* of the ſame Pariſh and County, Yeoman; with a great many others.

L. C. J. Jones. See what they have done.

Clerk. They are indicted of Treaſon for levying War againſt the King; and they have confeſſed the Indictment upon their Arraignment; and the Judgment upon the Indictment, is, *That the ſaid* Kelloway, *and the reſt of them there, ſhould be led to the Priſon from whence they came, and from thence to be drawn to the Place of Execution, and upon the Gallows there to be hang'd, every one of them in the ſaid Indictment, and living to be cut down, and their Entrails to be taken out of their Bodies, their Heads to be taken off from their Bodies, and their Bodies divided into four Quarters.*

Mr. *At. Gen.* This ſhews they were Traitors. Now we will ſhew you, that in the mean time between their Treaſon and Conviction, this Priſoner did receive them. Call Mr. *Barrington.* [*Who was ſworn.*

Mr. *Jones.* Mr. *Barrington*, what do you know concerning Mr. *Ring?*

Mr. *Barrington.* If it pleaſe you, my Lord, on the 11th of *July* laſt I was abroad about my Maſter's Buſineſs, and in the mean time when I was abſent, as I was inform'd, there came Mr. *Ring*, who lives in *Wych-ſtreet* at the Sign of the Bible; and when I return'd, I was told, that Mr. *Ring* was at our Houſe to ſpeak with me, and that there was one Mr. *Lawrence* there at Mr. *Ring*'s at the Bible in *Wych-ſtreet*; and when I came there, there was Mr. *Lawrence* at Mr. *Ring*'s Houſe; and when I came to the Houſe on the right hand, there was his Wife, as I take it: I aſked for Mr. *Lawrence*, and ſhe was a little at a Stand. Said I, I underſtand Mr. *Ring* was in ſuch a Place to inform me Mr. *Lawrence* deſired to ſpeak with me. Upon that he ſhew'd me where he was: I went up to him, and he was lying upon the Bed very weary and tired; and when I had been there a-while, there came in one *Kelloway*, and they ſaid they came both out of the Weſt Country, and came on *Friday* Night, and I ſaw them on *Saturday*. If it pleaſe your Lordſhip, I called there after, and knocked at Mr. *Ring*'s Door, and there came a Woman and made anſwer, That they were gone from thence both of them, and that they were to go on Ship-board to ſee ſome Friends; and I called there on *Wedneſday* the 15th Day at Night, to ſee Mr. *Lawrence* at Mr. *Ring*'s Houſe, and Mr. *Lawrence* told me he was going from thence to the Pewter-Platter in *St. John*'s; and when Mr. Common Serjeant came to examine me about theſe Men, I made a true Confeſſion, that they were at Mr. *Ring*'s, and removed to the Pewter-Platter: and when we came to ſearch at the Pewter-Platter, at firſt they did not know any ſuch Men, till we deſcribed them. Then they confeſſed there were ſuch Men there on *Tueſday* and *Wedneſday* Night, but not the Night before, which was *Thurſday* Night. From thence we went without *Temple-Bar* to Mr. *Ring*'s, where they were at firſt; and Mr. *Criſp* and I went together to enquire for theſe Men, and there was a Woman, which I think is Mr. *Ring*'s Wife, I can't tell. I enquired for theſe Men, and ſhe made anſwer, That they were not there at preſent, and ſaid ſhe could not tell at preſent, but that they lay there the laſt Night, which was *Thurſday* Night; that was *Ring*'s Wife, I take it, ſhould ſay they were there the Night before, ſo after that ſhe had owned they lay there on the *Thurſday* Night, ſhe aſked me what this Gentleman was; ſo I told her, a Friend of mine. So afterwards we were at the Caſtle-Tavern without *Temple-Bar* by *St. Clement*'s Church, and Mr. Common-Serjeant was pleaſed to ſend for Mr. *Ring* to examine him about theſe Men, what Lodgers he had in his Houſe on *Friday* Night, *Saturday* Night, *Sunday* Night, and *Monday* Night. Mr. *Ring* knew nothing of any Men that came out of the Country; ſo upon that, he denying it, Mr. Common-Serjeant order'd his Houſe to be ſearch'd, and in ſearching, they found a Paper upon the Chamber-Window, that was brought to the Caſtle-Tavern, where Mr. *Ring* was, and the Paper was produced, and Mr. *Ring* would confeſs nothing till ſuch time as they found that Paper.

L. C. J. Jones. See, is that the Paper you ſpeak of?

Mr. *Barrington.* That is all I have to ſay, if it pleaſe your Lordſhip.

L. C. J. Jones. Did you ſee them in the Company of *Ring?*

Mr. *Barrington.* I did not ſee him when I was at the Houſe.

Mr *Sol. Gen.* You ſay Mr. *Ring* would confeſs nothing till ſuch time as the Paper was found; what did he ſay after the Paper was found? *Mr. Finch.*

Mr. *Jones.* *Ring* was by, what did he ſay upon producing that Paper?

L. C. J. Jones. Was the Paper ſhew'd to him?

Mr. *Barrington.* I think not; he would have ſeen it.

Mr. Juſt. *Withins.* You ſay he would confeſs nothing till that Paper was produced.——Mr. *Barrington.* Truly, I can ſay no more of it.

Mr. *Jones.* When the Paper was produced at the *Caſtle*-Tavern, what did he ſay then?

Mr. Juſt. *Withins.* What did *Ring* ſay at the *Caſtle*-Tavern?

Mr. *Barrington.* I can't remember, but that he denied every thing.

Clerk. Call Mr. *Barrow.* [*Who was ſworn.*

Mr. *Barrow.* Sir, I heard *Ring* confeſs to my Lord Mayor in *July* laſt, that he lodg'd *Lawrence* and *Kelloway*, and that *Lawrence* and *Kelloway* did tell him, that they had been both in the late *Weſtern* Rebellion in *Monmouth*'s Army; and that after that he had lodg'd them two or three Nights; this I heard him confeſs.

Counſel. Pray ſpeak it again.

Mr. *Barrow.* That *Lawrence* and *Kelloway* had told Mr. *Ring*, they had been in the late *Weſtern* Rebellion in *Monmouth*'s Army, and that he had lodg'd them two or three Nights in his own Houſe.

Mr. *Common Serjeant.* What did you hear him ſay concerning Mr. *Herle?*

Mr. *Barrow.* There was ſome talk concerning Mr. *Herle* or *Hurle.*

L. C. J. Jones. Did he ſay he lodg'd them, after they had told him that?

Mr. *Barrow.* After that. That is all I can ſay.

Clerk. Call Mr. *Criſp.* [*Who was ſworn.*

Counſel. Give my Lord and the Jury an Account of what you know concerning Mr. *Ring.*

Mr. *Criſp.* I went to ſearch Mr. *Ring*'s Houſe, my Lord, and in the Window there was that Letter under Mr. *Lawrence*'s own Hand, ſealed up and directed to *Newberry* for a Horſe which he had ſtole from his Maſter, and left at *Newberry*, which Letter I brought to the Tavern; and when we came to the Tavern, we examin'd him, and he denied every thing; but at laſt we ſhew'd him the Letter, and he own'd he had ſuch a Couſin, and another that he did not know, but that he did not lodge there then. And when he came to the Seſſions-Houſe, *Lawrence* and *Kelloway* were produced before him, and were examined what Account they had given to him, when they came to his Houſe; they told him after the Duke of *Monmouth* was beaten, they ran away to *London*, and *Kelloway* being his Couſin, brought *Lawrence* with him; they told him the Duke was beaten, and lay there *Friday* Night, *Saturday* Night, *Sunday* Night, and *Monday* Night.

Mr. *Jones.* He own'd he knew Mr. *Kelloway?*——Mr. *Criſp.* Yes.

L. C. J. And that *Kelloway* had been in the Duke's Army, and that he was beaten?—Mr. *Criſp.* Yes.

L. C. J. What did *Ring* ſay upon it?

Mr. *Criſp. Ring* ſaid nothing there to it; he confeſs'd he lodg'd them two or three Nights.

Counſel. Swear Mr. *Hardiſty.* [*Which was done.*

Mr. *At. Gen.* Mr. *Hardiſty*, pray will you give my Lord and the Jury an Account of his Examination?

Mr. *Hardiſty.* I was directed to attend my Lord Mayor at the Examination of Mr. *Ring*, the Priſoner at the Bar, above here in the Room, and did accordingly; and upon Examination, my Lord, he did make this Confeſſion. This is the Examination, and it is as he gave it himſelf, and ſigned by himſelf.

L. C. J. Jones. And read to him?

Mr. *Hardiſty.* Yes, half a dozen times, I believe.

Mr. *Common Serjeant.* My Lord, upon the appearing of *Lawrence* and *Kelloway* before him then, he confeſs'd all.

The Examination of William Ring, *of the Pariſh of* St. Clement Danes *in the County of* Middleſex, *Taylor, taken before the Right Honourable Sir* James Smith, *Knight, Lord Mayor of the City of* London, *this* 18*th Day of* July, 1685, *who being examined, ſaith as followeth,*

THAT *Joſeph Kelloway*, and one *Henry Lawrence*, the ſaid *Kelloway*'s Acquaintance, came to this Examinant's Houſe on *Friday* or *Saturday* laſt; that this Examinant did aſk of *Kelloway* (being this Examinant's Kinſman) what did drive them to Town? That they told this Examinant, that they went to *Monmouth*, that he was routed, and that brought them to Town, or to that Purpoſe; that they were in *Monmouth*'s Army. That Night they came, he this Examinant told them, he was unwilling to lodge them; that he this Examinant did lodge them after this Diſcourſe, *Saturday*, *Sunday*, and *Monday* Nights, and they dined twice with this Examinant; that they were at his Houſe on *Friday* Morning; but where they lay on *Wedneſday* and *Thurſday*, ſaith he knows not. Saith, that *Lawrence* ſent this Examinant to a Glover in *St. Bartholomew's Cloſe*, who was a Journeyman in the Houſe, as this Examinant ſuppoſeth, and told the Maſter of the Houſe, that there was a Kinſman of his Journey-man's would ſpeak with his Journey-man. Saith, *Kelloway* and his Acquaintance told this Examinant, that they left their Horſes at *Newberry*. That a Note being produced, directed to this Examinant, to deliver ſeveral Goods therein mentioned, and being examined upon the ſaid Note, this Examinant ſaith, that he this Examinant was ſent for to the *Caſtle-Tavern* near *Shoe-lane* in *Fleetſtreet*, and one *Bond* brought this Examinant the Note above-mentioned, and now produced to him; believes the Note to be the hand-writing of *James Hooper*. That this Examinant was there to enquire of one *Hearne*, but expected to meet *James Hooper*, who formerly told this Examinant that he went by the Name of *Hearne*. That being in Diſcourſe with *James Hooper* about the time of the late Duke of *Monmouth*'s Landing, *James Hooper* told this Examinant, that his the ſaid *Hooper*'s Brother was with the Duke of *Monmouth*, and that he the ſaid *James Hooper* would go to him the ſaid Duke, or to that purpoſe. Further, this Examinant ſaith, that about a Fortnight ago he carried, according to a Note from *Hooper* to that purpoſe, to a Joiner's Houſe in *Ivy-lane*, *London*, a Cravat and a Pair of Cuffs, and then enquired for *Hooper* of a Woman of the ſaid Houſe; and ſaith, that then he this Examinant did ſpeak with *James Hooper* who lay private there, becauſe, as this Examinant believes, the ſaid *Hooper* was concerned in the Rebellion. Saith, he hath not ſeen him the ſaid *Hooper* this Fortnight, nor heard from him otherwiſe than by the Note now produced. *Will. Ring.*

Taken before me Sir James Smith, *Lord-Mayor.*

Mr. *At. Gen.* Call Mr. *Richardſon*, to prove that theſe were the ſame Men that were carried down. [*Who was ſworn.*] Mr. *Richardſon*, pray give an Account, whether theſe were the Men you carried down into the *Weſt.*

Mr. *Richardſon.* My Lord, thoſe two Perſons, that is, *Joſeph Kelloway* and *Henry Lawrence*, that were committed for being in the late Rebellion, I carried them both down into the Weſt, where they were both convicted; one is executed, and the other has a Reprieve.

Mr. Juſt. *Withins. Henry Lawrence* was Captain *Hunt*'s Man.

Mr. *Richardſon.* The ſame, he ran away with his Horſe and Arms.

L. C. J. Jones. Can you tell theſe were the ſame Men that were preſent at his Examination?

Mr. *Richardſon.* The very ſame Men; they were committed at the ſame time; he was examined before them, for they were all committed at the ſame time together.

L. C J. Jones. What do you ſay, Sir; you the Priſoner at the Bar, what do you ſay for yourſelf?

Mr. *Ring.* I did not underſtand what they were.

L. C. J. You knew the Priſoners, one of them was your Kinſman.

Mr. *Ring.* I did know him, but the other I did not know; I did not know what Deſign they had been upon.

L. C. J. Jones. Your own Examination ſays, you did.

Mr. *Ring.* Then my Examination is wrong.

L. C. J. Jones. Hear, hear again: You did receive them, and then they told you that they were in *Monmouth*'s Army, and that *Monmouth* was beaten; and afterwards you continued to harbour them in your Houſe three Nights.

Mr. Juſt. *Withins.* And dined twice with them.

Mr. *Ring.* My Lord, I never heard of it.

L. C. Baron. That Gentleman heard you ſay, they had told you they had been in *Monmouth*'s Army, and you lodged them after.

Mr. *Criſp.* Yes, my Lord; and when we were there, the Woman would not own them.

L. C. J. Jones. Why did you hide them in your houſe, and not confeſs it?

Mr. *Ring.* At firſt I did deny it.

Counſel. Yes, and did deny it, till *Lawrence* and the other Man were brought before you.

Mr. *Ring.* My Lord, what I did was ignorantly done.

L. C. J. Jones. Did you hear your Examination now read?

Mr. *Ring.* I heard moſt of it, I believe.

L. C. J. Jones. Pray let it be read again.

Counſel. It was read over and over four or five times.

Mr. *Hardiſty.* He was upon it, I believe, an hour together: it was taken firſt in parts, and as he recollected himſelf it was compared, and afterwards my Lord-Mayor deſired him to conſider with himſelf: and then the Examination was written fair over, and he ſigned it, and it was read ſeveral times, ſix or ſeven times.

Mr. *Ring.* My Lord, I do acknowledge I did lodge them, but I did not underſtand what Deſign they had been upon.

L. C. J. Jones. But you ſee here you have acknowledged they ſaid they were in the Army, and you did lodge them afterwards; they were of *Monmouth*'s Party, they had told you ſo. Read that Part again.

Mr. *Hardiſty. Joſeph Kelloway*, and one *Lawrence* the ſaid *Kelloway*'s Acquaintance, came to this Examinant's Houſe on *Friday* or *Saturday* laſt; that this Examinant did aſk *Kelloway*, being this Examinant's Kinſman, what did drive them to Town? That they told this Examinant, that they went to *Monmouth*, that he was routed, and that that brought them to Town.——Mr. *Ring.* I never ſaid that Word.

Mr. Juſt. *Withins.* It is under your Hand.

Mr. *Ring.* If it be under my Hand, I never ſaid it.

Mr. *Sol. Gen.* Was that part read to him?——Mr. *Hardiſty.* Yes.

L. C. J. Jones. Read on.

Mr. *Hardiſty.* That they were in *Monmouth*'s Army; that the Night they came, this Examinant told them, he was unwilling to lodge them, and that this Examinant did lodge them after this Diſcovery, *Saturday*, *Sunday*, and *Monday* Night, and they dined twice at this Examinant's Houſe.

L. C. J. Jones. What do you ſay now to this? Can there be any thing more plain?

Mr. *Ring.* I do acknowledge, my Lord, I did lodge them, but I was not ſenſible what the Iſſue of this Buſineſs would be.

L. C. J. Jones. You did not know, that to harbour known Traitors was High-Treaſon.

Mr. *Ring.* My Lord, I don't know whether they came from *Monmouth* or no.

L. C. J. Jones. It is no great matter whether you do or no; they told you ſo.

Mr. *Ring.* I never heard ſuch a Word from them.

L. C. J. Jones. How came it to be put in your Examination?

Mr. *Ring.* I don't know, my Lord, when it was taken I was in a maze. I think the Pariſh knew well enough, that I never kept any ſuch Company, nor had any ſuch Deſign.

Mr. Juſt. *Withins.* He confeſſes it over Night, cauſes it to be writ down next Day, and ſets his Hand to it too: Nothing can be more plain.

L. C. J. That is a great Argument you were not in ſuch ſurprize, that you had not the uſe of your Underſtanding; for you confeſſed the ſame thing over Night, and you had time to conſider of it all Night, and you came the next Morning, and then confeſſed as now it is written, and put your Hand to it.——Mr. *Ring.* I was ordered to put my Hand to it.

L. C. J. Jones. That is, if you acknowledged it to be true.

Mr. *Ring.* I did not know what was put down.

Mr. Juſt. *Levinz.* The matter is ſo plain, that nothing can be more. When they came to you, they inform'd you where they had been, and afterwards you were unwilling to lodge them; you knew therefore they had been in the Rebels Army, and ſo the matter is plain: and for ought I can hear, this is not the firſt time you have harbour'd ſuch Men.

L. C. J. Jones. There is another thing touching one *Hurle*; but you are not charged with it in the Indictment, and ſo we don't trouble the Jury with any Evidence concerning that. Have you any more to ſay?

Mr. *Ring.* I do acknowledge, my Lord, that I lodg'd them; but I did not underſtand any thing elſe.

L. C. J. Jones. Why! did not you confeſs it?

Mr. *Ring.* I did not confeſs it.

Mr. Juſt. *Withins.* And you ſhifted Lodging for them after they were known to you.——Mr. *Ring.* I did not.

L. C. J. Jones. Gentlemen of the Jury, the Priſoner ſtands indicted of High-Treaſon for receiving *Joſeph Kelloway* and *Henry Lawrence*, who were Traitors, and known to him to be Traitors, and

and harbouring them in his Houſe, and giving them Entertainment and Comfort: This, Gentlemen, is clearly High-Treaſon by Law; and tho' this Man himſelf were not in actual Rebellion, yet if he do receive any that he knows to have been ſo, he is equally guilty; he is a principal Traitor by the Judgment of the Law, and however he would now pretend his Ignorance, that he did not know that they were in the Army, or, if he did know they were in the Army, that he had incurr'd ſo great a Danger as the Forfeiture of his Life, which now he ſtands as well as he can to defend; yet it does appear plainly to you, not only by his own Confeſſion taken upon his Examination, but likewiſe by the Teſtimony of the Witneſſes, who were preſent at the time when he did confeſs that theſe Men had diſcourſed with him, and acknowledged that they were in *Monmouth*'s Army, and that he was routed, and that yet he did entertain and receive them. The firſt Witneſs indeed does not ſay the very thing, but it is very much inducing to the Evidence that is given more expreſs by the other Witneſs: for he ſays that he was at his Houſe, and he enquir'd for them there, tho' he did not ſee him at all, but his People; and they not only did confeſs that they had lodged there, but that there was a Lodging provided for them elſewhere: But however, if that were quite laid aſide, and not taken at all into Conſideration, yet what is teſtified by the other Witneſſes, and upon his own Examination, makes it as clear and plain as can be, that he did receive theſe Perſons into his Houſe, and comfort them, and entertain them, knowing them to have been guilty of High Treaſon, that is, to have been in the Army of *Monmouth*, of that Party, and that they came to *London*, and went away from the *Weſt* becauſe he was beaten; and there is an Expreſſion in the Examination to that purpoſe: ſo that I take the Indictment to be very full and clearly prov'd upon him; and it is not his Ignorance of the Law that will excuſe him, that is, his Ignorance of the Danger that he hath incurr'd by entertaining theſe People; altho' you cannot but take notice, that he was in ſome dread and fear that it was an Offence to do ſo: for at firſt he ſays, by his Examination, that he did refuſe to entertain them; which ſhews that he had ſome Conſideration of the Danger that he might incur by receiving them: and yet after this plain Diſcourſe of theirs, that they were in the Army, he entertains them. That they were the ſame Men that were in the Army, appears plainly: for though at firſt he did deny it, and did ſtand in it, before he was confronted by the Men, they being preſent; yet afterwards he did confeſs, that they were the Men that were entertain'd by him; and that they were the ſame Men, doth appear by the Teſtimony of Captain *Richardſon*, who ſaw them, and afterwards cauſed them to be brought down to the *Weſt*, where one of them was executed for Treaſon. So I muſt leave it to you, Gentlemen. I think it is a very plain Caſe.

Mr. *Ring*. Here is abundance of theſe things that I know nothing of.

Counſel. Set *John Fernley* to the Bar. [*Which was done.*

Clerk. *John Fernley*, hold up thy Hand. You that are ſworn, look upon the Priſoner, and hearken to his Charge: He ſtands indicted by the Name of *John Fernley*, &c. *(prout ante.)*

Mr. *Phipps*. This is an Indictment of High-Treaſon againſt *John Fernley*, the Priſoner at the Bar: It ſets forth, that the ſaid *John Fernley* knowing one *James Burton* to be a Traitor, and to have conſpir'd againſt the Life of the King, did traitorouſly conceal the ſaid *Burton* two Days and two Nights, and gave him Meat and Drink againſt the Duty, &c.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this Priſoner ſtands indicted of Treaſon, for receiving and harbouring one *James Burton* who was guilty of Treaſon, he knowing him to have been guilty of Treaſon. And the courſe of our Evidence will be this: We will prove that this *James Burton* ſtood outlawed for Treaſon before he committed a new Treaſon, when he went into the *Weſt*, and was there with *Monmouth* in the late Rebellion; and tho', Gentlemen, the very Outlawry againſt the ſaid *Burton* is enough to ſatisfy any Man, that this Man could not be ignorant that he was a Traitor, for no Man can imagine, when a Man ſtands out a Proceſs till he become out-lawed for High-Treaſon, that any ſhould be ignorant that he is guilty of Treaſon, and that it would be very dangerous to receive a Man after that, without any more Evidence: But this *Burton*, after he was out-lawed and fled, came again, and was in Arms with *Monmouth* in the Rebellion; and after their Defeat he came up to Town: And *Fernley*, knowing he had been then in the *Weſt* with *Monmouth*, he received him, and harboured him; and this we will prove by Witneſſes. Firſt, we will ſhew the Record of the Outlawry.

Clerk.——*An Indictment preferr'd againſt* James Burton, *and divers others for High-Treaſon, for which the ſaid* Burton *and divers others ſtand out-lawed, by the Return of* Samuel Daſhwood, *Eſq*; *and* Sir Peter Daniel, *Sheriffs*. This is the Record itſelf, my Lord.

Counſel. Swear Mr. *Ward*. [*Which was done.*

Mr. Juſt. *Withins*. Look upon it, Mr. *Ward*; is that the Record?

Mr. *Ward*. Yes, it is, my Lord.

Mr. Juſt. *Withins*. Pray ſee when the Outlawry was.

Mr *Hardiſty*. *Upon Monday next after the Feaſt of St.* Martin, *Biſhop, the ſaid* Richard Rumbold, Richard Goodenough, Francis Goodenough: [Here are the Names of a great many Men.]

Mr. Juſt. *Withins*. Is *James Burton* among them?

Mr. *Hardiſty*. *On Monday next after the Feaſt of St.* Michael, *the ſaid* Richard Rumbold, James Burton, Richard Nelthorp, *are outlawed, and every one of them is outlawed*——It is *November* was Twelve-month.

Call *James Burton*. [*Who was ſworn.*

Mr. *North*. *James Burton*, ſtand up there: Do you give my Lord and the Jury an account concerning your being in the *Weſt*, and your being entertain'd here at Mr. *Fernley*'s Houſe, with all the Circumſtances.

Mr. *Burton*. I came out of the *Weſt* into *London*, on *Wedneſday* Night, from *Monmouth*'s Army.

L. C. J. Jones. What *Wedneſday* Night?

Mr. *Burton*. Truly I have forgot the Day of the Month, but it was about three Weeks after the Rout, and I came home to my Wife and ſtaid two Nights, and ſhe was not ſatisfied I ſhould be there, and went to endeavour to get a Lodging for me for two or three Nights; and ſhe went to get leave at Mr. *Fernley*'s for me to be there two or three Nights; and I went thither on *Friday* Night, and on Sabbath-day in the Evening I was taken there.

Mr. Sol. Gen. Speak aloud, ſay that again.

Mr. *Burton*. On *Wedneſday* Night I came out of the Country, after I had been in the Army; I came home to my Wife, and ſtaid till *Friday* Night, and on *Friday* Night ſhe got me a Lodging at Mr. *Fernley*'s; there I went about ten a-clock at Night, and ſtaid there till *Sunday* Night, and I was taken.

Mr. Juſt. *Withins*. Did you ſee Mr. *Fernley*?

Mr. *Burton*. I ſaw him at Dinner on *Sunday*, and not before.

L. C. J. Jones. What Acquaintance had you before? He does not keep a publick Houſe, does he?

Mr. *Burton*. I had been gone two Years, or very nigh.

L. C. J. Jones. What was the Occaſion of your going?

Mr. *Burton*. My Wife was acquainted there.

L. C. J. Jones. What was the Occaſion of your going away, and your Abſence for two Years?

Mr. *Burton*. The Occaſion of my going then, was, I was in the Proclamation for being with *Rumbold* at the *Mitre*-Tavern within *Aldgate*.

Mr. Juſt. *Levinz*. *Fernley* knew you before, did not he?

Mr. *Burton*. He knew me by Sight.

Mr. Juſt. *Levinz*. Had you any Acquaintance with him?

Mr. *Burton*. I lived pretty near to him for a while.

Mr. Juſt. *Levinz*. How near?

Mr. *Burton*. I lived within two or three Doors of him.

Mr. Juſt. *Levinz*. Did he know you?

Mr. *Burton*. Yes, yes, he did know me.

Mr. Juſt. *Levinz*. You came to lodge at his Houſe on *Friday* Night?

Mr. *Burton*. Yes, an't pleaſe you.

Mr. Juſt. *Levinz*. Had you no Diſcourſe till *Sunday* you dined together?

Mr. *Burton*. No, not till *Sunday* at Dinner.

Mr. Juſt. *Withins*. Tell your Diſcourſe at Dinner.

Mr. *Burton*. My Lord, I have forgot what altogether the Diſcourſe was; I had ſome Diſcourſe of the Army; he knew I was in the Army.

L. C. J. Jones. I would have you ſpeak the Senſe, ſo far as you remember of the Diſcourſe at that Time with him.

Mr. *Burton*. The Senſe, as far as I remember, was, that the Army was routed.

L. C. J. Jones. And that you were there?

Mr. *Burton*. He knew I was there.

L. C. J. Jones. How came he to know you were there?

Mr. *Burton*. I believe I told him ſo myſelf.

Mr. Juſt.——Upon your Oath, did he know you fled upon the Account of the Proclamation before?

Mr. *Burton*. It is like he might know it by others, but not by me.

L. C. J. Jones. When were you taken? What Day?

Mr. *Burton*. I was taken on *Sunday* in the Evening: I had been four Days in *London*; two Days at Home, and two Days at his Houſe.

L. C. J. Jones. Did you not ſee him before *Sunday* at Dinner?

Mr. *Burton*. My Lord, he was in the Shop all *Saturday*; he is a Barber.

Mr. Juſt. *Withins*. You lay privately at his Houſe all *Saturday*?

Mr. *Burton*. Yes, my Lord, privately.

Counſel. Call *Mary Burton*. [*Who was ſworn.*

Mr. *North*. How came this Man to lodge at Mr. *Fernley*'s Houſe, can you give an Account? and why it was?

Mrs. *Burton*. Becauſe I thought he was not ſafe at home; and having Acquaintance with Mrs. *Fernley*, lodging pretty near, and ſhe being a young Woman, and having Children, I had Acquaintance, going to and fro; and we having a cloſe Houſe and no Yard, I had the Privilege of going to dry Linnen there, ſo that we had Acquaintance, and a little Familiarity; and being acquainted, I thought I might have Entertainment there; that is all I can ſay.

L. C. J. Jones. Were you at Dinner upon *Sunday*?

Mrs. *Burton*. Yes, I was at Dinner.

L. C. J. Jones. What Diſcourſe had they at Dinner?

Mrs. *Burton*. Indeed I can't ſay they had any Diſcourſe, I was very ill, and laid me down upon the Bed and fell aſleep.

L. C. J. Jones. You are upon your Oath.

Mrs. *Burton*. I know I am, Sir.

L. C. J. Jones. What Diſcourſe was at Dinner?

Mrs. *Burton*. Whilſt I was eating, I did not mind.

Mr. Juſt. *Levinz*. You liv'd cloſe by, why did you aſk for a Lodging there?

Mrs. *Burton*. We do not live cloſe by now, I live with my Daughter. I have no Houſe now.

Mr. Juſt. *Levinz*. She knew he was your Huſband, why ſhould you lodge your Huſband at another Houſe than where you lodged yourſelf?

Mrs. *Burton*. What was it you ſaid, My Lord?

Mr. Juſt. *Levinz*. Sure you would give the Woman ſome Account, why you lodged your Huſband at another Houſe than where you lodged yourſelf.

Mrs. *Burton*. She was not altogether a Stranger, and upon the Account of the Proclamation there were none of them Strangers.

L. C. J. Jones. For whom did you aſk a Lodging?

Mrs. *Burton*. For my Huſband.

Mr. *North*. Did you ſpeak with Mr. *Fernley* himſelf?

Mrs. *Burton*. I did not ſpeak with Mr. *Fernley* himſelf.

Mr. *North*. On *Sunday* you ſaw him at Dinner?

Mrs. *Burton*. Yes, I ſaw him at Dinner.

Mr. Juſt. *Levinz*. Had you any Diſcourſe with them about the Proclamation?

Mr. Att. Gen. About your Huſband's going away upon that Proclamation?

Mrs. *Burton*. An't pleaſe you, my Lord, my Diſtreſs was ſo great, that I was hardly in my Senſes to diſcourſe with any body; but, I thank God, I am now in my Senſes between whiles.

Mr. Att. Gen. Had you any Diſcourſe with your Neighbours about that Proclamation your Huſband went away upon?

Mrs. *Burton*. I had not, indeed.

Then Mr. *Reynolds* was ſworn.

Mr. *North*. Mr. *Reynolds*, what do you know concerning, Mr. *Burton*'s being lodged at Mr. *Fernley*'s Houſe?

Mr. *Reynolds*. Towards the Beginning of *Auguſt* laſt, hearing that there were ſeveral that were in the *Weſt* lurk'd about *Wapping*, I took the Lieutenant

of the *Tower*'s Warrant, and we had ſome Intimation, that a ſuſpected Perſon lay at Mr. *Fernley*'s Houſe; I went on *Sunday* about eight a-clock at Night, and took Mr. *Burton* in Mr. *Fernley*'s Houſe.

Mr. Juſt. *Withins*. You took him there, did you?

Mr. *Reynolds*. I took him there, my Lord.

Mr. Att. Gen. Did you ſpeak with *Fernley* before you took *Burton*?

Mr. *Reynolds*. I took *Burton*; and Mr. *Fernley* being Maſter of the Houſe, I wiſhed the Conſtable to ſecure him for harbouring him.

Mr. Att. Gen. What did *Fernley* ſay?-------Mr. *Reynolds*. Says I, Mr. *Fernley*, how come you to harbour Mr. *Burton* that is in the King's Proclamation? He is a Traitor, you know. Says he, I did not know it was Mr. *Burton*; but my Wife deſired me to lie out of the Chamber where I lay before, that a Friend of her's might lie there for two or three Days.

Mr. Att. Gen. Where did you find him?---------Mr. *Reynolds*. He was in a Room up one pair of Stairs, up the Chimney; and while we were there, he fell down the Chimney, with all the Soot about him: Mr. *Fernley* was then one pair of Stairs higher; and I deſired the Conſtable to go up to ſee for him.

Mr. Att. Gen. Had you no Diſcourſe with him about the Buſineſs of being in the Army? With *Fernley*, I mean?

Mr. *Reynolds*. No, my Lord.

L. C. J. Did you hear no Diſcourſe between *Burton* and him?

Mr. *Reynolds*. No, my Lord.

Mr. Juſt. *Withins*. He was very friendly, to lie out of his own Chamber for him.

Mr. *Reynolds*. They were put in two ſeparate Chambers, by the King's Direction, till they were ſent to *Newgate*.

Mr. Att. Gen. Did he tell you on *Sunday* Night that he did not know it was *Burton*?----------Mr. *Reynolds*. To the beſt of my Remembrance, he did ſo, when I brought him to the *Tower*.

Mr. Att. Gen. And yet he dined with him on *Sunday*?

Mr. *Reynolds*. I looked upon it as an Excuſe.

Mr. *North*. What Day was *Burton* taken?

Mr. *Reynolds*. It was *Sunday*.

Mr. *North*. What time on *Sunday*?

Mr. *Reynolds*. *Sunday* about eight a-clock at Night. He had been in Bed, my Lord, I believe; and before we could get open the Door, I believe he got out of Bed, and went to get up the Chimney.

Mr. Sol. Gen. Gentlemen, you obſerve in the courſe of the Evidence, that the firſt Evidence we produce is *James Burton*; now *James Burton* ſtood outlawed for Treaſon, and as he ſtands outlawed he is not a competent Witneſs: but now to take off that Objection which the Priſoner ought to make, but we make it for him, we ſhew you here a Pardon whereby that Outlawry is diſcharged, ſo that he ſtands now a very legal Witneſs.

Mr. Juſt. *Withins*. You underſtand, Gentlemen, what Mr. *Solliciter* mentions? [The Pardon produced and read.]

L. C. J. Jones. What ſay you?

Mr. *Fernley*. My Lord, I am charged for entertaining *Burton*. My Lord, I knew nothing of him when he came into my Houſe till Sabbath-day at Dinner. I aſked my Wife what time *Burton* came in; ſhe told me he came on *Friday* Night. *Saturday* was a buſy Day with me, my Lord; on *Sunday* Morning I got up and went to Church; when I came from Church, I went up to Dinner; and when I came in and ſaw him, I aſked him, what in the Name of God brought him there? It hath pleaſed God, ſaid he, to preſerve me hitherto; and my Wife interceded ſo far, as to procure me a Night's Lodging, which I hope may be no Detriment to you. I wiſh it may not, ſaid I; and at Dinner I aſked him, how he made his Eſcape? And he told me how he did eſcape. Says I, What do you mean to do? Says he, Some Friends will procure me a Paſſage beyond Sea. Upon this I conſidered with myſelf, and diſcourſed with him about the *Weſt*, and his Eſcape out of it; and about half an hour after we had dined, one knocked at the Door.

Mr. Juſt. *Levinz*. What Day was this?

Mr. *Fernley*. Sabbath-day at Noon, ſome body knocked at the Door, and they told me there was one would ſpeak with me, and I came down, and there was one *Gaunt* in the Shop; ſays he, Is Mr. *Burton* within? May I ſpeak with him? Yes, ſaid I. up I went, and *Gaunt* with me; and when we came into the Room they embraced one another, and were very glad to ſee one another; and *Burton* gave Mr. *Gaunt* Thanks for a Guinea he had ſent him. Says *Gaunt*, Mr. *Burton*, I am glad to ſee you; I hope in a little Time I ſhall have a Paſſage for you beyond Sea: ſays he, If you had been here a while ſooner, you might have gone; there are ſome Gentlemen went away a while ago. Says I to Mr. *Gaunt*, Who were they? He told me it was Major—— and his Son, and another. Says I to Mr. *Gaunt*, Do you hear of *Ferguſon*? No, ſays he, I hear nothing of him as yet, but in a little Time I may hear from him; and *Burton* aſked, when he thought he might be going? In a Day or two's time, ſaid he. Says *Burton*, I have no Money nor no Clothes. Says he, Take no care for that; ſo he named ſome Gentlemen that were to go: he told him of Colonel *Danvers* and Major *Wildman*. Upon this Diſcourſe, within myſelf I did conſider what way I might do his Majeſty a Piece of Service: I thought it better to forbear, and not to ſeize him preſently, till I had acquainted ſome Magiſtrate; and I did think in the Morning to have gone to a Juſtice of Peace, and have had him apprehended: *Burton*, my Lord, I knew was ſecure, for he could not eſcape my Hands. I had no Deſign of concealing him; I have ſeveral eminent Gentlemen to teſtify for my Loyalty. I thank God, I never had an ill Thought againſt his Majeſty in my Life, only this Misfortune hath befallen me upon the Account of my Wife. I am as innocent as a Child unborn, as to any Thing againſt the King.

L. C. J. Jones. But he plainly told you, he came from the Army?

Mr. *Fernley*. He did acquaint me, my Lord, he did ſo; as ſoon as I ſaw him, I was ſtartled; I did look upon it as a Thing ſent from God Almighty; for I knew, my Lord, that there was 100 *l.* for him; I knew there was a Proclamation out againſt him; but as for the Outlawry, I knew nothing of that: a Proclamation I knew there was againſt him, and being a poor Man, there was no Obligation upon me to conceal him, and ruin myſelf and Family.

L. C. J. Jones. What was the Reaſon, you were ſo kind as to part with your own Lodging to entertain him?———Mr. *Fernley*. My Lord, I had quitted my Chamber before he came to the Houſe.

Mr. Juſt. *Withins*. It is proved you did it upon his Account.

Mr. *Fernley*. My Lord, no body will offer to ſay that.

L. C. J. Jones. That you quitted your Lodging, and that he came into the ſame Lodging is clearly proved.

Mr. *Fernley*. My Lord, my Chamber was ſlited above a Week before he came, not knowing of him, for I had no Thoughts of him.

L. C. J. Jones. Pray what Servants have you?

Mr. *Fernley*. Only a Boy, my Lord.

L. C. J. Jones. Could not you have ſent out your Boy when he had diſcourſed thus treaſonably with you, but keep him in your Houſe ſeven or eight Hours after you had entertain'd him at Dinner?

Counſel. Are you a Conſtable?——Mr. *Fernley*. I am a Conſtable myſelf, and upon the Account of my Office I was the more ſecure. I was certain he could not eſcape my Hands, and I thought to do his Majeſty more Service.

L. C. J. Jones. How could you do his Majeſty more Service?

Mr. *Fernley*. *Gaunt* told him, he would come again to him.

L. C. J. Jones. When did he come to you?

Mr. *Fernley*. About half an Hour after Dinner.

L. C. J. Jones. But you ſhould have ſeized him immediately after Dinner. How came this Man to take ſo much Freedom before you that were an Officer, as to talk High-Treaſon?

Mr. *Fernley*. My Lord, I thank God, if I were to die this Minute, I never harboured a Thought againſt the King.

L. C. * *Baron*. If you had had a loyal Heart, you ſhould have kept *Gaunt*, if you had any Thoughts to have done it.

* *William Montague*, Eſq;

Mr. *Fernley*. My Lord, I will tell you why I let *Gaunt* go, becauſe he promiſed to come again the next Day.

L. C. J. Jones. Would you, being a Conſtable, let a Man go upon his Word, that had confeſſed himſelf guilty of Treaſon?

Mr. *Fernley*. My Lord, if I did any Thing, it was ignorantly. My Lord, as for *Gaunt*, when I knew there was a Proclamation out againſt *Danvers* and *Wildman*, I hearing *Gaunt* diſcourſing about their Deſign, I thought (promiſing to come the next Day) to know how they were to go.

Mr. Juſt. *Levinz*. For God's ſake, would you truſt all this to your own Breaſt! If you had had an honeſt Intention, you would have gone to ſome Officers, and acquainted them with it; ſome of the King's Juſtices of the Peace, or ſome of the Privy-Council, that ſuch Perſons would be at your Houſe the next Day.

L. C. Baron. By your own Diſcourſe, after you had heard all this Diſcourſe, and after *Burton* had told you this, you could let him go quietly to his own Chamber: If you had ſuch a Deſign, as you ſay, you ſhould have firſt ſeized *Burton*.

Mr. *Fernley*. Another Chamber; no, he dined in his Chamber, my Lord.

Mr. Juſt. *Withins*. You went into another Chamber from him. Have you any Witneſſes?

Mr. Juſt. *Levinz*. They had a Confidence in you, otherwiſe *Burton* and *Gaunt* would not have talk'd ſo freely before you.

L. C. J. Jones. There was a great Confidence in lodging him in your Houſe, being a Conſtable; no body would ſearch a Conſtable's Houſe. Have you any Witneſſes to call?

Mr. *Fernley*. Mr. *William Ruſh*, Captain *Haddock*. [*Who were called.*]

L. C. J. Jones. Did *Burton*'s Wife dine with you and him?

Mr. *Fernley*. Yes, my Lord.

L. C. J. Jones. Where did you dine?

Mr. *Fernley*. In the Chamber, my Lord.

L. C. J. Jones. And was this Diſcourſe concerning *Monmouth*'s being beaten in the *Weſt*, at this time of Dinner?

Mr. *Fernley*. The Diſcourſe of it? Yes, my Lord, what Diſcourſe was, was at Dinner.

Mr. Juſt.------Was *Burton*'s Wife at Dinner, or was ſhe upon the Bed?

Mr. *Fernley*. She din'd at the Table, my Lord. My Lord, ſhe went to ſleep when *Gaunt* came in.

Mr. Juſt. *Levinz*. Where did ſhe go to ſleep, in the ſame Room?

Mr. *Fernley*. Yes, my Lord.

L. C. J. Jones. Where do you uſe to dine at other times?

Mr. *Fernley*. In the Kitchen, my Lord. My Lord, when I came from Church, the Dinner was ſent up thither.

L. C. J. Jones. Woman, you are upon your Oath, remember that you are oblig'd by your Oath to confeſs the Truth, let it concern whom it will: The Diſcourſe between your Huſband and this Man, you could not but be privy to; there was only you three at Dinner, your Huſband, you, and *Fernley*, the Priſoner at the Bar: All this Diſcourſe was at Dinner-time, how is it poſſible that you ſhould not hear it?

Mr. Juſt. *Levinz*. *Fernley* himſelf owns he did diſcourſe with your Huſband at Dinner, that he came from the Rebels in the *Weſt*.

Mrs. *Burton*. An't pleaſe you, my Lord, I did not hear. As I ſaid before, I muſt ſay again, I did not hear.

Mr. Juſt. *Withins*. Nothing about *Monmouth*?

Mrs. *Burton*. No, not one Word, if I were do die as I ſtand here.

Mr. Juſt. ------- You were at Dinner?

Mrs. *Burton*. Yes, my Lord.

Mr. Juſt. ------- And this Diſcourſe was at Dinner-time?

Mrs. *Burton*. I did not hear it.

Mr. Juſt. *Withins*. What would you aſk him, Sir?

Mr. *Fernley*. What Account can he give of my Life and Converſation, how I have behaved myſelf, and carried myſelf.

L. C. J. Jones. What are you, Sir? What is your Quality?

Mr. *Ruſh*. I am a Diſtiller, Sir.

Mr. Juſt. *Levinz*. Where do you dwell?-------Mr. *Ruſh*. I did dwell two Years ago in *Wapping*, but not now: I live now at *Waltham-Stow*.

Officer. He is a very great *Whig*.

Mr. Juſt. *Withins*. If he be a *Whig*, he can't be a little one.

L. C. J. Jones. How long have you liv'd at *Waltham-Stow*?

Mr. *Ruſh*. Two Years and upwards, Sir.

L. C. J. Jones. That is long before any Thing that this Man is charged withal.

Mr. *Ruſh*. I formerly knew the Man, he was a Barber, and us'd to trim me: I always looked upon him to be a good ſober Man.

Mr. Juſt. *Withins*. A *Wapping*-Man! a ſober *Wapping*-Man!

Mr. *Ruſh*. I hope there is a great many there.

L. C. J. Jones. That is all you ſay for him?

Mr. *Ruſh*. I have nothing to ſay to his Fact: He demeaned himſelf always well among his Neighbours; I know nothing of the Fact for which he is here.

Mr.

Mr. Att. Gen. Did you know *Burton?*——Mr. *Ruſh.* Yes, Sir.

Mr. Att. Gen. What was *Burton?* was he reputed an honeſt Man?

Mr. *Ruſh.* I never knew him otherwiſe; I never was in his Company; I know he dwelt cloſe by where I liv'd.

L. C. J. Jones. And you took him to be a very honeſt Man?

Mr. *Ruſh.* Before this: He has not been ſo lately, it ſeems. He is a Perſon I never had any Company or Converſation with in my Life.

Cryer. Capt. Haddock.——*Officer.* He won't come in, my Lord.

L. C. J. Jones. Well, well, let him ſtay there.

Cryer. Mr. Dove.

Officer. He won't come in, I can't make him come in.

L. C. J. Jones. Here are none that give any Teſtimony for you, at leaſt will----What are you?----Mr. *Whittal.* I dwell in *Wapping*, Sir.

Mr. Juſt. *Levinz.* What Trade are you?---Mr. *Whittal.* A Plumber.

Mr. Juſt. *Levinz.* Who knows you?

Mr. *Whittal.* I am well known there, Sir.

Mr. Juſt. *Levinz.* Do you go to Church?

Mr. *Whittal.* Here's Mr. *Tanner* knows me, the Clerk of the Peace.

Mr. *Tanner.* Yes, Sir, I know him.

Mr. Juſt. *Levinz.* Do you go to Church?

Mr. *Whittal.* Always went to Church.

Mr. Juſt. *Withins.* There were a Parcel of them that went conſtantly to Church *trimmingly.*

L. C. J. Jones. Priſoner, what would you aſk him?

Mr. *Fernley.* Only to give an Account how I behaved myſelf.

Mr. Juſt. *Withins.* Well, Sir, what do you ſay?

Mr. *Whittal.* All I know is, he behav'd himſelf very well, and went to Church as other Neighbours did; and I never heard him ſpeak againſt the Government.

Mr. Juſt. *Withins.* Did you know *Burton?*

Mr. *Whittal.* No, Sir, he was gone before I came to live there.

L. C. J. Jones. Have you any more to ſay?

Mr. *Fernley.* This, my Lord, may give ſome Account, that I had no Deſign againſt the Government. I am a poor Man, my Lord, and upon that Account I owe a great deal of Money: I knew there was 100*l.* for ſecuring *Burton*, there was no gain by concealing him: he was not a Perſon could requite me, that I ſhould harbour him, and loſe 100*l.* which was certain for taking him; which, my Lord, ſhews I had no Deſign.

L. C. J. Jones. No, this argues you to be a ſtronger Confederate; and that you were ſo firm to your Party, you would not gain 100*l.* though you might have it for doing your Duty.

Mr. *Fernley.* My Lord, I look'd upon it as ſure as if I had it in my Pocket. I knew nothing of him till *Sabbath-day* at Noon, and I did not deſign to conceal him afterwards, any farther than to ſerve the King.

L. C. J. Jones. You tell us a Story of yourſelf; it is to no Purpoſe to try any Priſoner, if his Saying muſt be taken for Evidence: We will hear what Witneſſes you have to produce, or if you can object to the Evidence that's againſt you.

Mr. *Fernley.* My Lord, I own it to be true, I have declared more than the Witneſſes have ſaid againſt me; but, my Lord, I am innocent in it, God knows my Heart, I had no Deſign in it. It was but ſix hours I knew of him.

Mr. Juſt. *Withins.* You lay out of your Bed before?

Mr. *Fernley.* My Lord, not upon his account; I was a Week before out of that Bed, to prepare it for my Wife to lie-in.

L. C. J. Jones. Is your Wife delivered?---Mr. *Fernley.* No.

L. C. J. Jones. You made great haſte?

Mr. *Fernley.* It was my Wife's Fault.

L. C. J. Jones. Gentlemen of the Jury, this Priſoner ſtands indicted for harbouring and relieving one *James Burton*, knowing him to have committed Treaſon. Gentlemen, you are to be acquainted, that this *James Burton* was not only guilty of the late Rebellion in the *Weſt*, but he was likewiſe charg'd by Proceſs with being guilty of the Plot at the *Rye-houſe*, and thereupon there were ſuch Proceedings by Law, that he was outlawed, the Record of which Outlawry hath been produced to you: ſo that if there were no more, if you be perſuaded that he is the Perſon guilty, whether he were in the Rebellion in the *Weſt* or no, that may induce you to find this Indictment, for the Priſoner receiving him after the Rebellion in the *Weſt*, and knowing him to have committed Treaſon, whereupon he was outlawed, it equally makes him liable to the Offence wherewith he is charg'd. But, Gentlemen, that is not all; you have expreſs Teſtimony from *Burton* himſelf, who it ſeems was acquainted with him, and who had fled from his Neighbourhood, by the ſpace of two Years almoſt, and yet he receives this *Burton* into his Houſe: I will not ſay, at the firſt time that he came into his Houſe, it doth appear by any Evidence, that he knew him to have been in the Rebellion in the *Weſt*; but when he came thither upon *Friday*, he was ſo kind to him as to leave his own Chamber, and to let him have that for his Lodging, although now he gives you another Excuſe plainly frivolous and falſe, that is, a Pretence of making way for his Wife to lie-in, who yet is not delivered. He lies there upon *Saturday* Night, and dines with him upon *Sunday*. *Saturday* perhaps might be a buſy Day, and there is no Teſtimony at all given by any Evidence of any Diſcourſe that was between them upon that Day; but upon *Sunday*, when they dined together, *Burton* ſwears, that he did tell him that he had been in the *Weſt* in the Rebellion there, and he came thither for Shelter. This Man being acquainted with this, allowed him to dine with him, and harboured him in his Houſe for the ſpace of ſeven or eight Hours more, without bringing him before any Juſtice of Peace, or any Magiſtrate who had Authority to commit him, although he had a particular Authority of his own (as he was Conſtable) for the Conſervation of the Peace; yet he forgets his Oath as well as his Duty and Allegiance, and ſuffers him ſtill to remain there. It is true, the Wife of *Burton* dined with them, as *Burton* himſelf ſays, and the Woman confeſſes; but ſhe was ſo buſy at her Victuals, that ſhe can remember nothing, ſhe did not hear that there was any Diſcourſe concerning *Monmouth*. But leſt you ſhould want another Witneſs, for *Burton* is but one Witneſs to that Particular, you have him plainly confeſſing it himſelf, which is above thouſand Witneſſes; you have him confeſſing that *Burton* did acknowledge he had been in the *Weſt*, and that *Monmouth* was routed, and yet he continues him in his Houſe; nay more, this Man doth appear to be a Perſon in whom there was that great Confidence, that another Perſon, *Gaunt*, came, and he bids him come into his Houſe, and there he diſcours'd of ſome Traitors, and the means of conveying away *Burton*, though he had confeſſed it himſelf. Gentlemen, what he tells you, is, that he did mean to diſcover; when did he intend to diſcover? He did not diſcover to any body, before the Man was apprehended by an Officer: he lets *Gaunt*, who plainly appears to be as arrant a Traitor as could be in the world, to go away meerly upon his own Parole, without taking any courſe to apprehend him. He pretends he is a poor Man, and he might have gain'd 100*l.* if he had diſcover'd him, and ſurely he would have diſcover'd him to gain 100*l.* But this is a ſtrong Argument, that he was deep in the Rebellion himſelf, and one in great Eſteem with them, that being a poor Man, he would not do his Duty, for which he might have had a Reward of 100*l.* but ſuffers him to eſcape. This is the Caſe, Gentlemen, that is before you; if you believe he did knowingly, as he himſelf upon the matter doth confeſs, give any comfort or relief to *Burton*, knowing him to be a Rebel, you ought to find him guilty.

Then the Jury withdrew to conſider the Evidence.

Clerk. Set *Elizabeth Gaunt* to the Bar. [*Which was done.*] *Elizabeth Gaunt*, hold up thy Hand. [*Which ſhe did.*]

THOU ſtandeſt indicted by the Name of *Elizabeth Gaunt*, Wife of *William Gaunt*, of the Pariſh of St. *Mary White-Chappel*, in the County of *Middleſex*, Yeoman; as a falſe Traitor againſt our late Serene Lord *Charles* the Second, by the Grace of God her then natural Lord; not having the Fear of God in her Heart, nor weighing the Duty of her Allegiance, but moved and ſeduced by the Inſtigation of the Devil, and the true and natural Obedience which a true and faithful Subject of our ſaid Sovereign Lord the King towards our ſaid late Lord the King of right ought to bear, withdrawing, and with all her Strength intending the Peace and common Tranquillity of this Kingdom of *England* to diſquiet, moleſt, and diſturb, and War and Rebellion againſt our ſaid late Sovereign Lord the King within this Kingdom of *England* to ſtir up and move, and the Government of our ſaid late Sovereign Lord the King in this his Kingdom of *England* to ſubvert, and our ſaid late Sovereign Lord the King from the Title, Honour, and Kingly Name of the Crown Imperial of this Kingdom of *England* to depoſe and deprive, and our ſaid late Sovereign Lord the King to Death and final Deſtruction to bring and put: The 24th Day of *September*, in the 36th Year of the Reign of our ſaid late Sovereign Lord *Charles* the Second, and divers other Days and Times as well before as after, within the Pariſh, *&c.* falſely, maliciouſly, deviliſhly, and traitorouſly, with divers Rebels and Traitors, to the Jurors unknown, ſhe did conſpire, imagine, and intend our ſaid late Sovereign Lord the King, her then ſupreme and natural Lord, not only from his Kingly State, Title, Power, and Government of this Kingdom of *England* to deprive and throw down; but alſo our ſaid late Sovereign Lord the King to kill and put to death, and the ancient Government of this Kingdom of *England* to alter and wholly ſubvert, and a miſerable Slaughter amongſt the Subjects of our ſaid late Sovereign Lord the King throughout this Kingdom of *England* to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid late Sovereign Lord the King to procure and aſſiſt. And the ſaid moſt wicked and deviliſh Treaſons and traitorous Compaſſings, Imaginations, and Purpoſes aforeſaid, to fulfil, perfect, and bring to paſs, the ſaid *Elizabeth Gaunt*, as a falſe Traitor, then and there, to wit, the ſaid 24th Day of *September*, in the Year aforeſaid, at the Pariſh and Ward aforeſaid, well knowing one *James Burton* to be a falſe Traitor, and as a falſe Traitor traitorouſly to have compaſſed and imagined the Death and Deſtruction of our ſaid late Sovereign Lord the King, and War and Rebellion againſt our ſaid late Sovereign Lord the King within this Kingdom of *England*, together with other Traitors (to the Jurors unknown), to have intended to be raiſed; ſhe the ſaid *Elizabeth Gaunt* afterwards, to wit, the ſaid 24th Day of *September*, in the Year aforeſaid, within the City of *London* aforeſaid, the ſaid *James Burton*, in a certain Houſe of a Perſon to the Jurors unknown, knowingly, ſecretly, wickedly, deviliſhly, and traitorouſly, did entertain, conceal, comfort, ſuſtain, and maintain, and then and there, for the comforting, ſuſtenance, and maintenance of him the ſaid *James Burton*, Meat, Drink, and 5*l.* in Money for the maintenance and ſuſtenance of him the ſaid *James Burton*, unto the ſaid *James Burton*, maliciouſly and traitorouſly ſhe did give and deliver, and cauſe to be given and delivered, againſt the Duty of her Allegiance, and againſt the Peace, *&c.* and againſt the Form of the Statute, *&c.*

Clerk. How ſay'ſt thou, art thou guilty or not guilty?

Mrs. *Gaunt.* I deſire to have more time to conſider of it.

L. C. J. Jones. You know whether you be guilty of this Offence; what need you have any time of Conſideration for that?

Mrs. *Gaunt.* I don't know, Sir; I am ignorant in the Law, and in things of that nature.

L. C. J. Jones. But this is not Matter of Law; it is, whether you did receive theſe Traitors or no knowingly; this *James Burton*, knowing him to have committed Treaſon: Can't you tell whether you did or no?——Mrs. *Gaunt.* Not guilty.

Clerk. How wilt thou be try'd?

Mrs. *Gaunt.* By God and my Country.

Clerk. God ſend thee a good Deliverance.

Then the Middleſex *Jury returning, Mrs.* Gaunt *was ſet aſide, and* Ring *and* Fernley *brought to the Bar, who were both brought in guilty by the Jury.*

Clerk. Set *Henry Corniſh* to the Bar, and *Elizabeth Gaunt*. [*Which was done.*]—You the Priſoners at the Bar, theſe Men that have been now called, and here appear, are to paſs between our Sovereign Lord the King and you, upon your ſeveral Lives or Deaths: If you challenge any of them, you muſt ſpeak as they come to the Book to be ſworn, before they are ſworn.

Mr. *Corniſh.* My Lord, I muſt humbly beg leave of your Lordſhip and this honourable Court, that I may renew my Requeſt. The time of notice given me for my Trial being ſo ſhort, it hath no Precedent, I think: I humbly pray your Lordſhip I may have time allowed for my Trial; I have had no Counſel, no Pannel, no Help in the world; I had not Pen, Ink, nor Paper, my Lord; theſe are very hard things. My Lord, his Majeſty

was

was petition'd last Night by my Children, and he was graciously pleased to say, that he would refer it to my Lords the Judges. I only pray your Lordships, that you would be pleased to allow me Time: Though here is a grievous Indictment brought against me, yet I doubt not but to clear myself of what is alledged against me, if I have but Time to prepare myself for it: therefore I humbly pray I may have Time allotted.

L. C. J. Jones. You told us so before, that you had exhibited a Petition to the King, and that the King did refer it to the Judges; you shew us nothing of that.

Mr. *Cornish.* My Lord, I can but only signify to your Lordship what I hear; my Children were with me, and told me they had petitioned the King, and his Majesty was pleased graciously to receive it.

Mr. Att. Gen. The King left you to the Course of the Law.

Mr. *Cornish.* It is very hard Measure; I have no Preparation at all, no more than at the first Moment; but I bless God, I hope I shall in time satisfy you of my Innocency.

L. C. J. Jones. You were apprehended and seized upon *Tuesday* last, this is almost a Week; you knew what you were charged withal.

Mr. *Cornish.* My Lord, I did not know what I was charged withal, I had no Liberty of Friends to come to me; my Wife at length obtained Leave, but it was in the Presence of Major *Richardson*; I had no Friend with my Wife, no Pen, Ink, nor Paper.

L. C. J. Jones. Was Pen, Ink, and Paper deny'd you? Did you ask it?

Mr. Att. Gen. As soon as he petition'd for it, he had it.

Capt. *Richardson.* He had Pen, Ink, and Paper.

L. C. J. Jones. When was that?—Capt. *Richardson.* On *Saturday.*

Mr. *Cornish.* My Lord, it was eight a-clock at night.

Mr. Just. *Levinz.* Mr. *Cornish*, I would not have you think you are used otherwise than other Men are; for I must tell you, it is not usual to have Pen, Ink, and Paper, without Leave.

Mr. *Cornish.* I know it hath been allowed in the like Case.

Mr. Just. *Withins.* Ay, upon Petition, never else.

Mr. Just. *Levinz.* There are many Men, and of as good Quality as you, tried for killing Men: does any body give them Notice? Is there any more Necessity of Notice in Point of Treason, than in Point of Murder?---Mr. Just. *Withins.* I told you what your Offence was, when you were committed.

Mr. *Cornish.* My Lord, I remember in my Lord *Russel*'s Case, he had at least seven or eight Days allowed him.

Mr. Just. *Levinz.* It may be so; but it is not necessary. Prisoners that are tried here generally have no Notice at all; if one Man hath a singular Favour, another Man cannot claim it.

Mr. *Cornish.* My Lord, I have a material Witness above a hundred and forty Miles off.

L. C. J. Jones. My Lord's Trial, I think, was put off but till the Afternoon.

Mr. *Cornish.* With Submission to your Lordship, I think he had eight Days assign'd him. But, my Lord, I humbly conceive I have a Witness that is very material in my Case, that is 140 Miles out of Town, in *Lancashire*; I humbly pray I may have Time allotted me to send for him.

L. C. J. Jones. Why did you not set forth that in your Petition to the King?——Mr. *Cornish.* My Lord, I did not understand the Case.

L. C. J. Jones. Were not you committed for High-Treason?

Mr. Just. *Withins.* I told you so myself: I shew'd you the Commitment; therefore you can't pretend you were ignorant of it.

Mr. *Cornish.* My Lord, it did not mention this King or the last: And I am not a Lawyer, I am not skill'd in these Things; I am very ignorant, and hope your Lordship will consider me; my Innocence will appear as bright as any Man's that ever stood at this Bar.

L. C. J. Jones. I don't believe you want that Evidence a hundred and forty Miles off. Is he the only Man that can make your Innocence appear?

Mr. *Cornish.* My Lord, by what I apprehend he will be the most material Witness I have. My Lord, I shall desire nothing but with Submission to your Lordship and the Bench; but I humbly conceive it is very reasonable I should have Time, I humbly pray your Lordship to consider it.

L. C. J. Jones. Mr. *Attorney*, have you any Directions?

Mr. Att. Gen. No, my Lord.

Mr. *Cornish.* I do not doubt, if I might have a little Time, to make my Defence.

Mr. Just. *Withins.* You should have applied yourself to the King, it does not lie in our Power.

Mr. *Cornish.* My Lord, I humbly pray you to consider my Case.

Mr. Just. *Withins.* Mr. *Bridgman* here on the Bench says, there was a Petition before the King, for putting it off; and the King absolutely refused it.

Mr. Just. *Levinz.* We have nothing to do, Sir; we are here by Commission to try you.

Mr. *Cornish.* My Lord, I have been denied a Copy of the Pannel; I hope that is reasonable, I must desire a Copy of the Pannel.

Mr. Att. Gen. That is none of your Right, Mr. *Cornish.*

Mr. *Cornish.* Mr. *Attorney*, with Submission, I hope I ought to have it.

Mr. Att. Gen. No, you ought not to have it; you have your peremptory Challenges, you may challenge thirty-five without Cause.

L. C. J. Jones: You shall have a Copy of the Pannel here.

Mr. Att. Gen. Yes, here he may.

Mr. *Cornish.* It is a very hard Case, when I have a material Witness so far out of Town, that I can't have a little Time allotted.

L. C. J. Jones. Can't every Man that comes here to be tried say the very same Thing, that he hath a material Witness in *France*, *Spain*, or any where else, and that when that Witness comes, his Innocence will be as clear as the Sun?

Mr. *Cornish.* My Lord, my Witness is in *Lancashire*, I cannot help it; I beseech your Lordship to consider me: I am apt to believe that he would so much vindicate my Reputation in this Matter, that it would be a very great Satisfaction to your Lordships; and I am sure you are not for oppressing any Man.

L. C. J. Jones. No, Sir, that we are not.

Mr. *Cornish.* I am sure you are for the just Vindication of the Government, for executing of Justice, and I will desire no other than that.

L. C. J. Jones. Mr. *Attorney*, if you pray he may be tried, we can't deny it.

Mr. Att. Gen. Mr. *Cornish*, I cannot defer it, I have no Authority; and why you should be in another Condition than other Prisoners, I don't know; you have not deserved so well of the Government.

Mr. *Cornish.* I have not the Names of the Wards where these Men live, and their Trades.

Mr. *North.* He hath a Copy of the Pannel, and that is sufficient.

L. C. J. Jones. You may ask them where they live.

Mr. *Cornish.* I hope I may have Pen and Ink, my Lord.

L. C. J. Jones. Ay, ay.

Then the Jury were called, and after Mr. Cornish *had challenged thirty-five of them, the Jury sworn were as followeth:*

Thomas Rawlinson,	*John Grice,*	*William Longboat,*
Thomas Langham,	*Thomas Oneby,*	*Stephen Coleman,*
Ambrose Isted,	*William Clowdesly,*	*Robert Clavel,*
Thomas Pendleton,	*Richard Helsford,*	*William Long.*

Proclamation being made, *If any one can inform*, &c. Mr. *Cornish* was set aside, and *Elizabeth Gaunt* at the Bar.

Clerk. Elizabeth Gaunt, hold up thy Hand. [*Which she did.*]——You of the Jury, look upon the Prisoner, and hearken to her Cause: She stands indicted by the Name of, *&c. (as before in the Indictment)* Upon this Indictment she hath been arraigned, and thereunto pleaded not guilty, and for her Trial hath put herself upon her Country, which Country you are. Your Charge is to enquire, whether she be guilty of this High Treason whereof she stands indicted, or not guilty. If you find her guilty, *&c.*

Mr. *Phipps.* May it please your Lordship, and you Gentlemen that are sworn, *Elizabeth Gaunt* the Prisoner at the Bar stands indicted, for that she knowing *James Burton*, together with other Traitors, traitorously to have conspired the Death of the late King, and to raise Rebellion in this Kingdom, did harbour the said *James Burton*, and give him Five Pounds in Money.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen that are sworn, the Prisoner stands indicted for harbouring of *Burton*, who was a great Traitor, and for procuring a Way for his Escape beyond Sea, and also for giving him 5 *l.* to bear his Charges. In the former Trial you had an Account of her Husband, and in this you will hear she and her Husband were the great Brokers for carrying over such Traitors, as my Lord *Shaftesbury* and others; these have taken Care to convey them over at all times. We will produce our Witnesses. Call *Burton* and his Wife. [*Mr.* Burton *sworn.*]

Mr. Att. Gen. Do you know Mrs. *Gaunt?*—Mr. *Burton.* Yes, Sir.

Mr. Att. Gen. Pray give my Lord and the Jury an Account how she harbour'd you, and all the Passages that past between you and Mrs. *Gaunt.* Pray tell first, whether you were engag'd in the Matter of the *Rye?*

Mr. *Burton.* How I came concerned I will tell you, if it please you.

Mr. Att. Gen. Speak.

Mr. *Burton.* The first Time I knew any thing of it, Mr. *Keeling* came to me one *Saturday* Morning and asked me, if I was to go to *London.* I said, Yes, I was to go to the *Exchange*; and he desir'd me to meet him at the *Mitre*-Tavern within *Aldgate*, and ask for *Number Five.* I came at the Time, and no body being there, I was going away, and met with a Country-Man, with a Stick in his Hand, that had but one Eye; he came and ask'd for the same Number: So the Gentleman sent his Boy after me, and told me one stay'd for me. When I came, he ask'd me, if I ask'd for *Number Five?* and I said, Yes. *By whose Appointment?* By *Josiah Keeling*'s, said I. So he ask'd the Man of the House to shew a Room: He shew'd a Box; but he would have a Room, and went up stairs, and call'd for Pipes and a Candle, and a Pint of Wine. In a little while *Keeling* came in, and brought *Barber* and *Thompson*, and no body spake almost any thing but *Rumbold*, (that was *Rumbold* with one Eye, for *Keeling* when he came in call'd him Captain *Rumbold*) and *Rumbold* talk'd about Privileges and such Things at first, and he said his House was a convenient House, and there they might do the Business: but before they had done, I found they design'd to kill the King, but nothing troubled him but killing the Postillion, *to kill a Man in cold Blood.* But then says we, *If you are for killing, we have done*, and so broke up; that was the End of that. A while after Mr. *Keeling* went in, and made a Discovery; I never came among them afterwards. So after Mr. *Keeling* had discovered, I was in the Proclamation for being there at that Meeting, and absconded myself, and lay hid. A Matter of two Months after, Mrs. *Gaunt* came to enquire of my Wife where I was, to speak with me; she brought her to me. She told me, there were some Persons about to make an Escape, and would have me go along with them. I told her, with all my Heart: So I ask'd her which way and how they intended to go. She told me, they had provided Horses to ride down to *Rochford*-Hundred, and there was a Vessel to carry them over; and, says she, *be ready by such an Evening, and I will call for you.* Accordingly she did, and had me into *Bishopsgate-Street*, and in *Half-moon-Alley* in a little Brew-house, up stairs in a Chamber, there were both the *Rumbolds*; one of them did not go, and the other and I lay there all Night: and in the Morning a Man came and called us away; and we went to *White-Chapel* to take Horse, to ride down to *Rochford*-Hundred, and stay'd for the Vessel two Days; and when we met the Vessel, it was a small Vessel, and bad Weather, and the Master of the Vessel had but one Hand and two Boys, one a very little one; and we went down the Creek, and I asked the Man where he did intend to land us; and he told us, at *Ostend.* Said I, I understood we were to go for *Holland* to the *Brill.* Says he, My Vessel is only able to go to *Ostend* or *Dunkirk*, either of them. Says *Rumbold*, I don't understand the Sea. Says I, This is a very small Vessel and leaky, and the Man not able to manage it. Says I, I will go back again to *London.* Says he, I will do as you do; and we both parted at *London*, and I never saw him afterwards till I saw him at *Amsterdam.* I lay by a great many Months after; then Mrs *Gaunt* came to me again, and told me there were two other Persons going, and I might have a Passage if I would go: So she bid me be ready by such an Evening, and I was ready; and a Boat being ready at the Water-side, carried me to *Gravesend*, where I went in a Vessel to *Amsterdam.*

Mr.

Mr. Att. Gen. Where were you?

Mr. *Burton.* I was with my Wife at my Daughter's: I had a Daughter married, her Husband was drown'd.

Mr. Att. Gen. How came Mrs. *Gaunt* to take so much care of you? Give the Court an account.

Mr. *Burton.* She might think I knew something of her Husband, if I should be taken; I suppose that might be the chief thing.

Mr. Att. Gen. What had her Husband done?

Mr. *Burton.* Her Husband, I suppose, knew something of the Business.

Mr. Att. Gen. What Business?

Mr. *Burton.* About seizing the *Tower:* He came to me, and would have had me gone with him with Capt. *Walcot* to the *Tower*, to see what Force there was of Soldiers; and Capt. *Walcot* said he had a design to take an House over-against the *Tower*, to put in some Men there to break in upon the *Tower*; and *Gaunt* was with him.

L. C. J. Jones. What discourse had you with her about the Plot?

Mr. *Burton.* Nothing with her.

Mr. Att. Gen. What was it she would help you away for?

Mr. *Burton.* I suppose this was the reason, because she knew I knew her Husband was concern'd.

Mr. *North.* Did she assist you with any Money?---Mr. *Burton.* Yes.

Mr. *North.* How much?

Mr. *Burton.* She gave me a parcel of Money just as I was going away; I put it among other Money.

Mr. *North.* How much? 30 or 40*s*?

Mr. *Burton.* More than that.

Mr. Sol. Gen. Were you gone from your own House when this Woman came to you?

Mr. *Burton.* My own House was broke up a great while before.

Mr. Sol. Gen. Did you appear publickly when she came to you?

Mr. *Burton.* No, an't please you.

L. C. J. Jones. Had there been any Search for you before?

Mr. *Burton.* Yes.

Mr. *North.* You were in the Proclamation at this time?

Mr. *Burton.* Yes, an't please ye, Sir.

Mr. Att. Gen. Did she carry you to *Rumbold?*---Mr. *Burton.* Yes.

Mr. Att. Gen. Was there any discourse between *Rumbold* and her?

Mr. *Burton.* No; there was an elderly Man in the House, I did not know him, carried me up to *Rumbold*, there was both of them.

Mr. Att. Gen. What Money had you of her?

Mr. *Burton.* I believe about 5*l.* I told her I had lain a great while, and Money was very bare with me; and she told me she would get me a little.

Mr. Att. Gen. Did she know what you were conceal'd for?

Mr. *Burton.* Every body knew that, because I was in the Proclamation.

Mr. *North.* What directions did she give you, how you should behave yourself when she went with you to *Bishopsgate-street?* How did she say you must carry yourself?

Mr. *Burton.* Nothing there, she gave no order about that.

L. C. J. Jones. Did she tell you you were concern'd in the Plot with her Husband?

Mr. *Burton.* She did not tell me so, Sir.

L. C. J. Jones. Did you tell her you were concern'd in the Plot with her Husband?---Mr. *Burton.* I did not tell her so.

Mr. Att. Gen. Who were the two Men that were prepared to go with you that time?—Mr. *Burton.* One *Patchil.*

Mr. Att. Gen. He was kill'd in the Fight. Was *Patchil* in the Fight?

Mr. *Burton.* Yes, an't please you, he was kill'd.

Mr. Att. Gen. And who was the other?

Mr. *Burton.* T'other was a Man liv'd in *Southwark*; I never saw him before.

Mr. Com. Serj. What Directions did she give you about your own Name, or any others, when you went into the Boat?

Mr. *Burton.* If I knew any body, that I should not take notice I knew them.

L. C. J. Jones. You were not to take any Acquaintance of any body in the Boat?

Mr. Just. *Withins.* Hark you, Sir? You looked upon all those to be engaged in the Plot? All that she endeavour'd to save, were of the same Level.--Mr. *Bur. Rumbold* was; *Rumbold* was in the Proclamation.

L. C. J. Jones. Did she tell you, that you were in the Proclamation?

Mr. *Burton.* No, an't please your Lordship, she did not tell me so.

Mr. *North.* Did she never discourse of your being in the Proclamation?

Mr. *Burton.* No, not as I remember; it was a general thing.

Mr. Just. *Withins.* But why should she come to you to transport you, if it were not for such a thing?

Mr. *Burton.* Her Husband was with me about going to the *Tower.*

Mr. Att. Gen. Burton, pray thus; when you came from the *West*, what Overtures were to help you here from her, or her Husband?

Mr. *Burton.* Her Husband was with me at *Fernley*'s House, and he told me there were two or three Persons to go in two or three Days, and I should go with them.

Mr. Att. Gen. You named your Daughter, what is her Name?

Mr. *Burton. Mary Gilbert.* [*Then* Mary Gilbert *was called and sworn.*

Mr. Att. Gen. Do you know Mrs. *Gaunt?*

Mary Gilbert. Yes, Sir, I know her, she was our Neighbour.

Mr. Att. Gen. Then give an account of her coming to you about your Father.

Mary Gilbert. She came to our House that Night my Father went away. I never heard a word of the Discourse that past, for I always went out of the way.

Mr. Just. *Withins.* Why did you go out of the way?

Mary Gilbert. Because they were not willing I should hear the Discourse.

Mr. Com. Serj. You are upon your Oath, Mistress, you must tell the truth.---*Mary Gilbert.* I do, Sir; I will tell no more.

Mr. Sol. Gen. Did you see your Father go away? Who did he go with? In what Company?---*Mary Gilbert.* I can't tell.

Mr. Att. Gen. Did Mrs. *Gaunt* go with him?

Mary Gilbert. I met my Father and Mrs. *Gaunt* in *Houndsditch*, my Mother and I were to meet them in *Bishopsgate-street.*

Mr. Com. Serj. Well, what was the reason why you did not meet?

Mary Gilbert. We were to meet at seven a-clock, and we went to the House, and they were not come; and we were coming home, and met them in *Houndsditch*, and my Father had Mrs. *Gaunt* under the Arm, and went back to a House without *Bishopsgate.*

Mr. Sol. Gen. Did Mrs. *Gaunt* carry him thither?

L. C. J. Jones. Do you know why your Father was to go away?

Mary Gilbert. He went upon the account of the Proclamation.

L. C. J. Jones. Then you knew of the Proclamation?

Mary Gilbert. Yes, Sir, I knew of the Proclamation.

Mr. Com. Serj. Whose Acquaintance was the Man in *Bishopsgate-street?*

Mary Gilbert. He was none of mine.

Counsel. When your Father went up stairs into a Room, did you see any body with him?

Mary Gilbert. Yes, Sir, it was a Man that had but one Eye, a full-set Man, full of Pock-holes; but I never saw him before, nor after.

Counsel. How came you to see him?

Mary Gilbert. By going up stairs to see my Father.

[Mary Burton *sworn.*

Mr. Att. Gen. Do you know Mrs. *Gaunt* there?--Mrs. *Bur.* Yes, Sir.

Mr. Att. Gen. Pray will you tell the Court, how she came to enquire after your Husband?---Mrs. *Burton.* Yes, Sir, at my Daughter's House.

Mr. Att. Gen. What discourse happened between you?

Mrs. *Burton.* No discourse; but she said if I was willing, my Husband should go away, and she would take care.

Mr. Sol. Gen. But why should he go away?

Mrs. *Burton.* I don't know why, but only upon the Proclamation.

Counsel. Woman, did she take notice your Husband was gone from home, and had left his House?

Mrs. *Burton.* I knew myself, my Lord.

Mr. Just. *Levinz.* Where did you go?

Mrs. *Burton.* My Husband went out of doors by his own self, by Appointment, and we were to meet, my Child and I together, without *Bishopsgate*, by the *Catherine-wheel.*

Mr. Com. Serj. Who made that Appointment?

Mrs. *Burton.* Mrs. *Gaunt.*

Mr. Com. Serj. Upon what account did she come to you to secure your Husband?

Mrs. *Burton.* Upon the account he was in the Proclamation, and I thought within myself, for fear my Husband should know any thing against her Husband; but I never said so, for I was glad my Husband should be helped away, willing to save his Life, for I knew it was Death.

Mr. Just. *Levinz.* And you took that to be the meaning of it in reference to the Proclamation?

Mr. Sol. Gen. How far did you live from her?

Mrs. *Burton.* Formerly we dwelt pretty near one another, when Mrs. *Gaunt* kept a Tallow-Chandler's Shop.

L. C. J. Jones. Woman, do you verily believe she knew your Husband was in the Proclamation?

Mr. Just. -----. Did you never see the Prisoner at the Bar at any time in *Holland?*-----Mrs. *Burton.* No.

Mr. Att. Gen. Nor her Husband?---Mrs. *Burton.* Nor her Husband.

Mr. Att. Gen. I ask you at this time when your Husband went away, and his House was search'd, how far did she live from you then?

Mrs. *Burton.* She had but Lodgings; I don't know where her Dwelling-house was.

Mr. Att. Gen. Where were her Lodgings?

Mrs. *Burton.* At the upper end of *Old Gravel-Lane*, and my Daughter in the middle of *Gravel-Lane*, in *Worcester-street*, as far as it may be to *Newgate*, thereabouts.

Mr. Att. Gen. Was it taken notice of all over the Street that the House was searched, and your Husband gone? Was that taken notice of in the Neighbourhood?----Mrs. *Burton.* Yes, yes.

Counsel. Between the time your Husband went first away, and the time she came to take care of him, had you no discourse about the reason of his going away, nor of the Proclamation?---Mrs. *Burton.* No.

L. C. J. Jones. What say you, Woman, to this Evidence? Several Witnesses say you were very busy in contriving the Escape of *Burton*; what was the reason why you would send him away?

Mrs. *Gaunt.* I did not contrive to send him away.

L. C. J. Jones. The Woman says so, *Burton* says so, the Daughter says the same.-----Mrs. *Gaunt.* Where, Sir?

L. C. J. Jones. At *Bishopsgate*, or *Houndsditch.*

Mrs. *Gaunt.* I deny it.

L. C. J. Jones. And you gave him Money afterwards?

Mrs. *Gaunt.* Who saw me give it him?

L. C. J. Jones. He swears it.

Mrs. *Gaunt.* He was the more beholden to me.

L. C. J. Jones. Did you, or did you not?

Capt. *Richardson.* She says she is not come here to tell your Lordship what she did.

L. C. J. Jones. Woman, did not you hear that *Burton*'s Name was in the Proclamation about *Rumbold*'s Plot?---Mrs. *Gaunt.* It is like I might.

L. C. J. Jones. You might hear it!----Mrs. *Gaunt.* Yes.

L. C. J. Jones. And yet you would by all means help him to escape?

Mrs. *Gaunt.* I can say nothing against it, if they swear it.

L. C. J. Jones. Do you know what you are charg'd withal? You are accused for relieving and comforting *Burton*, whom you knew to have committed Treason.---Mrs. *Gaunt.* My Lord, he says so.

L. C. J. Jones. And for helping him to escape, and giving him Money in order to it?----Mrs. *Gaunt.* He says so.

L. C. J. Jones. He swears so; what do you say?

Mrs. *Gaunt.* Is that sufficient?

Mr. Just. ------ Ay, and another swears it, that is sufficient.

Mrs. *Gaunt.* I have not heard any body else swear it.

Mr. Just. ----- Yes, his Wife.

Mrs. *Gaunt.* Not about the Money.

Mr. Just. -----, You came and sollicited him to go several times.

Mrs. *Gaunt.* It is very untrue, my Lord.

L. C. J. Jones. Did you know his House had been search'd to find him?

Mrs. *Gaunt.* I did not know it a great while since, I might know,

[*Here* Burton's *Pardon was produced again.*

Mr. Juſt. *Withins.* It is a Pardon for *Burton*, now he is a good Witneſs *, Gentlemen.

L. C. J. Jones. Have you any more, Woman, to ſay for yourſelf? If you can tell us any other Cauſe than that he was guilty of Treaſon, wherein your Husband was concern'd.

Mrs. *Gaunt.* No, I deny that, that I knew my Huſband was concern'd in any thing of that kind.

L. C. J. Jones. Wherefore then would you take ſo much care to ſend him away?——Mrs. *Gaunt.* I don't tell you, my Lord.

L. C. J. Jones. You don't tell us, but the Witneſſes have ſworn it.

Mrs. *Gaunt.* I muſt leave it to them.

L. C. J. Jones. Gentlemen of the Jury, this Woman ſtands indicted for High-Treaſon, for concealing, comforting, and relieving one *James Burton*, a Perſon that had committed High-Treaſon; and for endeavouring that he might make his eſcape, and giving him 5*l.* in Money. Gentlemen, the Evidence that is given is by *Burton*, his Wife, and his Daughter. *Burton* ſays, that this Woman was very ſollicitous ſeveral times to help to ſend him beyond Sea. He does tell you, that when there was a Plot againſt the Life of the King, wherein *Rumbold* was concern'd, and one of the chief Actors, that he himſelf was preſent at one of the Conſultations concerning it, and that afterwards he did withdraw himſelf from the Company, as he ſays; but he ſays, that this Woman's Huſband being likewiſe concern'd in the Plot, and this Woman, as he believes, knowing that he was able to make ſome Diſcovery concerning her Husband, and knowing alſo his danger in reſpect of his own Guilt, ſhe endeavours to ſend him away firſt to *Rochford*, and ſo to go beyond Sea. And afterwards, in another place in *Houndſditch*, and from thence he was to be conveyed beyond Sea. It is true, there is no direct Proof that there was any particular mention that *Burton* was in the Proclamation for that Treaſon; but the Woman ſays, and *Burton* himſelf ſays, that they do both verily believe, that the Priſoner at the Bar did know he was in the Proclamation, and therefore there was no particular diſcourſe concerning it; and ſhe herſelf being examined, ſays, ſhe might hear that his Name was in the Proclamation, and ſhe might hear that his Houſe was ſearched, and that he could not be found; and yet notwithſtanding all this, ſhe endeavours to conceal him. What can be the meaning of all this in this Woman, but that ſhe was very zealous to maintain the Conſpiracy, and was a great Aſſiſtant to all Perſons that were concern'd in it? She will not tell you any other Cauſe wherefore ſhe ſhould be concerned to convey this Man beyond Sea, and therefore in all reaſon you ought to conceive it was for this; it was a known Cauſe, made known to all People by the King's Proclamation. If you believe ſhe did know or believe *Burton* to have been guilty of that Treaſon, and that ſhe did help to convey him away, as the Witneſſes have proved that ſhe did, by giving him Money, and ſolliciting him ſeveral times to be gone, then you ought to find her guilty.

Then the Jury deſiring to aſk a Queſtion, Burton *was called again; but being gone out of Court, was ſent for, and Mr.* Corniſh *was ſet to the Bar.*

Clerk. Henry Corniſh, hold up thy Hand; you of the Jury, look upon the Priſoner, and hearken to his Cauſe; he ſtands indicted by the Name of *Henry Corniſh*, late of the Pariſh of St. *Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, Merchant, *&c.* as before in the Indictment. Upon this Indictment he hath been arraign'd, and thereunto pleaded Not Guilty, *&c.*

Mr. *Phipps.* May it pleaſe your Lordſhip, and you, Gentlemen that are ſworn, *Henry Corniſh*, the Priſoner at the Bar, ſtands indicted, for that he, knowing that the late Duke of *Monmouth*, *William Ruſſel*, Eſq. the late Lord *Grey*, and other Traitors, had conſpired the Death of the late King, and to raiſe Rebellion in this Kingdom, did promiſe to aid and aſſiſt them in compaſſing this wicked Imagination, againſt the Duty of his Allegiance, *&c.* To this he hath pleaded Not Guilty, *&c.*

Mr. *Corniſh.* I am innocent of the whole matter.

Officer. Burton is come.

L. C. J. Jones. Let us make an end of that firſt. In the Evidence that you gave againſt *Elizabeth Gaunt*, you ſaid that you did receive Money from her, 5*l.* or ſome ſuch Sum.

Mr *Burton.* Yes, an't pleaſe your Lordſhip.

L. C. J. Jones. Did ſhe owe you any Money?

Mr. *Burton.* No, my Lord.

L. C. J. Jones. Upon what account was it you receiv'd that Money?

Mr. *Burton.* She gave it me.

L. C. J. Jones. Upon what account was it? To aſſiſt you in your Eſcape?

Mr. *Burton.* She knew I was bare of Money, and gave it me of her free Will.

L. C. J. Jones. And it was at that time you went away?

Mr. *Burton.* Yes.

Mr. Juſt. *Withins.* It was to aſſiſt you in your Eſcape?

Mr. *Burton.* Yes, I believe ſo.

Mr. Com. Serj. Who paid your Boat-hire?

Mr. *Burton.* I paid none, I don't know, the Waterman can tell.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, Mr. *Corniſh*, the Priſoner at the Bar, ſtands indicted for contriving the Death of the late King, and for raiſing Rebellion in the Kingdom, and is charged that he did conſent to be aſſiſting to that Rebellion that was then deſigned. It is not unknown to you, Gentlemen, for there have been ſeveral Trials of that Conſpiracy, that there was a great Rebellion deſign'd in *England* by the late Duke of *Monmouth*, the Lord *Ruſſel*, and Sir *Thomas Armſtrong*; and particularly, Gentlemen, there was a Meeting (which already hath appeared in publick,) at Mr. *Sheppard*'s Houſe, where the Lord *Ruſſel*, the late Duke of *Monmouth*, Sir *Thomas Armſtrong*, Mr. *Rumſey*, and the late Lord *Grey*, met to conſider and adjuſt Matters. At that Meeting Mr. *Corniſh* indeed came in very late, (for he was invited and knew their Deſign then) he came in late, and ſo was not at the whole Diſcourſe; but there was a Declaration framed to be put out when they ſhould riſe, and they did acquaint Mr. *Corniſh* with it, and they read it to Mr. *Corniſh*, and Mr. *Corniſh* did like it very well, and promiſed he would be aſſiſting, as we will prove to you, Gentlemen. Another Inſtance of Mr. *Corniſh*'s Rebellion, for I need not tell you what part he acted when he was Sheriff, and maintain'd that which was the Ground-work of the Rebellion, ſetting the Commonalty againſt the Government of the City: Another Inſtance we will give you is, his Under-Sheriff that was employed to divide the City, and to raiſe Men within the City, having diſcourſe with Mr. *Corniſh* about the ſettling that matter, he liked it very well, and promis'd he would be aſſiſting to him; and you may eaſily preſume Mr. *Goodenough* the Under-Sheriff was very privy to all the Acts of Mr. *Corniſh* at that time. We will call our Witneſſes. Mr. *Rumſey.*

Mr. *Cor.* I deſire the Witneſſes may be kept apart.

Mr. Att. Gen. They will prove it upon you at two times.

Mr. *Cor.* You will find me guilty of neither; I am as innocent as any Perſon in this Court.

Mr. Att. Gen. So was my Lord *Ruſſel to his Death*, Mr. *Corniſh:* Do you remember that?

Mr. *Cor. Mr. Attorney General*, I ſpeak in the Preſence of the great God, I am as innocent as any Man in this Court.

Mr. Att. Gen. Mr. *Rumſey*, pray will you give my Lord and the Jury an account of the Inſurrection that was to have been in *England*, in the late King's Time, and what concern the Priſoner had in that Affair.

Mr. *Rumſey.* My Lord, about the latter end of *October*, or the beginning of *November*, my Lord *Shaftesbury* deſired me to go to Mr. *Sheppard*'s Houſe, where there was a Meeting of thoſe Gentlemen that I did name before, the Duke of *Monmouth*, my Lord *Ruſſel*, my Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, and Mr. *Sheppard*, and accordingly I went; I came late there myſelf, for they were juſt going away, when I came in. I told them my Meſſage, and they told me they were diſappointed by Mr. *Trenchard*. I had not been there a quarter of an Hour, but we were going away, and Mr. *Sheppard* was call'd for by his Man, and he went down Stairs and brought up Mr. *Corniſh*; and when he came into the Room, he told the Gentlemen there met, that Mr. Alderman *Corniſh* was come; ſo as ſoon as Mr. Alderman *Corniſh* came into the Room, he made his Excuſe to the Gentlemen that he did not come ſooner, and that he could not ſtay with them; the Reaſon why he could not ſtay with them, he told them was, that they were to meet that Night about their Charter, and there was never another Alderman in Town but himſelf, and therefore he could not ſtay, there was a Neceſſity of an Alderman to be there. And upon that Mr. *Ferguſon* opened his Boſom, and from under his Stomacher pull'd out a Paper; they told him they had that Paper read, and deſired to read it to him: Mr. *Ferguſon* read it, and Mr. *Sheppard* held the Candle all the while that it was reading; and after they had read it, they aſked him how he liked it; and he did ſay he liked it very well.

L. C. J. Jones. What were the Contents of that Paper?

Mr. *Rumſey.* The firſt part of it was complaining of the Miſgovernment of the late King; there were two Points in it that I do remember very well that they would declare for; One was *Liberty of Conſcience*; and t'other was, That all thoſe that would aſſiſt in that Inſurrection, that had any Lands of the Church, or the King's, in the late War, ſhould have them reſtored to them.

L. C. J. Jones. Was there any thing in that Paper that did engage any body to an Inſurrection?

Mr. *Rumſey.* I did not hear all the Paper, nor did I take great notice of it; but thoſe two Points were in it, to engage them that would aſſiſt.

Mr. Att. Gen. What was the Effect of the Paper?

Mr. *Rumſey.* It was to be a Declaration upon the Riſing; when the Riſing was to have been, this was to have been diſperſed abroad.

Mr. Att. Gen. Mr. *Rumſey*, was there a Riſing intended at that time?

Mr. *Rumſey.* Yes, and they met there for that Purpoſe; and Mr. *Trenchard* was the Man to manage the Buſineſs about *Taunton*, and he diſappointed them.

Mr. Att. Gen. What was your Meſſage from my Lord *Shaftesbury* to them?

Mr. *Rumſey.* It was to know what Iſſue they had come to about the Riſing, and to preſs them to it, for ſuch a matter as that was not to be long kept a-foot; either let them come to a Reſolution to riſe, or let it fall for good and all.

Mr. Att. Gen. After Mr. *Corniſh* had expreſſed his liking of this Buſineſs and Declaration, what follow'd?

Mr. *Rumſey.* He did ſay he liked it very well; and that poor Intereſt he had, he would join with it.

Mr. Att. Gen. Speak that again.

Mr. *Rumſey.* Mr. *Corniſh* did ſay, he did like the Declaration, and with the ſmall Intereſt he had, he would appear to back it, or Words to that Effect.

Mr. *Cor.* My Lord, ſince he takes the Freedom to charge me with theſe things, I never was at a Conſult in my Days.

Mr. Juſt. *Levinz.* You were not then at Mr. *Sheppard*'s that Night?

Mr. Att. Gen. Will you deny you were at Mr. *Sheppard*'s that Night?

Mr. *Cor.* I do declare, I never was at Mr. *Sheppard*'s in any Conſult in my Life, as he declares; but I have had great dealings with Mr. *Sheppard*.

L. C. J. Jones. You ſhall be allow'd your Liberty; pray, Sir, be not tranſported with Paſſion. I doubt, before this time, notwithſtanding the Confidence you ſeem to have, there are few believe you to be as innocent as any Perſon preſent.

Mr. Att. Gen. You will hear more from his Oracle.

Mr. Juſt. *Levinz.* Were you there when my Lord *Ruſſel* was there?

Mr. *Cor.* I was not there when my Lord *Ruſſel* was there, as I remember.

L. C. J. Were you preſent; hear, hear, Sir: were you preſent at *Sheppard*'s when *Ferguſon* was there?

Mr. *Cor.* My Lord, I have been at *Sheppard*'s ſeveral times, but I never liked the Man for his Morals, and therefore never liked to be in his Company.

L. C. J. Jones. He pulled the Paper out of his Boſom.

Mr. *Cor.* It is as great an Untruth as ever was told in the World; but, my Lord, ſeeing he takes this Freedom to charge me, I deſire to know whether he ſtands here as a lawful Evidence?

L. C. J. Jones. What is your Exception?

Mr. *Cor.* He ſtands charged guilty of Treaſon.

L. C. J. Jones. That itſelf does not diſable him to be a Witneſs.

Mr. *Cor.* Before he hath his Pardon, my Lord?

L. C. J. Jones. I don't know whether he hath his Pardon or not.

* *Tho' it might make him a good Witneſs, yet unleſs he had been attainted, it was not legal to try any for receiving or comforting him, for had he been convict, yet if he had had his Clergy, the other, who is in nature of an Acceſſary, is diſcharged thereby.* Hale's *Hiſt. P. C. p.* 222.

Mr.

Mr. Att. Gen. There is no Indictment at all upon him,

Mr. Juſt. *Levinz.* If he were convicted, or outlawed of Treaſon, it were ſomething; an innocent Man may be charged.

Mr. *Rumſey.* My Lord, Mr. *Corniſh* and I have been very well acquainted theſe fourteen Years or thereabouts, and have had great concerns together; for during the time that I managed the King's Cuſtoms at *Briſtol*, ſix Years I was there Collector, he did return between three and four hundred thouſand Pounds for me; he is a very honeſt Gentleman, and I appeal to himſelf, whether I take delight to appear here to accuſe him.

Mr. *Corniſh.* But Colonel, what is the reaſon that you have not accuſed me all this while?

Mr. *Rumſey.* Mr. *Corniſh*, I hope that is not an Objection; I think I ſuffer for it and not you; it was Compaſſion, and the ſame Compaſſion makes you deny it to ſave others; if you would deal openly, I make no doubt, but you might partake of the King's Favour yet, as well as I have done.

Mr. *Corniſh.* I do thankfully accept of his Majeſty's Favour at all times, but I thank God I am innocent in this matter, and do not ſtand in need of it.

Mr. *Rumſey.* And you ſay I accuſe you falſely; then Mr. *Corniſh*, you don't ſtand there, nor I here.

Mr. Att. Gen. Pray, will you aſk him any Queſtions?

L. C. J. Jones But pray don't enter into a long Harangue.

Mr. *Corniſh.* My Lord, I do humbly conceive, that he does not ſtand here as an Evidence.

L. C. J. Jones. You have the Judgment of the Court for that.

Mr. *Corniſh.* Before he is pardoned?

L. C. J. Jones. I don't talk of a Pardon; what Record have you againſt him?--------*Mr. Att. Gen.* You were preſent and heard that reſolved before in my Lord *Ruſſel*'s Caſe.

Mr. *Corniſh.* My Lord, Mr. *Rumſey* did upon his Evidence give in, and he was obliged by his Oath to ſpeak the whole Truth ——

L. C. J. Jones. Now you are making your Speech, it is not your proper time; you ſhould urge any thing againſt Mr. *Rumſey*'s Evidence, or the Credibility of it when it is your time.

Mr. *Corniſh.* My Lord, I do here deſign it.

Mr. Att. Gen. Mr. *Rumſey*, pray recollect; had you never any Diſcourſe with him at other times?--------Mr. *Rumſey.* We have had along Acquaintance, fourteen Years; but, in my Life, I never heard him ſpeak any thing before or ſince that, to my knowledge.

Mr. Att. Gen. Mr. *Corniſh*, will you aſk him any more Queſtions?

Mr. *Corniſh.* I deſire to know ——

Mr. *Rumſey.* What would you know?

Mr. *Corniſh.* Whether did you and I diſcourſe of theſe matters at any other time?----------Mr. *Rumſey.* No.

Mr. Juſt. *Levinz.* You muſt not ſtand to dialogue between one another, but ſpeak as we may hear you.

L. C. J. Jones. You ſhall argue if you will, when you come to make your Defence in the proper time, the Improbability of any thing that he hath ſaid, or the Impoſſibility, or Repugnancy to any Truth, or any Evi- that you can give to the contrary; but, I ſay, this is not your time.

Mr. *Corniſh* I never was at any Conſult in my Life.

Mr. Att. Gen. That is a Name he gives it; was you never at a Meeting about a Riſing? Mr. *Goodenough* ſworn.

Mr. Att. Gen. Mr. *Goodenough*, are you acquainted with Mr. *Corniſh?*

Mr. *Goodenough.* Yes, Sir.

Mr. *Corniſh.* My Lord, I humbly conceive he is not a Witneſs, he ſtands indicted upon an Outlawry; I can produce it.

Mr. Att. Gen. We do admit it.

L. C. J. Jones. They admit your Exception, and will anſwer it by producing a Pardon.

Mr. *Corniſh* I need not ſay any thing againſt him, he is known well enough.

Mr. Juſt. *Withins.* He was your Under-Sheriff, Mr. *Corniſh.*

Mr. *Corniſh.* Much againſt my Will; I oppoſed him to the utmoſt; and this is nothing but Malice againſt me.

[Mr. *Goodenough*'s Pardon read.]

Mr. *Corniſh.* I do humbly conceive this can't be done, but by a Writ of Error, or an Act of Parliament.

L. C. J. Jones. Can't the King pardon an Outlawry?

Mr. Juſt. *Withins.* That is no piece of Law, I am ſure of it.

Mr. Att. Gen. Goodenough, pray what do you know of a Riſing intended againſt the late King?

Mr. *Goodenough.* All that I have to give an account of, is a Diſcourſe —

Mr. Att. Gen. Anſwer what I aſk you; what do you know of a Riſing by others?--------Mr. *Goodenough.* I know nothing of that Buſineſs of my Lord *Ruſſel*'s; but there was a Deſign to riſe, Sir, in *London*; we deſign'd to divide it into twenty parts, and out of each part to raiſe five hundred Men, if it might be done, to make an Inſurrection.

L. C. J. Jones. What were theſe Men to do when they were raiſed?

Mr. *Goodenough.* They were to take the *Tower*, and drive the Guards out of Town.

Mr. Att. Gen. Pray, acquaint my Lord and the Jury what Diſcourſe you had with Mr. *Corniſh.*

Mr. *Goodenough.* Before this was agreed on by us, I chanced to be at Alderman *Corniſh*'s; Sir, ſaid I, now the Law won't defend us, tho' we be never ſo innocent; but ſome other way is to be thought on. Upon this, ſaid he, I wonder the City is ſo unready, and the Country ſo ready. I ſaid to him again, Sir, there is ſomething thought of to be done here; but, ſays I, in the firſt place, the *Tower* ought to be ſeized, where the Magazine is. Upon this he made a little Pauſe, and ſaid, I will do what I can, or what good I can. To this purpoſe he anſwered me; and about ſome time after, he met me upon the *Exchange*, and aſked me how Affairs went? which I underſtood to be relating to what we diſcourſed; this is all that I can ſay. I never met after this, but only upon the *Exchange* he aſk'd how matters went.

Mr. Att. Gen. Was there any Diſcourſe about ſeizing the Guards?

Mr *Goodenough.* I have told you the whole Diſcourſe.

Mr. Att. Gen. Pray, repeat it.

Mr. *Goodenough.* I told him, ſays I, Sir, now it is plain, the Law will not defend us, though we are never ſo innocent, or to this purpoſe.

Mr. Sol. Gen. Upon what occaſion was that Diſcourſe?

Mr. *Goodenough.* Every thing going againſt us,

Mr. Sol. Gen. How?

Mr *Goodenough.* This was in *Eaſter* Term, as near as I can remember, 83.

Mr. *Att. Gen.* Ay, 83.

Mr. *Goodenough.* Therefore, ſays I, ſomething elſe is to be thought on, ſome Courſe elſe is to be taken: to this purpoſe he anſwered me, I wonder the City is ſo unready, and the Country ſo ready.

L. C. Baron. What Country?--------Mr. *Goodenough.* He had been in the Country, as I underſtood before, that I don't know.

Mr. *Corniſh.* What time was this, Sir?

Mr. *Goodenough.* In *Eaſter* Term, or thereabouts, 83. I told him then, Sir, there is ſomething thought of to be done here in *London*, to this purpoſe; but ſays I, in the firſt place, the *Tower* is to be ſeized, where the Magazine is; ſo he anſwered me, after ſome Pauſe (he pauſed upon it) ſays he, I will do what good I can, or what I can, to this purpoſe.

Mr. Sol. Gen. Did he ſeem to diſlike ſeizing the *Tower* at all?

Mr. *Goodenough.* Not at all, Sir, it did not appear ſo to me.

Mr. Sol. Gen. What Diſcourſes had you any other time?

Mr. *Goodenough.* I never had any Diſcourſe of this matter, or any thing relating to it at any other time, but only when I came upon the *Exchange*, how things went.

Mr. Sol. Gen. And did you give him an account?

Mr. *Goodenough.* I ſaid, well. I gave him a general Anſwer, for that was not a place to talk in, and that I apprehended of this Diſcourſe.

Mr. Sol. Gen. Had you any other matters?

Mr. *Goodenough.* I had ſome other matters of managing the Riot, that was brought againſt him, and ſeveral others, and myſelf alſo.

L. C. J. Jones. Will you aſk him any Queſtions, Mr. *Corniſh?*

Mr. *Corniſh.* Whether his Pardon be allowed?

L. C. J. Jones. We heard it read,

Mr. *Corniſh.* This being a Court inferior to the King's Bench——

L. C. J. Jones. Here is a Pardon under the Great Seal, Sir, and here is a Pardon of that Offence which you charge him with, and which you take to be a ſufficient Exception againſt his being a Witneſs; we are ſatisfied it is ſufficient.

Mr. *Corniſh.* Pray, my Lord, is not this Pardon ſpecial?

L. C. J. Jones. What do you mean by that?

Mr. *Corniſh.* Becauſe, my Lord, he hath been in an Act of Treaſon ſince; therefore, my Lord, if he be not pardoned of that--------

L. C. J. Jones. No, no, he is not indicted for it; we can't try him now for any Treaſon of that nature.

Mr. *Corniſh.* I humbly conceive he hath not had a Pardon for his laſt Treaſon.

L. C. J. Jones. I muſt tell you, if he be guilty of Treaſon, till he is tried and convicted, it doth not take off his Teſtimony.

Mr. *Corniſh.* Pray, Mr. *Goodenough*, remember all your Tricks, whether or no, was there any body preſent when this Diſcourſe paſt between you and I?--------Mr. *Goodenough.* No body but you and I.

Mr. *Corniſh.* You were not ſo converſant in my Houſe, I know.

Mr. *Goodenough.* Sir, I came to you about the Buſineſs of the Riot,

Mr. *Corniſh.* How many times might you be at my Houſe? Not three times, I believe.

L. C. J. Jones. You aſk a Queſtion, and anſwer it yourſelf.

Mr. *Corniſh.* My Lord, I deſire to know, where it was theſe Words were ſpoke?----------Mr. *Goodenough.* Sir, in your lower Room.

Mr. *Corniſh.* In my own Houſe?--------Mr. *Goodenough*, Yes, Sir.

Mr. *Corniſh.* And no Company there?

Mr. *Goodenough.* And no Company.

Mr. *Corniſh.* That is very ſtrange, and that afterwards you ſhould meet me, and diſcourſe this matter again.

Mr. *Goodenough.* No, Sir, all I ſay is this, you met me upon the *Exchange*, and aſked me how things went?

Mr. *Corniſh.* That might be in reference to the Suit you were managing for the Rioters; I know of nothing elſe.

Mr. Juſt. *Withins.* And I tell you, Mr. *Corniſh*, that was a Branch of the Plot; take that from me.

Mr. *Corniſh.* My Lord, he was Attorney in that Cauſe, and I might aſk, how matters went in reference to that Trial; but I take God to witneſs, nothing elſe as I remember.

L. C. J. Jones. But here you ſay, it was a ſtrange thing that Mr. *Goodenough* and you ſhould be in a Room alone, when you acknowledged him to have been the Attorney in a Cauſe of mighty Conſequence among you.

Mr. *Corniſh.* He was concerned for all; and I ſtedfaſtly believe he was never with me twice about that Suit; but he hath been at Sir *Thomas Player*'s; there he often went about that Affair; and I do not believe that ever he came to me about that Buſineſs.

L. C. J. Jones, Is that all you have to ſay to him, Sir?

Mr. Att. Gen. Will you aſk him any more Queſtions? if not, go on, we have done.

Mr. *Corniſh.* My Lord, Colonel *Rumſey* is a Perſon that hath acquainted the Court, that there was a long acquaintance between him and me. I have ſerved his Majeſty in my Place, and do it to this day. My Lord, it is a very improbable thing, that I ſhould meet him at Mr. *Sheppard*'s, where I ſaw ſuch wicked horrible Doings; and that he ſhould never afterwards ſpeak to me about that Affair. He came to my Houſe, I remember, about the return of ſome Monies for his own private Uſe; for he was then out of his Majeſty's Employment. He does declare here, he never ſaid a Word to me, never ſpake to me any thing of it but there. My Lord, it is a very ſtrange thing, that there ſhould be ſuch a Contrivance to ruin the King and Kingdom, and that I ſhould be one in this Buſineſs, this Villany, and not be conſulted how to carry it on; it is very ſtrange they ſhould ſee me, and never ſay a Word of it afterwards to me. My Lord, I hope, and you Gentlemen of the Jury, that you will conſider the Improbability of it; it is as improbable as any thing in the World. I hope it doth appear to your Lordſhip and this Bench, that there is no probability in it; he owns we had a great deal of Freedom; he owns we were acquainted for fourteen Years together, and that I ſhould be at ſuch a wicked villainous place once, and ſee him ſo often afterwards, and never ſpeak of it, and never ſay any thing of it; the Great God of Heaven and Earth, before whom I ſtand, knows that I know nothing of all that he hath ſworn againſt me: He muſt ſwear theſe things to ſave his own Life; if he will take away my Life, he will take away many others, without queſtion, if he can ſave his own. I ſhould not urge this, but God is my Witneſs, I never heard any thing of a Contri-

vance

vance or Plot, till my Lord *Ruſſel*'s Trial: Theſe are very ſtrange things, if ſo be ſo good a Government as we have, ſhall not protect ſuch innocent Men; truly, my Lord, I am as innocent as any Man in this Court, if I were to appear before the Great God in Judgment this Moment.

L. C. J. Jones. Look you, Mr. *Corniſh*, I would with all my heart allow you all the Liberty imaginable, to ſpeak pertinently to your Defence; but to oppoſe Confidence, and very great Aſſurance, upon your being in the Preſence of Almighty God, againſt expreſs Teſtimony, is the weakeſt Defence that can be; if you have any Witneſſes, if you have any thing to urge againſt the Teſtimony of any of theſe Perſons, beſides the Improbability of it, which you have often mentioned over and over again, you ſhall be heard with all Patience: if you have Witneſſes that you will call, we will hear them likewiſe.

Mr. *Corn.* My Lord, I think his Treaſon being confeſſed, and not being pardoned———

Mr. Juſt. *Withins.* Is that all you will ſay, Mr. *Corniſh?*

Mr. *Corn.* I hope you will bear a little with me, I am highly concerned.

L. C. J. Jones. You are ſo.

Mr. *Corn.* I have had no help, and it is well known, I am not ſkilful in the Law. I don't underſtand what you ſay, nor how to plead my Cauſe, having no help, nor no aſſiſtance allowed me. My Lord, it is a moſt improbable thing that I ſhould be at this place, where this horrible Wickedneſs was, and that it ſhould lie all this time never mention'd: I have been, my Lord, ſeveral times in Priſon this Year, and I think my virtue will be ſo much the greater, to be again and again purged, as I have been; that which hath pleaſed me very much, hath been my Innocency: Would any Man in my Circumſtances have ſtaid and continued in this Nation, if he had not known himſelf perfectly innocent? Others have gone away, and I could as freely have gone, after I have been taken up four times.

L. C. J. Jones. I doubt there are a great many are not gone; Mr. *Rumſey* hath told you plainly, it was compaſſion to you, though Injury to himſelf, that he did not accuſe you ſooner.

Mr. Juſt. *Levinz.* Here is *Gaunt* ſtaid here till within this Week or Fortnight, and never ſtirr'd.

Mr. Juſt. *Withins.* Mr. *Corniſh*, my Lord hath put you in the right Way for your Defence, if you can invalidate the Teſtimony, or call any Witneſſes, do it; but to talk at this rate, you may do it this Month (for ought I know), and 'twill ſignify no more than it hath done already.

Mr *Corn.* The Improbability is ſo manifeſt.

L. C. J. Jones. Is it enough to ſay, Improbability, Improbability, Improbability? Is that enough? Have you ſaid any more?

Mr. *Corn.* My Lord, I have ſaid this, that this Gentleman that ſhould be ſo converſant in the Town, I in his Company, and he in mine; is it not improbable?———

Mr. Juſt. *Levinz.* Look you, Mr. *Corniſh*, I will tell you what the Method is, to give Evidence firſt, and then apply it in ſumming up the Evidence; if you were ſumming it up, the Court hath all the reaſon in the World to hear you; if you have Evidence, the Way is to give your Evidence, and apply it if you can.

Mr. Juſt. *Withins.* Have you any Witneſſes?

Mr. *Corn.* Againſt Mr. *Rumſey?*

Mr. Juſt. *Withins.* Againſt any body, Mr. *Rumſey* if you will.

Mr. *Corn.* My Lord, I humbly conceive that this Witneſs, Mr. *Rumſey*, ought not to ſtand; if your Lordſhip ſatisfies me, I ſhall be very much obliged to your Lordſhip: He declared upon his Oath, when he ſwore againſt my Lord *Ruſſel*, that he had nothing elſe to ſwear againſt any Man.

Mr. Juſt. *Withins.* How does it appear?

Mr. *Corn.* I will produce it, if your Lordſhip pleaſe to give me time.

Mr. Juſt. *Withins.* But afterwards he diſcovered a great deal more.

L. C. J. Jones. Look you, Sir, if you have any Exception againſt Mr. *Rumſey*'s Teſtimony, we will hear you; propound a legal Exception.

Mr. *Corn.* My Lord, I humbly conceive, he not producing his Pardon, his Evidence is not good.

L. C. J. Jones. You have had the Opinion of the Court,

Mr. *Corn.* If your Lordſhip over-rule me.

L. C. J. Jones. We muſt over-rule you.

Mr. *Corn.* If that will not be granted me.

L. C. J. Jones. Then you have no more to ſay?

Mr. *Corn.* But for my Innocency, for that (I know) I have enough to ſay.

L. C. J. Jones. That is in your own Breaſt, the Jury can't ſee that; will you call any Witneſſes?——Mr. *Corn.* I have ſome Witneſſes to call here, as to Mr. *Goodenough*, my Lord.

L. C. J. Jones. What is your Exception againſt Mr. *Goodenough?*

Mr. *Corn.* My Lord, it was my moſt great Unhappineſs and Misfortune that this *Goodenough* was admitted into the Office of Under-Sheriff; and, my Lord, that I might fully convince your Lordſhip and this Court, all that I deſire is, ſome few Men may be call'd; beſides, I think there are a thouſand, I may ſay, that will bear me witneſs, I did oppoſe him.

L. C. J. Jones. But pray, Mr. *Corniſh*, is that an Exception that he does not ſwear true becauſe you would not let him be your Under-Sheriff?

Mr. *Corn.* It looks like Malice.

L. C. J. Jones. You did admit him to be Under-Sheriff, all the World knows that.

Mr. *Corn.* But I can ſet forth that I did oppoſe him, and the Reaſons why I did oppoſe him.

L. C. J. Jones. You may, if you will, give Evidence, what an Inſtrument he was to you, and how he ſerved you in your Office, when you were Sheriff: is this to the purpoſe?———Mr. *Corn.* Yes.

L. C. J. It is not at all to the purpoſe.

Mr. *Corn.* My Lord, I was impoſed upon by my Partner.

L. C. J. Jones. You could not be impoſed upon, you had equal Power with your Partner.

Mr. *Corn.* If your Lordſhip pleaſes to conſider the Temper of that Man.

L. C. J. What Man?

Mr. *Corn.* *Bethel*, I mean, what an obſtinate Man he was. My Lord, I hope I can purge myſelf greatly in theſe matters.

L. C. J. Jones. If you will, tell to what you will call them?

Mr. *Corn.* The great Averſion that I had.

Mr. Att. Gen. We will admit that he did oppoſe him, becauſe he would have had more Money.

Mr. Juſt. *Withins.* You have heard the Opinion of the Court.

Mr. Juſt.—It is not material whether he came in with or without your Conſent.

Mr. *Corn.* Mr. *Gosfright*, will you be pleas'd to declare to my Lord, how I was impos'd upon by ſuffering *Goodenough* to be Under-Sheriff?

Mr. *Gosfright.* My Lord, after that *Bethel* and *Corniſh* were choſen Sheriffs, they had ſome Meetings together concerning an Under-Sheriff; Mr. *Bethel* he named *Goodenough*, Mr. *Corniſh* he named another; they could not agree, the Difference did ariſe in three or four, or more Days Debate, as I remember, and Mr. *Corniſh* did tell Sheriff *Bethel*, he was reſolved if *Goodenough* were Under-Sheriff he would fine, and not hold, and told him the reaſon why: He ſaid he was a Man that he would not truſt a Hair of his Head with, and he had no Knowledge, he believ'd, of the Buſineſs; but withal, he told him, he was a Man obnoxious to the Government, and he was an ill Man, and had done ill things, and he would not truſt his Eſtate and his Reputation in the hands of ſuch an Under-Sheriff. *Bethel* he inſiſted upon it, and he was reſolved he would have *Goodenough*, and *Corniſh*'s Man ſhould not be.

L. C. J. Jones. Who was *Corniſh*'s Man?

Mr. *Gosfright.* I know the Man, but forget his Name. ——*Millman.*

L. C. J. Jones. Can you tell what *Goodenough* was to give for the Under-Sheriffwick?———Mr. *Gosfright.* No, indeed.

L. C. J. Jones. Was there no Diſcourſe?

Mr. *Gosfright.* Not in my hearing.

L. C. J. Jones. Was *Goodenough* Under-Sheriff to *Corniſh* at laſt?

Mr. *Gosfright.* Yes, Sir.

L. C. J. Jones. How did they agree?

Mr. *Gosfright.* I believe the Animoſities were ſo great, that they were never reconciled; for *Corniſh* had ſo beſpattered *Goodenough* that he was ſo ill a Man, that *Goodenough*, I believe, could never digeſt it well.

L. C. J. Jones. Did you hear any angry Words after he was admitted to be Under-Sheriff?

Mr. *Gosfright.* Truly, I never was at Alderman *Corniſh*'s while he was Sheriff: But I heard that Character of him.

L. C. J. Jones. And what was the Reaſon you did not go to Mr. *Corniſh*'s?

Mr. *Gosfright.* No, I believe *Goodenough* never came there, but I was at neither of their Houſes.

Mr. Juſt. *Levinz.* Pray, how many Juries did you help him in?

Mr. *Gosfright.* Truly I was ſo little acquainted, I could not help him.

Mr. Juſt. *Levinz.* I hear other People ſay the contrary.

Mr. *Gosf.* I was but newly come into *England*, and could know no Man.

Mr. *Corn.* Alderman *Love*.

L. C. J. Jones. To what purpoſe do you call him, Sir? To the ſame?

Mr. *Corn.* It is evidently to declare how much I was impoſed upon.

L. C. J. Jones. Pſha! I will tell the Jury, I will do this for you, upon this Man's Teſtimony, that you were unwilling that *Goodenough* ſhould be Under-Sheriff.

Mr. *Corn.* My Lord, there is a great deal more in it.

L. C. J. Jones. What is there more? He never heard an angry Word between you during the time, he ſays, afterwards you admitted him to be Under-Sheriff.

Mr. *Corn.* Mr. *Love*, will you pleaſe to declare to the Court, what averſion I had to Mr. *Goodenough* being the Under-Sheriff.

Mr. *Love.* My Lord, I did receive a Subpœna laſt Night, and I wonder'd at it, I confeſs; ever ſince I was ſo happy to get out of public Employment, having apply'd myſelf to my private Affairs, I never came to *Guild-Hall*. But all I can ſay, is this, that when it was publickly talk'd upon the *Exchange*, meeting Mr. *Corniſh* upon the *Exchange*, I did hear him inclined to have another Man (one I don't know) to be his Under-Sheriff, and that he did not like Mr. *Goodenough*, but was inclin'd to another Man: but it is ſo long ago, I believe I might perſuade him, having been Sheriff above twenty years ago, to Mr. *Haſtings*, an honeſt Man; I got my *Quietus eſt*, without trouble: But I muſt ſay this for the Gentleman, I did hear him complain, that he was impoſed upon to take this Man.

L. C. J. Jones. How long was it after the time?

Mr. *Love.* It was before they had pitched upon a Man, and he was much inclined to one Mr. *Milbourne*, or *Millman*, or ſome ſuch name, that is all I can ſay.

L. C. J. Jones. Do you think we ſit here to hear Impertinencies? God forbid, Sir, I ſhould hinder you from giving any Evidence; but this is not at all material.

Mr. *Corn.* If your Lordſhip pleaſe to let Mr. *Jekyl* come, he will tell you what this Man did declare, why I was againſt him.

L. C. J. Jones. If you had not entertain'd Mr. *Goodenough*, then there might be ſomething of Malice in it; but you did receive him.

Mr. *Corn.* I had private Covenants with *Bethel*, before I would let him come into the Office. Mr. *Jekyl*, pray may you declare to my Lord, and the Jury, what averſion I had againſt Mr. *Goodenough*'s being Under-Sheriff?

Mr. *Jekyl.* Truly, my Lord, Alderman *Corniſh* and I, living near together, I had occaſion to go to him ſeveral times about Bills of Exchange; and he told me, when he was Sheriff, how he was troubled with *Bethel*, becauſe he would put *Goodenough* upon him; for I don't intend to have him, ſays he, for I know he is obnoxious to the King and Government, and deſired me to ſpeak to Mr. *Bethel* about it; but I had no acquaintance with him till he was Sheriff: And ſome came to me, to deſire me to ſpeak to Alderman *Corniſh* to receive *Goodenough*. Truly, ſays I, I find him ſo averſe againſt him, that it is not for me to perſuade him to take a Servant he muſt put ſuch truſt and confidence in. For I ſaw Alderman *Corniſh* was ſo averſe to it, that I would not do it.

Mr. Sol. Gen. Pray do you think in your Conſcience, he was more obnoxious to the Government than his Partner, Sheriff *Bethel*; was?

Mr. *Jekyl.* I muſt confeſs, I have heard much of Sheriff *Bethel*; but I never heard that *Corniſh* was any diſaffected Man to the Government.

Mr. Sol. Gen. But which was the moſt diſaffected Man to the Government, *Bethel*, or *Goodenough?*

Mr. *Jekyl.* Truly, as I remember, he ſaid, he would not have him, becauſe he was obnoxious to the King and Government.

Mr. Juſt. *Withins.* This Gentleman was in a Limb of the Plot himſelf; as great a Rioter, and as hot as any of them, this evidence that they call; I remember you, Mr. *Jekyl*, I'll aſſure you.

Mr. *Corn.* If Sir *William Turner* be upon the Bench, I deſire him to ſpeak.

L. C. J. Jones. We will hear Sir *William Turner* any thing.

Mr. *Corn.* I desire he would declare how I was used.

Sir *William Turner.* I don't remember that ever I saw Mr. *Goodenough*'s Face before this time, so I have nothing at all to say against him, nor can I say any thing, but what Mr. *Cornish* told me; and that was, he once came to my House some time after he was chosen Sheriff, and told me, that Mr. *Bethel* pressed very much for taking *Goodenough* to be his Under-Sheriff; that he had no mind to accept him, and he would propose another, and it caused a great Difference; but it was at last composed, but how, I can't tell.

L. C. J. Jones. Now, Mr. *Cornish*, by my consent, if you will, call all the Aldermen upon the Bench; whether they will, or will not, say the same thing; for my part, I will agree, that they have given Evidence (if they will be contented themselves) to the same purpose.

Mr. *Cornish.* My Lord, I shall not give your Lordship unnecessary trouble, but I think it is convenient to call some Witnesses to prove the Manner of my Life and Conversation.

L. C. J. Jones. Your Life hath not been in the dark.

Mr. *Cornish.* The Dean of *Canterbury*, Dr. *Tillotson.* (*Who did not appear.*)

L. C. J. Jones. Will any Man attest your Loyalty in *London?*

Mr. *Cornish.* The Dean of *Norwich*, Dr. *Sharp.* Is the Dean of *Norwich* here?—*Officer.* No, Sir.

Mr. *Cornish.* My Lord, here is Mr. *Lane*, I desire he may be asked what he knows.

Mr. *Lane.* Upon the Trial of my Lord *Russel*, according as Mr. *Cornish* desires I may be heard, it is with respect to Colonel *Rumsey*'s Evidence; Colonel *Rumsey* says, in my Lord *Russel*'s Trial, he did not hear the Declaration read, because it was read before he came there.

Mr. *North.* Were you present at my Lord *Russel*'s Trial?

Mr. *Lane.* No, Sir.

Mr. Just. *Levinz.* Sir, that signifies nothing.

Mr. *Cornish.* That is a very material thing, my Lord.

L. C. J. Jones. What is? It is no Proof at all.

Mr. *Cornish.* Not the printed Trial?

L. C. J. Jones. No.

Mr. *Cornish.* It is by Authority.

L. C. J. Jones. Any body that was present may swear it.

Mr. *Cornish.* My Lord, I desire I may have the Minister of the Parish, Dr. *Calamy*, for my constancy at my Parish-Church, and receiving the Sacrament, according to the Rites of the Church of *England*, that I am, to all appearance, a Person that does as well affect the Government as any Man.

L. C. J. Jones. I doubt you are all Appearance.

Dr. *Calamy.* My Knowledge of Mr. *Cornish* hath been since I came to be Minister of the Parish, which is about two Years, a little above two Years; whenever he was in Town he did use to come to Church as constantly as any one, and come with his Family to Prayers, and did come to the Sacrament, and he did not only come at *Easter*, to save himself from a Presentment, but at our monthly Communion; and since I have been Minister of the place, I have often conversed with him: All that I can say, is, that I never heard him say a disrespectful Word of the Government.

L. C. J. Jones. I hope he took you to be a Man of another Kidney.

Dr. *Calamy.* I marked his words, because of the Character I had heard of him.

Mr. Att. Gen. Pray, what was the Character he had before those two Years?

Dr. *Calamy.* That was what was publick.

Mr. *Cornish.* *Joseph Reeve*, Esq;

Mr. *Reeve.* My Lord, I received a Subpœna from the Prisoner at the Bar yesterday. I have been acquainted with him about fourteen or fifteen years, and had a considerable trade with him, and sometimes we had some Conversation, and drank a Glass of Wine together; I thought he was always very Loyal, and drank the late King's Health, and this King's Health, and all the Royal Family. I have no more to say.

Mr. *Cornish.* Mr. *John Cook.*

L. C. J. Jones. What do you examine this Witness to?

Mr. *Cook.* My Lord, I have dealt with him for these twenty Years last past, I always found him a very honest Man, and a just Man, and very upright in his dealing, I always reckon'd him a very honest just Man: I have dealt with him for great Sums, and always knew him very just and upright.

L. C. J. Jones. Your Observation of him as to the Government.

Mr. *Cook.* I never knew any thing to the contrary, but that he was always very Loyal.

Mr. *Cornish.* Mr. *John Knap.*

L. C. J. Jones. Mr. *Cornish*, it is not impossible for you to produce Men enough, that shall say, they know nothing against you concerning the Government; and that you have been a Loyal Man, sure those you chuse, will say so, you have chosen them; and, perhaps, if it were the Business of the King's Counsel, they could do contrary: you are not accused touching your general Conversation, but concerning a particular Fact.

Mr. *Cornish.* It is improbable I should be a Person ever concern'd in these matters; if you consider, you find *Cornish* mentioned only about being there.

L. C. J. Jones. Does not Mr. *Rumsey* tell you the meaning why?

Mr. *Cornish.* It is very strange a Man should be at such an Hellish Meeting, and I see him over and over so many times, and never speak of it again.

L. C. J. Jones. Mr. *Cornish*, do not you know that *Goodenough* could not be produced till the Rebellion in the *West?*

Mr. *Cornish.* Is it probable that I should entertain any Treasonable Discourse with Mr. *Goodenough*, when I had so much opposed him in coming into the Office?

L. C. J. Jones. But you let him in.

Mr. *Cornish.* It is known to hundreds in this Town, that I was imposed upon by an unreasonable Man; my Innocency is as great as any Man's, and my Virtue should be considered, when I have been under these Impositions: I have been Loyal and Dutiful to my Prince, and faithful to the Government in all respects; I have opposed all manner of Heats, as much as any Man whatsoever; I can bring hundreds to shew, that where I heard Heats I allay'd them, and it is strange I should be such a Man as I am represented here.

L. C. J. Jones. Have you done, Sir?

Mr. *Cornish.* My Lord, I have thus much further to say, that I do think there is no probability that I could be at this Meeting; tho' a man should have a care how he takes God's Name in vain, I have said it, and I do in the Presence of the great God of Heaven declare it, I was never at the Debate about these Affairs; I take the great God to Witness, I would not do it for a whole World, if I were not innocent. My Lord, it is most improbable what Mr. *Rumsey* says.

L. C. J. Jones. It is a probable thing that *Rumsey* should forswear himself, it is a probable thing that *Goodenough* should forswear himself, who have taken the great God to Witness to the Truth of what they swear against you; but it is improbable that Mr. *Cornish* should not speak the Truth.

Mr. *Cornish.* I will call some other Friends, if your Lordship please, to prove my Loyalty.

Mr. *Knap.* I ever found him a fair, good Pay-master.

Mr. Att. Gen. He calls you for his Loyalty. Did you never hear him speak any thing against the Government?

Mr. *Knap.* I have not been in his Company but now and then.

Mr. *Cornish.* Did you ever know me speak any thing against the Government?—Mr. *Knap.* No, Sir.

L. C. J. Jones. I marvel that you who have been an Alderman a great while, don't call some of the Aldermen; you have call'd Sir *William Turner*, a very worthy Alderman, I wonder you don't call some others of your Brethren, that are known Persons.

Mr. *Cornish.* Mr. *Carleton.*

Mr. *Carleton.* I have been acquainted with my Cousin *Cornish* ever since the Year 61, when, being a Merchant, trading in Cloth, I began my acquaintance with him, and afterwards he recommended me to the Party I married, and being Relations, we had great intimacy together; I have been several times at his House, he did always assure me of his Loyalty: I have told him what I have heard People say abroad, but he did assure me he was Loyal, and I do hope the very same of him.

L. C. J. Jones. But you remember you have heard that he was not a Person of such eminent Loyalty.

Mr. *Carleton.* That was upon the account, my Lord, of his being in with *Bethel*; but he did always assure me of it.

Mr. *Cornish.* My Lord, I hope your Lordship will consider what temper the Man was of that I was to be with, and how obstinate he was; and I hope I shall not answer for his Crimes.

Mr. Just.——. Mr. *Cornish*, Why did you qualify yourself to serve with him? for you were not at first qualified.

Mr. *Cornish.* I had been travelling up and down in the Country.

Mr. Just. —: At that time to qualify yourself to be an Officer, then you could lay aside all your Scruples; and receive the Sacrament.

Mr. *Cornish.* *Joseph Smart*, Esq;

Mr. *Smart.* I have known Mr. *Cornish* above these twenty Years, and dealt with him considerably, I never knew him but a very fair Dealer.

Mr. *Cornish.* Mr. *William Crouch.*

Mr. *Crouch.* I have had acquaintance a great while with Mr. *Cornish*, and have had several Dealings; I found him a very honest Dealer, and a good Pay-master.

L. C. J. Jones. What know you of his Loyalty?

Mr. *Crouch.* For his Loyalty, I took it as the Town did, though I never knew any Disloyalty from him.

Mr. *Cornish.* Mr. *James West.*

L. C. J. Jones. Do you think you profit yourself with this Testimony?

Mr. *Cornish.* I would not offend you.

L. C. J. Jones. No, no, you don't offend; I would gladly hear you, if there were any thing pertinent to your Defence.

Mr. Just. *Withins.* Mr. *Cornish*, you have this Happiness, that you will be tried by your Fellow-Citizens, of very good Quality and Understanding, I must needs tell you.

Mr. *Cornish.* I am satisfied I have appeared here with all the Care and Caution that becomes an honest Man; I have spoke nothing but what I have consider'd as I have been in prefence of the great God; I never was at any Meeting, nor never heard any thing of this till the Trial about my Lord *Russel*, never heard one Word.

L. C. J. Jones. Gentlemen of the Jury, the Prisoner at the Bar, Mr. *Cornish*, is indicted, that knowing that there was an Insurrection intended to be against the late King, of blessed Memory, he did promise to be aiding and assisting in it; this is the Substance of the Indictment. There have been two Witnesses produced, Mr. *Rumsey* and Mr. *Goodenough: Rumsey*'s Testimony (so far as I am able to remember, after so long a Discourse, and so much time that hath been spent) was to this purpose; That the Duke of *Monmouth*, the Lord *Russel*, *Ferguson*, and others, being in Mr. *Sheppard*'s House, there came at length Mr. *Cornish*, and excus'd himself for coming late, and said, That he was to depart from them very speedily, because he was to go to attend the Business (as I take it) of the Charter, where the Presence of an Alderman was necessary, and none like to be there but himself; That *Ferguson* pull'd a Paper out of his Bosom, so says Mr. *Rumsey*, and upon the desire of the Company, it was read to Mr. *Cornish*, and *Sheppard* held the Candle; there were these two Points, *Rumsey* says, they had agreed on in that Paper, when the Rising should be, they would declare for Liberty of Conscience, and for the Restitution of those Lands, Bishops Lands, and King's Lands, to those Persons from whom they had been taken after the King's Restauration. This Paper being read to Mr. *Cornish*, he said, He did like it very well (these were the very words of *Rumsey*), and with that poor Interest that he had in the World, he would join in the Assistance of them, for those Ends and Purposes that were mentioned in that Declaration. Then comes *Goodenough*, and he tells you, that he came to him in his Parlour, when he was Sheriff; said, Now there was no Safety, no Defence at all by Law, all was gone, there must be some other Course taken, for the Law would not sufficiently protect them. Why, says Mr. *Cornish*, I marvel they are so slow in the City, when they are so ready in the Country. Ay, but, says *Goodenough* again to him, there hath been something done in the City. This was after the time that the City had been put into several Divisions. I don't see there is any

Teſtimony from Mr. *Goodenough*, that Mr. *Corniſh* knew any thing of that; but ſays he, there is ſomething done here, the *Tower* is to be ſeiz'd, there is the Magazine, and that is to be ſeiz'd upon, and then we ſhall be able to do ſomething: ſays he, I will do what good I can; or, ſays he, what I can; he is not confident whether of theſe Expreſſions he did uſe, I will do what good I can, or I will do what I can. Afterwards he meets Mr. *Corniſh* upon the *Exchange:* here, I confeſs, it is not ſo expreſsly to be applied to this Purpoſe, that it doth faſten directly upon the point in the Indictment; but ſays he, How do Affairs go? How do our Affairs go? Says he, ery well: This is the Teſtimony given againſt him. If this be true, notwithſtanding Mr. *Corniſh*'s Proteſtations of his Innocency, ſure there is nothing doth more plainly prove this Indictment than this Teſtimony. He ſays it is improbable, very improbable that I in my Circumſtances, that I ſhould ſay ſo; it is improbable, becauſe Mr. *Rumſey* had Acquaintance with me for fourteen Years together, that I have dealt with him for vaſt Sums, and that I ſhould ſay it in his preſence never but once; and that *Rumſey* does ſay, He never heard him ſpeak any thing to that purpoſe, but that one time; and therefore it is mighty improbable I ſhould ſay ſo. But what is the Reaſon, ſays he, that this was not diſcover'd before? To this *Rumſey* gives a poſitive Anſwer, Truly, ſays he, Mr. *Corniſh*, I had more Compaſſion for you than for myſelf, I have ſuffer'd forit, you have not ſuffer'd for my ſilence. Then, *Goodenough* ought not to be allowed to be a competent Witneſs, becauſe when Mr. *Corniſh* and *Bethel* were choſen Sheriffs of the City, Mr. *Corniſh* was much againſt receiving *Goodenough* to be his Deputy, and *Goodenough* muſt ſay all this maliciouſly againſt him, becauſe he ſo much oppoſed his being Under-Sheriff to him and *Bethel*. He hath produced ſeveral Witneſſes to that Purpoſe, and they ſay there was ſome reluctancy in him to the receiving *Goodenough* to be his Under-Sheriff; but it is plain and clear to you all, Gentlemen, and every body in the City knows that *Goodenough* was his Under-Sheriff, and how well he ſerv'd him, and to what purpoſes I believe many of you very well know. Another Improbability is, that he ſhould admit *Goodenough* to come into his Parlour alone, a Man that he had ſo much diſpleas'd; but if ſo be he was once againſt him, he did afterwards take him not only to be his Under-Sheriff, but employ'd him to be his Attorney, and then he might very well admit him into his Parlour alone, to diſcourſe of his Buſineſs as an Attorney; and this might fall in among other Diſcourſe. Gentlemen, there are ſeveral other Witneſſes produced concerning the Honeſty of his Dealing, and the Honeſty of his Converſation, that they have nothing at all to ſay againſt; but, Gentlemen, in a popular City, where he is, and hath been ſo well known, it is a very eaſy matter to bring millions of Men to give the very ſame Teſtimony; and certainly he will bring none, having the choice of them, but ſuch as ſhall ſpeak in his Favour; but he ſpeaks in the Preſence of God, he ſpeaks from the bottom of his Heart, that he never had any ſuch diſloyal Thought enter'd into his Mind. Gentlemen, hath no body any Senſe of the Preſence of God but Mr. *Corniſh?* Hath not *Rumſey* call'd God to be a Witneſs to his Oath? and *Goodenough* hath done the like? Why is it maliciouſly againſt the Life of Mr. *Corniſh?* For I don't know he does, in the leaſt, object any thing againſt *Rumſey*, that there was ever any Diſpleaſure between them two: Why ſhould he deliver this Teſtimony, if it were not the Teſtimony of his Heart? and that which he ſays himſelf, he had too long concealed out of the Compaſſion he had for him. Gentlemen, if a great many Proteſtations and Aſſeverations ſhould make a Man as innocent as confident, no Man ſhould die by the Sentence of the Law; it is an eaſy Matter for any Man to take up the ſame Aſſurance and Confidence that he hath done: And for his being ſuch a Church-man, as he now pretends himſelf to be; for that is one thing by which he would argue the Improbability of the thing, and he would have you believe very much of his Loyalty from it; Gentlemen, all the Evidence he hath given, is but of two Years ſtanding, and ſince the Trial of my Lord *Ruſſel:* and ſuch a Man as he, and many Men that were conſcious to themſelves of their Guilt, did think it very fit to purge themſelves that way, to gain themſelves a good Opinion that they were loyal to the Government. But it is not deny'd by Mr. *Corniſh*, that before that time he did not frequent the Church, nor receive the Sacrament.

Mr. *Corniſh*. Theſe ſeven Years, my Lord.

L. C. J. Jones. Who did ſay ſo? Sure no body ſaid ſo yet. I repeat the Evidence truly, all you ſaid of that was out of the mouth of Dr. *Calamy*.

Mr. *Corniſh*. Dr. *Calamy* came in but lately, and his Predeceſſor Dr. *Whitchcot* is dead.

Mr. Juſt. *Withens*. Sir, you were not qualified for your Office if you had not took the Sacrament.

L. C. J. Jones. You did lay aſide all your Scruples to qualify yourſelf to be Sheriff by receiving the Sacrament, which otherwiſe you could not have been. Others that have ſpoken of your Converſation likewiſe ſay, that the Report was abroad, that you were not ſo loyal and firm to the Government as you ought to have been. Gentlemen, you have heard the Evidence; I have done my endeavour to repeat it faithfully; If you believe that he did promiſe to aid or join, or agree with that Rebellion or Inſurrection, then you ought to find him guilty of this Indictment.

Mr. *Corniſh*. I am as innocent as any mortal man.

Then the Jury *withdrew, and after a conſiderable time return'd.*

Mr. *Corniſh*. My Lord, I hope I may have one Word.

Mr. Juſt. *Withins*. No, not till your Verdict.

Mr. Bar. *Gregory*. No, no, Mr. *Corniſh*, we can't.

Mr. *Corniſh*. I had a Witneſs more that was very material, but I would not offend your Lordſhip: Mr. *Rumſey* ſaid Mr. *Sheppard* held the Candle.

Mr. Juſt. *Withins*. Why did not you call him? You call'd a great many impertinent Witneſſes.

Mr. *Corniſh*. I was not come to him, I would have call'd them in Order.

Mr. Bar. *Gregory*. Why did not you produce him then?

Mr. *Corniſh*. Becauſe your Lordſhip ſeemed to be angry.

Mr. Bar. *Gregory*. No, not at all.

Mr. *Corniſh*. I did forbear purely upon that Account. I pray, my Lord, let him be call'd.

Mr. Bar. *Gregory*. Here were eight Judges and my Lord Chief Juſtice, and now here is only two: Do you think we will defer things of this Nature? It is never aſked. Apply yourſelf to the Judges: It is a ſtrange thing.

Mr. Juſt. *Withins*. This is only to delay Time.

Mr. Bar. *Gregory*. If he does ſo, the Jury muſt go out again.

Mr. Juſt. *Withins*. After the Jury hath been out an Hour, we muſt have new Allegations.

Mr. *Corniſh*. I was tender of offending.

Mr. Juſt. *Withins*. That is a Reflection upon the Court; under favour, Mr. *Corniſh*, I told you myſelf over and over to call your Witneſſes.

Clerk. Elizabeth Gaunt, hold up thy Hand.

Mrs. *Gaunt*. My Lord, I beſeech you, hear me, you won't take Advantage I hope of me.

Mr. Juſt. *Withins*. I declare my Opinion freely, it ought not to be done.

Recorder. I think ſhe ought to have it as well as t'other.

Mr. Bar. *Gregory*. You call never a Witneſs.

Mrs. *Gaunt*. No, Sir, I could not tell, I have ſome to call.

Mr. Juſt. *Withins*. I am of that Opinion you ought to take the Verdict.

The Judges *came again upon the Bench, and the* Jury *found Mrs.* Gaunt *guilty.*

L. C. J. Jones. Is *Rumſey* come in?

Capt. *Richardſon*. I have ſent for him, he will be here preſently.

Mr. *Corniſh*. My Lord, I muſt pray your Lordſhip, to conſider my Tenderneſs in offending you, which made me omit calling Mr. *Sheppard*; I had him in my Paper, he is in my Paper.

L. C. J. Jones. Don't you begin your Preface ſomething untowardly, as though the Court would not do you all the Kindneſs poſſible? half a dozen Times you were admoniſh'd to call for pertinent Witneſſes. You did call, I am ſure, a great many impertinent Witneſſes. Had you Mr. *Sheppard*'s Name in your Paper?

Mr. *Corniſh*. Yes, my Lord, but I was tender of offending; pray, my Lord, be pleaſed to remember Mr. *Rumſey*'s Evidence.

L. C. J. Jones. Is Mr. *Rumſey* here? Sir, pray hold your Tongue.

Mr. Att. Gen. I would acquaint you, my Lord, I ſent a Subpœna for Mr. *Sheppard*, but could not find him, but I underſtand that Mr. *Corniſh*'s Son was with him yeſterday, and he has abſconded; this I will give an Account of upon Oath: This my Lord, is a dangerous Practice after Examination, and after the Jury is withdrawn.

Mr. *Corniſh*. I pray do not aggravate the Matter.

Mr. Att. Gen. I muſt do my Duty for the King.

Mr. *Corniſh*. My Son went to him, and found him at Church.

Mr. Att. Gen. Now Mr. *Atterbury* is gone. I deſire you ſhould have all your right, but not have Tricks put upon the King's Evidence.

Mr. *Corniſh*. His Evidence was, Mr. *Sheppard*'s holding the Candle.

Mr. Juſt. *Levinz*. For God's ſake, could you examine ſo many to your Reputation, and forget an Evidence that was material? But I muſt tell you, if you will bring Mr. *Sheppard* to be examined, ſure it is requiſite, that the Witneſs that ſwears what you did there, ſhould be face to face with him; therefore Mr. *Rumſey* ſhould be heard certainly.

Mr. Juſt. *Withins*. It is fit to have *Atterbury* here, to enquire if he did abſcond; if Mr. *Corniſh*'s Son was with him, and he abſconded upon that Account, it is very material. This is a meer Trick put upon the King's Evidence.

L. C. Baron. Mr. *Corniſh*, if you intend to produce Mr. *Sheppard* for that, to contradict *Rumſey*'s Teſtimony, I wonder that you ſhould miſs him, without you have had ſome Notice ſince.

Mr. *Corniſh*. My Lord, I was not come to him: my Lord, though I have ſuch a vile Charge, I am perfectly innocent.

Mr. Juſt. *Withins*. Now you may ſee what we have got.

Mr. *Corniſh*. I beſeech you, my Lord, conſider me, it is as improbable a thing as any in the World.

L. C. J. Jones. This is running over the ſame thing twenty Times. Where is *Sheppard?*

Mr. *Corniſh*. He was here within this quarter of an Hour.

Mr. Juſt. *Withins*. Mr *Corniſh*, is this fairly done, when you ſaid he was upon the Spot?

Mr. Att. Gen. He was ſubpœna'd by you, he would not be found to be ſubpœna'd by the King.

Mr. Juſt. *Levinz*. To make the Court come down, and then to have no Notice of the Perſon at all; ſure you may give the Court leave to take Notice, that they are not civilly dealt with.

L. C. J. Jones. Who told you he was here?

Mr. *Corniſh*. This Gentleman ſays, he ſaw him. Pray, my Lord, don't be offended.

L. C. J. Jones. I never ſaw ſuch a thing; the Time was, you and your Partner would not have allowed it.

Mr. Att. Gen. If he comes, I will give him his Oath.

Mr. *Corniſh*. My Lord, here is Major *Richardſon* can bear Witneſs, I ſaid I muſt ſubpœna Mr. *Sheppard*; I named him before Major *Richardſon* again and again, and ſaid, I muſt not omit him.

Mr. Juſt. *Levinz*. Sir, I tell you what; you h'an't ſhewed ſo little Skill to-day here, but that you could maintain ſo long a Diſcourſe with Mr. *Rumſey* as you were allow'd to do, and ſhould not offer to call *Sheppard* to contradict him; you dwelt half an hour upon it.

Mr. Bar. *Gregory*. And relied only upon the Improbability of the thing.

Mr. *Rumſey*. There is another Gentleman in the *Tower*, the late Lord *Grey*, that was in Company when the Declaration was read.

Mr. Bar. *Gregory*. Have you been in Company at *Sheppard*'s?

Mr. *Corniſh*. I have been at *Sheppard*'s very often. Pray, my Lords, don't be offended, my Life will do you no good, I don't know but here is a Gentleman that hath been in my Company forty Times over ſince that Buſineſs.

Mr. *Rumſey*. Pardon me, Mr. *Corniſh*, not above three Times ſince, and then there was other Company.

Mr. Juſt. *Withins*. It is impoſſible for any, but thoſe that were Complices with you, to give ſuch Evidence; and, becauſe they were your Complices, now you won't believe them.

L. C. J.

L. C. J. Jones. Are you ſubpœna'd by Mr. *Corniſh?*
Mr. *Sheppard.* I have a ſubpœna from the King.
L. C. J. Jones. But were you ſubpœna'd by Mr. *Corniſh?*
Mr. *Sheppard.* Yes.
Mr. Att. Gen. When?
Mr. *Sheppard.* Laſt Night; this Morning I was not at home.
Mr. Att. Gen. Was Mr. *Corniſh*'s Son with you yeſterday in the Afternoon?——Mr. *Sheppard.* Yes, Sir.
Mr. Att. Gen. And what Diſcourſe had you with his Son?
Mr. *Sheppard.* He was very preſſing and urgent with me to be here today; and I told him, I could not tell whether I could or not.
Mr. Att. Gen. Is there any Account between you and Mr. *Corniſh?*
Mr. *Sheppard.* Yes, Sir.
Mr. Att. Gen. To what Sum?
Mr. *Sheppard.* We were always Trading.
Mr. Att. Gen. That is very true; you were Trading—To what Value?
Mr. *Sheppard.* About one or two hundred Pounds.
Mr. Att. Gen. Who is Debtor?——Mr. *Sheppard.* I am Debtor.
Mr. Sol. Gen. Mr. *Sheppard*, Since when did you contract that Debt?
Mr. *Sheppard.* Since when, Sir?——*Mr. Sol. Gen.* Ay.
Mr. *Sheppard.* I believe it was ſome ſix or eight Months ago.
Mr. Sol. Gen. For what was it? Upon what Account?
Mr. *Sheppard.* For Cloth, Sir.
Mr. Sol. Gen. Was there no Money lent?
Mr. *Sheppard.* Money lent me?——*Mr. Sol. Gen.* Ay, Sir.
Mr. *Sheppard.* No, Sir.
L. C. J. Jones. Is the Debt due to Mr. *Corniſh?*
Mr. *Sheppard.* My Lord, the Debt is due to him.
L. C. J. Jones. Or ſome body for whom he is a Factor?
Mr. *Sheppard.* I am indebted to Mr. *Corniſh*, for whom it is I can't tell.
Mr. Sol. Gen. Did you leave Word, whither you went, when you went out yeſterday?——Mr. *Sheppard.* No, Sir.
Mr. Sol. Gen. Which Subpœna was ſerved firſt upon you?
Mr. *Sheppard.* Mr. *Corniſh*'s yeſterday.
Mr. Sol. Gen. What time was it ſerved upon you?
Mr. *Sheppard.* Preſently after I came out of Church in the Afternoon, Sir.
L. C. J. Jones. What have you to ſay?
Mr. *Corniſh.* My Lord, Mr. *Rumſey* was pleaſed to give in his Evidence, that I had been at a Conſult or Meeting at Mr. *Sheppard*'s Houſe, where Mr. *Ferguſon* ſhould pluck out a Declaration out of his Boſom, and ſhould read it by the Candle, and Mr. *Sheppard* ſhould hold the Candle to him while he read it.
L. C. J. Jones. Do you remember Mr. *Corniſh* was ever at your Houſe?
Mr. *Sheppard.* At one of thoſe Meetings that was at my Houſe, Mr. *Corniſh* came into the Houſe to ſpeak a few Words with the Duke of *Monmouth*, or ſome other, I can't be poſitive in that, it is ſo many Years ago, and did not ſtay half a quarter of an Hour in the Houſe; I came up Stairs, and went out with him, and there was not one Word read, and no Paper ſeen while he was there.
Mr. Juſt. *Levinz.* Was Mr. *Corniſh* in the Room with the Duke of *Monmouth* and thoſe others?
Mr. Sol. Gen. Mr. *Sheppard*, do you remember that the late Duke of *Monmouth*, the Lord *Ruſſel*, the Lord *Grey*, and Sir *Thomas Armſtrong* were there together, and the Declaration read?
Mr. *Sheppard.* I remember there was a Declaration read, *Ferguſon* pull'd out a Declaration out of his Shoe, he pulled off his Shoe, and pull'd it out there.
Mr. Sol. Gen. Do you remember Mr. *Corniſh* was by any Time that Night?
Mr. *Sheppard.* Truly I can't ſay whether it was that Night when the Paper was read, but I do poſitively ſay, that there was no Paper read, for he was not looked upon to be of the Company: Mr. *Ferguſon* told me poſitively, there is the Duke of *Monmouth*, my Lord *Grey*, my Lord *Ruſſel*, Sir *Thomas Armſtrong*, Col. *Rumſey*, myſelf, and you.
Mr. Sol. Gen. Who did Mr. *Corniſh* come to ſpeak with, when he came to your Houſe?
Mr. *Sheppard.* Truly I don't know whether it was with the Duke of *Monmouth*.
Mr. Sol. Gen. How came Mr. *Corniſh* to know the Duke of *Monmouth* was there?——Mr. *Sheppard.* Truly my Memory will not call it.
Mr. Sol. Gen. Did his Coach ſtand publickly at your Door?
Mr. *Sheppard.* Whoſe Coach?
Mr. Sol. Gen. The late Duke of *Monmouth*'s.
Mr. *Sheppard.* No, Sir, they all came private, there was no Coaches at the Door as I ſaw, I let none of them in.
Mr. Sol. Gen. Was Mr. *Corniſh* but once there when the Duke of *Monmouth* was there?——Mr. *Sheppard.* But once.
Mr. Sol. Gen. Did he call the Duke of *Monmouth* out to him?
Mr. Juſt. *Street.* How came you to carry him up to the Duke of *Monmouth*, if he were none of the Company?
Mr. *Sheppard.* Mr. *Corniſh* did go up into the Room and ſpake to the Duke of *Monmouth*, or ſome other Perſon, but I think the Duke of *Monmouth*.
Mr. Sol. Gen. Do you remember he was there in Company, when Col. *Rumſey* was there?——Mr. *Sheppard.* No, I can't remember that.
Mr. *Rumſey.* My Lord, when I came to Mr. *Sheppard*'s Houſe, Mr. *Sheppard* came down and fetch'd me up, and I deliver'd my Meſſage I had to the Duke of *Monmouth*, and to the Company, and indeed I was not a quarter of an Hour there, I believe; but by that Time I had ſpoke my Words, ſome-body knock'd at the Door, and Mr. *Sheppard* went down, and immediately brought up Mr. *Corniſh* into the Room, without aſking a Queſtion of any body: and when he was come into the Room, Mr. *Corniſh* ſaid, he could not come ſooner, becauſe he had Buſineſs; and could not ſtay, becauſe there was a Committee for the Management of the Charter to meet that Night, and there was a Neceſſity of his being there, becauſe there was never another Alderman in Town, and there muſt be an Alderman there.
Mr. Att. Gen. Mr. *Sheppard*, do you remember any thing of that?
Mr. *Sheppard.* No, Sir, I do not remember it, I'll aſſure you.
Mr. Sol. Gen. Did you let him in at the Door?
Mr. *Sheppard.* No, Sir, I had Word brought me up Stairs, that Alderman *Corniſh* was below; and I went down, and brought him up.

Mr. Sol. Gen. Did you aſk for Mr. *Corniſh* to come up?
Mr. *Sheppard.* I don't remember I did: When Mr. *Corniſh* was there; there was not above three Perſons.
Mr. Sol. Gen. Who were they?
Mr. *Sheppard.* There was the Duke of *Monmouth*, and there was Mr. *Ferguſon*, and truly I can't tell whether t'other was my Lord *Ruſſel*, or my Lord *Grey*.
Mr. Juſt. *Levinz.* You acknowledge now, Sir, you did carry the Priſoner up to the Duke of *Monmouth* and thoſe Perſons: Did you uſe to carry all Perſons up there?
L. C. J. Jones. There was a Cabal of Rebels met together, and you go and bring up this Man to them, without any leave or licence from them; which is incredible certainly, unleſs you knew him to be one of the Company, and equally engaged with them.
Mr. Sol. Gen. Mr. *Sheppard*, you ſay, when Mr. *Corniſh* came up, there was not half the Company there. Had they been there, or were they not yet come?
Mr. Juſt. *Withins.* Look you, Sir, it is marvellous how Mr. *Corniſh*, if he were none of the Parties, ſhould have notice that the Duke of *Monmouth* was there, who came in privately at the Back-Door, and came to ſpeak with him there.
Mr. *Sheppard.* My Lord, I have no Back-Door.
Mr. Juſt. *Withins.* He came in privately.
Mr. Juſt. *Levinz.* Mr. *Sheppard*, I think I heard you ſay, they came privately without their Coaches.
Mr. *Sheppard.* Yes, Sir, they had no Coaches.
Mr. Juſt. *Levinz.* They came privately, I ſuppoſe, that no body ſhould know they were there?——Mr. *Sheppard.* I ſuppoſe ſo, Sir.
Mr. Juſt. *Levinz.* Why then did you carry Mr. *Corniſh* up? If you were below in the Houſe, he might come about your own Buſineſs; but to be carried into the Chamber where they were, looks as if it were about their Buſineſs.
Mr. *Corniſh.* I never heard any thing of the Buſineſs, my Lord.
Mr. Att. Gen. So far, Gentlemen, you remember he confirms what Mr. *Rumſey* ſays; that Gentleman denied he was there with the Duke of *Monmouth*.
Mr. *Corniſh.* Pray, *Mr. Attorney*, don't ſtrain, I have dealings with Mr. *Sheppard*, and have often been there, but never at any Meeting.
Mr. Att. Gen. He ſays, you ſpake with the Duke of *Monmouth*.
Mr. *Corniſh.* I never ſaw the Declaration, he declares it.
L. C. J. Jones. Had you any dealings upon account with the Duke of *Monmouth*?——Mr. *Corniſh.* Never for a Farthing.
Mr. Juſt. *Withins.* What Buſineſs had you with him then?
Mr. *Corniſh.* I don't know but I might enquire for him in other Places.
L. C. J. Jones. Your own Witneſs carried you up.
Mr. *Corniſh.* My Lord, if he did, I did not ſtay; he ſays Mr. *Sheppard* held the Candle.
Mr. Juſt. *Withins.* Mr. *Corniſh*, he confirms great part of what Mr. *Rumſey* ſays.
Mr. *Corniſh.* Not one Tittle; for he declares I was not of the Company.
L. C. J. Jones. He ſays no ſuch thing.
Mr. *Sheppard.* My Lord, to my Knowledge, I can ſafely ſay, he knows nothing of it.
L. C. J. Jones. And yet you could bring him up among them.
Mr. *Sheppard.* My Lord, I declare I never ſpake any thing to him in my Life about the Buſineſs, nor never in any Company.
Mr. Juſt. *Withins.* It is plain, Mr. *Rumſey* ſays he was the Man that brought you up: How ſhould Mr. *Rumſey* know that?
Mr. Att. Gen. Mr. *Sheppard*, I will aſk you this Queſtion: Had you order from that Company not to bring up any Perſon? Do you remember you ſwore ſo at a former Trial?
Mr. *Sheppard.* I remember when I was there, they deſired I would let none of my Servants up, and that I would go down and fetch up what they wanted; and I fetch'd up Wine and what they wanted.
Mr. Sol. Gen. Mr. *Sheppard*, why were none of your Servants to come up?——Mr. *Sheppard.* Becauſe they were in private, Sir.
Mr. Sol. Gen. Were Strangers to come up therefore?
Mr. *Sheppard.* It is ſo long ago, I cannot remember.
Mr. Juſt. *Levinz.* They came privately, without Coaches, becauſe none ſhould know they were there, and you carry Mr. *Corniſh* up to them.
Mr. *Corniſh.* I think this Witneſs is confronted.
L. C. J. Jones. Hold your tongue, Sir, he hath not done yet.
Mr. *Rumſey.* My Lord, as ſoon as Mr. *Corniſh* had made his excuſe for his not coming ſooner, and that he could not ſtay, I could not make that, and Mr. *Corniſh* can't ſay I would do any thing maliciouſly or ſpitefully againſt him; my Lord, as ſoon as he had done, all the Company went about him, and ſome-body did tell him, They would tell him what they had done: they told him the Declaration had been read; that Mr. *Ferguſon* had prepared it, and they ſaid, Look you, Mr. *Corniſh*, you ſhall hear it read; and with that this Gentleman, though he denies it, did take the Candle, and held it: they did not come to the Table, but the Company ſtood round while Mr. *Ferguſon* pull'd it out of his Boſom.
Mr. Juſt. *Withins.* Mr. *Sheppard*, you are very forward.
Mr. Att. Gen. My Lord, I would aſk Mr. *Sheppard* a Queſtion.
Mr. *Rumſey.* My Lord, the Declaration was read, and Mr. *Corniſh* did approve of it, and did ſay, With that ſmall Intereſt, or little Intereſt, or Words to that effect, that he had, he would aſſiſt.
Mr. Att. Gen. I wonder why you did not give me notice when you came in the Morning: Why did not you give notice?
Mr. *Sheppard.* I was here attending from eleven a-clock till half an hour after three.
Mr. Att. Gen. Did you ſend in any Word?
Mr. *Sheppard.* I could not tell who to ſend in: I was here expecting to be call'd.
Mr. Juſt. *Street.* You have had a favour that no Man ever had.
Mr. Sol. Gen. Gentlemen, there hath been a very great Indulgence given to the Priſoner, and it is to ſhew you what Tenderneſs a Court of Juſtice hath, and always will have, of the Lives of the King's Subjects: After a full Evidence, though he had neglected his Defence, yet you were again ſent for into Court, to hear what further Evi-

dence

dence he had to offer to you. I cannot but obſerve, this looks like a ſubtile Contrivance on the Priſoner's Part; you ſee what Endeavours have been made by Mr. *Attorney-General* to have had him here a Witneſs for the King; you have obſerved he told you he had a Subpœna for him, but he was abſent; in what Company he was abſent yeſterday he hath told you, with Mr. *Corniſh*'s Son: this Morning he was not to be found, after he had received this Subpœna, and a Subpœna from Mr. *Corniſh*; he ſtays without, and gives no notice; but when you are withdrawn, can ſend Intelligence to Mr. *Corniſh*, that he hath ſomething to ſay, that he hopes will excuſe him: now what that is, I muſt beg you a little to obſerve. Truly I am very glad for the Satisfaction of all Men, that Mr. *Sheppard* hath now been here, and he is ſo far from invalidating any one part of the Teſtimony, that by all the Circumſtances you can collect from this Evidence that is given, it is a Corroboration of it. Mr. *Corniſh* was accuſed of being preſent at Conſultations that have been held againſt the Life of the King, and for raiſing Rebellion at Mr. *Sheppard*'s Houſe; his excuſing his not coming there is a ſufficient Argument to prove he was privy to their Meeting; he hath gone on further, and proved to you the reading the Declaration. Now what ſays *Sheppard* to this Witneſs? Mr. *Corniſh*, by the way, I muſt obſerve to you, before did deny his being there; he had been ſometimes in company with *Ferguſon*, but he did not like the Man, he ſays, becauſe of his Morals: now the Witneſs he hath produced hath given you this Teſtimony, that Mr. *Corniſh* hath been there in that Company, that he came in ſuch a Manner, that no Man but muſt be ſatisfied he was privy to their Deſigns, and did know of their Meeting, for he comes when the Duke of *Monmouth*, and the reſt of the Conſpirators were there met in private, with a direct charge to Mr. *Sheppard*, that is the Witneſs, that they ſhould be ſo private, that no one Servant ſhould come up into the Room: yet Mr. *Sheppard* tells you, that when Mr. *Corniſh* came, he carried him up into the Room, without ſo much as acquainting any one of the Company that Mr. *Corniſh* had a deſire to come, but brings him up as if he were (and I make no doubt but you will imagine, he was) one of the Company. When he comes there, he ſays his Buſineſs is with the Duke of *Monmouth*, the Head of that Conſpiracy; and he himſelf tells you he never had any Dealings with the Duke of *Monmouth* in his Life. What can a Man imagine of that Man that had no Dealings with the Duke of *Monmouth*, to find him out in a place, where no Mortal could know, and none was to know, and coming to him at that Time, and at that Place, under thoſe Circumſtances of Concealment, no Man almoſt but out of his own Mouth muſt believe that he was privy to that Conſpiracy: therefore though this Witneſs doth ſeem to forget ſome Part of the Evidence, the reading the Declaration, and holding the Candle; yet theſe are ſuch Circumſtances that in themſelves do carry a Proof of the Charge, and do confirm all the reſt that the Witneſs hath ſaid; and this muſt be great Satisfaction to you, that he was there preſent and privy to that Deſign. And ſo I leave it to your Conſideration.

Then the Jury *withdrew for a ſhort time, and returning, brought Mr.* Corniſh *in guilty, and found* One Hundred *and* Forty Pounds *for the King in Mr.* Sheppard's *Hands.*

Clerk. Set *Elizabeth Gaunt* to the Bar. [*Which was done.*

Cryer. O-Yes, all Manner of Perſons are commanded to keep Silence, whilſt Judgment is giving, upon Pain of Impriſonment.

Clerk. Elizabeth Gaunt, hold up thy Hand. Thou ſtandeſt guilty of High-Treaſon, *&c.*

Recorder. You *Elizabeth Gaunt*, you have here been indicted for that great Crime of High-Treaſon, and that particular Part of it, for harbouring, and comforting, and aſſiſting, and cheriſhing of Traitors, more eſpecially of one *Burton*; you have had your Trial, and a very fair Trial, and upon that the Jury have found you Guilty: It is the Duty of my Place to pronounce the Sentence the Law hath provided for ſuch high Crimes as theſe are, and that is no other but this:

That you are to be carried back to the Place from whence you came, from thence you are to be drawn upon a Hurdle to the Place of Execution, and there you are to be burnt to death; and the Lord have Mercy upon your Soul.

Mrs. *Gaunt.* I ſay that this Woman did tell ſeveral Untruths of me.

Recorder. Is that all you have to ſay?

Mrs. *Gaunt.* I don't underſtand the Law.

Clerk. Bring *Henry Corniſh* to the Bar. *Henry Corniſh*, hold up thy Hand, *&c.*

Mr. *Corniſh.* My Lord, now the Law hath paſt upon me, I do humbly pray your Lordſhip, and this honourable Bench, that you will be pleaſed to intercede for me with his Majeſty. I ſhall lead a peaceable, quiet, and dutiful Life: and I hope, when you come to reflect upon what hath been ſaid to-day, that perhaps you will be of another Mind, and have more Charity for me than you had upon my Trial: for in the Simplicity of my Heart, and in the Preſence of God, I do declare, I am innocent: and if your Lordſhip, and this honourable Bench, intercede with his Majeſty, it will be an eternal Obligation upon me, and I ſhall live faithfully, peaceably, and loyally as long as I live. I preſume to beg this, and I promiſe myſelf, and hope it will ſtir up the Hearts of ſome Perſons, that they will not leave me deſtitute of Friends in ſuch a Caſe as this; having a Wife and ſeveral Children, it will be an Act of Charity.

Recorder. The Court does give you your Requeſt, and if there be any Miſery brought upon your Family, it is done by yourſelf *.

Clerk. William Ring, hold up thy Hand, *&c.*

Mr. *Ring.* I had no notice given me, an't pleaſe your Lordſhip.

Recorder. Where is the Executioner, is he here?----*Executioner.* Yes.

Recorder. Why don't you do your Duty to Mr. *Corniſh?*

Clerk. John Fernley, hold up thy Hand; thou ſtandeſt convicted of High-Treaſon, for traitorouſly harbouring one *James Burton*; what canſt thou ſay for thyſelf? *&c.*

Mr. *Fernley.* It is very hard meaſure I have had, I have nothing to ſay, but the King's Mercy.

Recorder. Is that all you have to ſay?

Mr. *Fernley.* I have nothing but the King's Mercy.

Recorder. Tie him up then, tie him up.

Cryer. O-Yes, all manner of Perſons are commanded to keep ſilence, whilſt Judgment is giving, upon pain of Impriſonment.

Recorder. You, the ſeveral Priſoners at the Bar, you have been ſeverally indicted here of the high Crime of Treaſon. For you, Mr. *Corniſh*, I apply myſelf firſt to you. Your Crime is for Treaſon that was committed in his late Majeſty's Life-time, being one of thoſe notorious Conſpirators that deſigned to raiſe Rebellion, and others ſome of them immediately deſigned the Life of his Majeſty that then was, and his preſent Majeſty, that was the Deſign of ſome of them; and others, they had another Part, that was to raiſe Rebellion, and particularly ſome of them in and about this City, and it was carried on ſome time before it was diſcover'd, may be a Year or more, under Colour and Pretence of Law: For ſo did they invade the Government, firſt of all by packing of Juries, there was the Foundation laid whereby to bring on that Buſineſs, which they had at laſt deſigned, when they could bring it to a ripe Head. Too many Perſons in that buſineſs, I believe, were very buſy, meddling with that they had not to do with; clubbing and caballing how to bring their Deſigns about, in oppoſition to the Government, not to ſupport it in the leaſt, but to overthrow it if it were poſſible: But then at laſt, they muſt take another Courſe, for no longer could they carry it on by pretence of Law, as you have heard to-day: Now we muſt take other Meaſures, and take down-right Blows. This is the Buſineſs, Mr. *Corniſh*, that you have been indicted for; and, I muſt tell you, whatever Apprehenſions you have to the contrary, and may pleaſe yourſelf in, I am ſorry to ſee ſuch a Sort of Pleaſure in your Countenance, as if you had had no Favour ſhewed you. I believe the Court hath ſhewed you more Favour, and had more Patience with you, than ever any Man that ſtood in your Place had; for calling a Witneſs after the Jury hath been out, is a thing I never ſaw a Precedent for: And I am glad it was done, for I think it hath cleared the thing beyond all manner of Contradiction: before it looked ſomething dark for want of *Sheppard*; and ſo it is a Happineſs that that Man was called to convince you of many things that you proteſted ſolemnly againſt, which I am ſorry to ſee in you, in this Condition that you are, to make ſuch ſolemn Proteſtations, and afterwards call a Witneſs to confront you in them. For the other two, here is Mr. *Ring* is very notorious for harbouring a couple of Traitors, knowing from whence they came; and if it were not for ſuch Perſons as theſe are, that do harbour them when they fly, it may be there would not be ſo many bold Attempts to commit ſuch Crimes as theſe are: To provide for them, and nouriſh them, and comfort them, after they have committed their Villainies, this does encourage them to commit their Villainies as they do, and ſo I reckon Harbourers to be worſe than Traitors themſelves; they are like Receivers to Thieves. There would not be ſo many Traitors, if there were no Harbourers. You have been convicted of theſe great Crimes; it is too late, and not fitting to ſpend time any longer, but to pronounce the ſeveral Sentences againſt you, which is this:

You muſt, every one of you, be had back to the Place from whence you came, from thence you muſt be drawn to the Place of Execution, and there you muſt ſeverally be hanged by the Necks, every one of you by the Neck till you are almoſt dead; and then you muſt be cut down, your Intrails muſt be taken out and burnt before your Faces, your ſeveral Heads to be cut off, and your Bodies divided into four Parts, and theſe to be diſpoſed of at the Pleaſure of the King; and the Lord have Mercy upon your Souls.

Fernley † and *Ring* were reprieved, but *Corniſh* and *Gaunt* were ordered for Execution; accordingly four days after, *viz. October* 23, *Henry Corniſh* was drawn on a Sledge to *King's-ſtreet* end, in *Cheapſide*, where a Gibbet was erected on purpoſe, at which Place he ſpoke as follows:

"I Am come here this Day condemn'd to die; but God is my Witneſs, "the Crimes laid to my charge were falſly and malicioufly ſworn againſt "me by the Witneſſes; for I never was at any Conſult, nor any Meeting, "where Matters againſt the Government were diſcourſed of: I never heard "nor read any Declaration, nor never acted wilfully any thing againſt the "Government. I confeſs, through the Juſtice of God, my private Sins "have brought me to this infamous End; yea, it were juſt with God, not "only to deprive me eternally of his Preſence, but to condemn me to eternal "Torments; but thro' Chriſt, I hope to be eternally bleſſed: Yet, as to "the Crimes for which I ſuffer, on the Word of a dying Man, I am al"together innocent. I bleſs God I was from my younger Years "brought up in, and have for ſome Years continued a Proteſtant, in the "Communion of the Church of *England*; in which Communion I now "die. I have often partaken in the Ordinances, the bleſſed Effects and "Comfort thereof I now feel in this my Agony. I bleſs God I was born "under a Government, in the Conſtitution of which I did ever acquieſce, "and in which I was once a Member; at which time I did, according to "the beſt of my Underſtanding—[*Here he was interrupted by the She"riff.*]—I bleſs God I was born in a Land of Light, where the Goſpel "hath been preached in Power and Purity; he might have brought me "forth in a Land of Darkneſs and Ignorance; but bleſſed be God for "Jeſus Chriſt.—*Then he intreated the Sheriff to intercede with his Majeſty to "be kind to his poor Wife and Children: The Sheriff promiſed him to wait on "his Majeſty the next Day about it.* He replied, *Mr.* Sheriff, *I thank you, "the Lord reward you a thouſand fold; the Lord put it into the Hearts of you "to be kind to the Widows and Fatherleſs; it is your Duty: The Lord put it into "the Hearts of all good People to pray for me.*"

More could not be taken, by Reaſon of the Noiſe of the People, and Interruption of one of the Sheriffs.

When he had made an end of Speaking, the Executioner did his Office; his Head was afterwards fix'd upon the *Guild-Hall*. His Attainder was reverſed by Act of Paliam. firſt of *Will. & Mar.* ‡ and the Witneſſes lodg'd in remote Priſons.

The ſame Day *Elizabeth Gaunt* was executed according to her Sentence. She left the following Paper.

Newgate, 22 *October*, 1685.

"NOT knowing whether I ſhould be ſuffered or able, becauſe of "Weakneſſes that are upon me, through my hard and cloſe Impriſon"ment, to ſpeak at the place of Execution, I write theſe few Lines, to "ſignify I am well reconciled to the Way of my God towards me, though it "be

* *See* State Trials, Vol. VIII. p. 459.

† Fernley *was afterwards executed at* Tyburn.

‡ *See* State Trials, Vol. VIII. p. 518.

" be in ways I looked not for, and by terrible things, yet in Righteouſ-
" neſs; for having given me Life, he ought to have the Diſpoſing of it,
" when, and how he pleaſeth to call for it; and I deſire to offer up my
" All to him, it being but my reaſonable Service; and alſo the firſt Terms
" that Chriſt offers, that he that will be his Diſciple muſt forſake all and
" follow him. And therefore, let none think it hard, or be diſcouraged,
" at what hath happened unto me; for he doth nothing without Cauſe,
" in all that he hath done unto us; he being Holy in all his Ways, and
" Righteous in all his Works; and it is but my lot in common with
" poor deſolate *Sion* at this day: neither do I find in my Heart the leaſt
" Regret of any thing that I have done, in the Service of my Lord
" and Maſter Jeſus Chriſt, in favouring and ſuccouring any of his
" poor Sufferers, that have ſhewed favour to his righteous Cauſe; which
" Cauſe, though it be now fallen and trampled on, as if it had not been
" anointed, yet it ſhall revive, and God will plead it at another rate, than
" yet he hath done, with all its Oppoſers and malicious Haters: and there-
" fore let all that love and fear him, not omit the leaſt Duty that comes to
" hand, or lieth before them, knowing that Chriſt hath need of them, and
" expects that they ſhould ſerve him. And I deſire to bleſs him that he
" hath made me uſeful in my Generation, to the comfort and relief of many
" diſtreſſed ones; that the Bleſſing of thoſe that have been ready to periſh,
" hath come upon me, and I have been helped to make the Heart of the
" Widow to ſing; and I bleſs his holy Name, that in all this, together
" with what I was charg'd with, I can approve my Heart to him, that I
" have done his Will, though I have croſſed Man's Will; and the Scrip-
" ture that ſatisfied me in it is, the xvith of *Iſa.* 3, 4. *Hide the Out-caſts,*
" *betray not him that wandereth; let my Outcaſts dwell with thee.* Oba-
" diah, ver. 13, 14. *Thou ſhouldſt not have given up him that eſcaped, in*
" *the Day of Diſtreſs.* But Man ſaith, You ſhall give them up, or you
" ſhall die for it. Now whom to obey, judge ye. So that I have cauſe
" to rejoice and be exceeding glad, in that I ſuffer for Righteouſneſs ſake,
" and that I am accounted worthy to ſuffer for well-doing, and that God
" hath accepted any Service from me, that hath been done in Sincerity,
" though mixt with manifold Weakneſſes and Infirmities, which he hath
" been pleaſed for Chriſt's ſake to cover and forgive. And now as con-
" cerning my Fact, as 'tis called, alas! it is but a little one, and might well
" become a *Prince* to forgive; but, *He that ſheweth no Mercy ſhall find*
" *none*: and I may ſay of it, in the Language of *Jonathan*, I did but
" taſte a little Honey, and lo, I muſt die for it; I did but relieve a poor,
" unworthy and diſtreſſed Family, and lo, I muſt die for it. I deſire in the
" Lamb-like Will, to forgive all that are concerned; and to ſay, Lord, lay
" it not to their Charge. But I fear and believe, that when he comes to
" make Inquiſition for Blood, mine will be found at the door of the fu-
* Withins. " rious * Judge, who, becauſe I could not remember things,
" through my Dauntedneſs at *Burton*'s Wife and Daugh-
" ter's Witneſs, and my Ignorance, took advantage thereat, and would
" not hear me, when I had called to mind that which I am ſure would
" have invalidated their Evidence; and tho' he granted ſome things of
" the ſame nature to another, yet he granted it not to me. My Blood
" will be alſo found at the Door of the unrighteous Jury, who found me
" guilty upon the ſingle Oath of an outlawed Man, for there was none
" but his Oath about the Money, who is no legal Witneſs, tho'
" he be pardoned, his Outlawry not being recall'd; and alſo the
" Law requires two Witneſſes in point of Life. And then about my
" going with him to the Place mentioned, it was by his own Words,
" before he could be outlawed, for it was two Months after his abſcond-
" ing; and though in a Proclamation, yet not High-Treaſon, as I have
" heard: ſo that I am clearly murdered by you. And alſo bloody Mr.
" *Atterbury*, who ſo inſatiately hunted after my Life; and tho' it is no
" Profit to him, yet through the Ill-will he bore me, left no Stone un-
" turned, as I have ground to believe, until he brought me to this; and
" ſhewed favour to *Burton*, who ought to have died for his own Fault,
" and not to have bought his Life with mine. And laſtly, *Richardſon*,
" who is cruel and ſevere to all under my Circumſtances, and did at that
" time, without all Mercy or Pity, haſten my Sentence, and hold up my
" Hand that it might be pronounced; all which, together
" with the † Great one of all, by whoſe Power all theſe, and † K. James II.
" multitudes of more Cruelties are done, I do heartily and freely forgive,
" as done againſt me: But as it is done in an implacable Mind againſt
" the Lord Chriſt, his righteous Cauſe and Followers, I leave it to him
" who is the Avenger of all ſuch Wrongs, and hath ſaid, *I have raiſed*
" *up one from the North, and he ſhall come upon Princes as upon Mortar,*
" *and as the Potter treadeth Clay*, Iſa. xli. 25. *He ſhall cut off the Spirit of*
" *Princes, and be terrible to the Kings of the Earth*, Pſal. lxxvi. 12. And
" know this alſo, that tho' you are ſeemingly fixed, and becauſe of the
" Power in your hands, and a weighing out your Violence, and dealing
" with deſpiteful Hand, becauſe of the old and new Hatred, by impove-
" riſhing, and by every way diſtreſſing thoſe you have got under you,
" yet unleſs you ſecure Jeſus Chriſt, and his holy Angels, you ſhall ne-
" ver do your buſineſs, nor your hands accompliſh your Enterprizes; for
" he will come upon you ere you are aware, and therefore, O that you
" will be wiſe, inſtructed, and learn, is the Deſire of her that finds no
" Mercy from you,

ELIZABETH GAUNT.

P O S T S C R I P T.

" SUCH as it is, you have it from her, who hath done as ſhe could, and
" is ſorry ſhe can do no better; hopes you will pity and cover weak-
" neſs, ſhortneſs, and any thing that is wanting, and begs that none may
" be weakened or humbled at the lowlineſs of my Spirit; for God's Deſign
" is to humble and abaſe us, that he alone may be exalted in his Day:
" and I hope he will appear in the needful time, and it may be reſerves
" the beſt Wine till laſt, as he hath done for ſome before me; none go-
" eth to Warfare at his own Charge, and the Spirit bloweth, not only
" where, but when it liſteth; and it becomes me who have ſo often
" grieved, quenched, and reſiſted it, to wait for and upon the Motions
" of the Spirit, and not to murmur: but I may mourn, becauſe through
" want of it, I honour not my God, nor his bleſſed Cauſe, which I
" have ſo long loved and delighted to love; and repent of nothing about
" it, but that I have ſerved him and it no better."

CXXXVII. *The Trial of* Charles Bateman, *Surgeon, at the* Old-Bailey, *for* High-Treaſon, December 9, 1685. 1 Jac. II.

THE *Seſſions* of Peace, *Oyer* and *Terminer*, and Goal-Delivery of *Newgate*, for the City of *London* and County of *Middleſex*, beginning at *Juſtice-Hall* in the *Old Bailey*, on the 9th of *December*, 1685; *Charles Bateman*, againſt whom an Indictment of *High-Treaſon* had been found, for conſpiring the Death of the late King, &c. was brought in the Cuſtody of the Keeper of *Newgate* in order to his Arraignment; and being ordered to hold up his Hand, he deſired that he might firſt ſay ſomething for himſelf, in order to put off his Trial; but was told by ‡ Mr. *Recorder*, he muſt plead before he could be heard. Whereupon deſiring to know whether he might have the ſame Advantage after his Pleading as before, as to gain longer time for his Trial; and being anſwered he might, he held up his Hand, and then the Indictment was read.

‡ *Sir* Thomas Jenner.

Mr. *Bateman* pleaded not guilty, and deſired his Trial might be put off, ſaying, *He was not prepared to make his Defence*, and therefore prayed a longer time, ſaying, *He had been cloſe Priſoner for the ſpace of ten Weeks, and was over and above very much indiſpoſed*; and further alledged, *he had had no Notice nor Pannel of the* Jury. As for Notice of Trial, he was anſwered, that it was not uſual to give any in that Court, but that he ought to have expected it, and prepared for it accordingly; and as for the Pannel, it was not deny'd him. Then he pray'd a Copy of the Indictment, but was told it could not be allowed; and upon his further alledging his unpreparedneſs and no notice of Trial, and the like, the King's Counſel urged that he had Opportunity enough to take notice of his Trial, for that it was upon an Indictment of the precedent *Seſſions*. Then he aſked, what time he might have between his Arraignment and Trial; and was anſwered, as much as would ſtand with the conveniency of the Court: and after ſeveral Hours reſpite, he a ſecond time was brought to the Bar, and then upon his humble Requeſt, Pen, Ink, and Paper was allowed him, and his Son to aſſiſt him; and then were ſworn to try the Iſſue,

Richard Aley, Eſq;	*John Palmer*,	*Daniel Fouls*,
Richard Williams,	*James Raynor*,	*Peter Floyer*,
John Cannum,	*Edward Rhediſh*,	*Lawrence Cole*,
Patrick Barret,	*George Lilburn*,	*John Cooper*.

And he making no Exceptions to them, then the Indictment was read.

The JURORS, &c.

THAT *Charles Bateman*, late of the Pariſh of St. *Dunſtan* in the *Weſt*, in the Ward of *Faringdon Without*, *London*, Surgeon, as a falſe Traitor, againſt the moſt illuſtrious and excellent Prince, *Charles* the Second,

late King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, and his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and ſeduced by the Inſtigation of the Devil; the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our late Lord the King, towards him ſhould, and of right ought to bear, altogether withdrawing and practiſing, and with all his Strength intending the Peace and common Tranquillity of this Kingdom to diſquiet and diſturb, and War and Rebellion againſt our late Lord the King, within this Kingdom to ſtir up, move, and procure; and the Government of our late Lord the King, of this Kingdom to ſubvert; and our ſaid late Lord the King, from the Stile, Title, Honour, and Kingly Name of the imperial Crown of this Kingdom to depoſe and deprive, and our ſaid late Lord the King to Death and final Deſtruction to bring and put; the 30th Day of *May*, in the 35th Year of his Reign, and divers other Days and Times, as well before as afterwards, at the Pariſh and Ward aforeſaid, falſely, maliciouſly, deviliſhly, and traitorouſly, with divers other Rebels and Traitors to the *Jurors* unknown, did conſpire, compaſs, imagine, and intend our ſaid late Lord the King, then his ſupreme and natural Lord, not only of his Kingly State, Title, Power and Government of his Kingdom of *England* to deprive and depoſe, but alſo our ſaid late Lord the King to kill, and to Death bring and put, and the ancient Government of this Kingdom to change, alter, and ſubvert; and a miſerable Slaughter amongſt the Subjects of our ſaid late Lord the King to cauſe and procure, and Inſurrection and Rebellion againſt our ſaid late Lord the King to procure and aſſiſt. And the ſame moſt wicked Treaſons and traitorous Conſpiracies, Compaſſings, Imaginations and Purpoſes aforeſaid to effect, and bring to paſs, he the ſaid *Charles Bateman*, as a falſe Traitor, then and there (to wit), the ſaid 30th Day of *May*, in the 35th Year aforeſaid, and divers other Days and Times, as well before as afterwards, at the Pariſh and Ward aforeſaid, falſely, unlawfully, moſt wickedly, and traitorouſly, did promiſe and undertake to the ſaid other falſe Rebels and Traitors then and there being preſent, *That* he the ſaid *Charles Bateman would be aſſiſting and aiding in the taking and apprehending the Perſon of our ſaid late Lord the King, and in taking and ſeizing the City of* London, *and the* Tower *of* London, *the* Savoy, *and the* Royal Palace *of* White-Hall, *againſt the Duty of his Allegiance, againſt the Peace*, &c. *and againſt the Form of the Statute in this Caſe made and provided*, &c.

Mr. *Phipps*, Counſel for the King, opened the Nature of it, and was ſeconded by Mr. Serjeant *Selby* and Mr. *Charles Moley*; after which, Mr. *Joſias Keeling* was ſworn, whoſe Evidence was, that he had been at

divers

divers Meetings and Conſults, where the Methods had been propoſed for the Purpoſes aforeſaid; and more particularly one time with *Rumbold* the *Maltſter*, ſince executed for *High Treaſon*; and that then, three Papers were produced by *Rumbold*, and opened, containing the Model of the Deſign, to divide the City into Twenty Parts, and to raiſe five hundred Men in each Part, to be under one Chief, and nine or ten Subordinates whom he ſhould appoint, the Names of the Lanes and Streets of each Diviſion being likewiſe inſerted therein; and at that time *Rumbold* propoſed the Buſineſs of the *Rye-Houſe*, ſaying, *He had a Houſe very convenient to plant Men in, to ſeize the King in his return from* New-Market, but that he ſomewhat boggled about the killing of the Poſtillion, which had been propoſed the better to ſtop the Coach, becauſe it looked too much like an Exploit in cold Blood. He further depoſed, that he had been at divers other places where it had been diſcourſed to the ſame Effect, and that Mr. *Bateman* was looked upon as a Perſon fitting to manage one Diviſion in order to an Inſurrection, to ſeize the *Tower*, *City*, &c. This being the Sum of Mr. *Keeling*'s Evidence; Mr. *Bateman* ſaid, that what he had ſworn, did not affect or charge any Treaſon upon him; and was anſwered by the Court that it did not, and bid the Jury take notice, that what Mr. *Keeling* had ſworn, was only to the Conſpiracy in general, and did not affect the Priſoner in particular.

Then *Thomas Lee* was ſworn, and gave Evidence, That he being made acquainted with the Deſign by Mr. *Goodenough*, &c. and how the City was to be divided into Twenty Parts and managed; and being aſked, who was a fit Man to manage one part, he nominated Mr. *Bateman*, and thereupon was deſired to go to him, and ſpeak with him about it as from Mr. *Goodenough*; and when he came to diſcourſe him about that Affair, he apprehended very plainly that he was no Stranger to it, nor boggled to give his Aſſent, and ſeem'd much deſirous to ſpeak with Mr. *Goodenough* about it: That he likewiſe went one day to the late Duke of *Monmouth*'s Houſe with Mr. *Bateman*; and Mr. *Bateman*, after he had had ſome Diſcourſe with one of the Duke's Servants, came to him and told him, the Duke was willing to engage in the Buſineſs, and aſſur'd him, that he had divers Horſes kept in the Country, to be in a readineſs when matters ſhould come to Extremity; and from thence he went with him to the *King's-Head Tavern*, and there had Diſcourſe to the ſame effect: and from thence they came to the *Devil-Tavern* within *Temple-Bar*, where Mr. *Bateman* propoſed the ſeizing the *City*, *Tower*, *Savoy*, *White-hall*, and the Perſon of the late King, and promiſed not to be wanting therein. At another time, he met him at the *Half-Moon Tavern* in *Alderſgate-ſtreet*, where diſcourſing about the Condition the Conſpirators were in, as to the intended Inſurrection, he ſaid, *If he could but ſee a Cloud as big as a Man's Hand, he would not be wanting to employ his Intereſt:* and that there were other Diſcourſes tending to the Inſurrection, but were broke off by the coming in of one *John Almeger*, before whom Mr. *Bateman* would not diſcourſe, becauſe he knew not of his coming.

Mr. *Lee* being aſked the Deſign of that Meeting, reply'd, it was upon the account of carrying on the Conſpiracy, and that Mr. *Bateman* had told him, that he intended to take a Houſe near the *Tower*, to place Men in, in order to ſurpriſe it, and that he had held divers Conferences with ſome Sea-Captains on that Affair; and that he had been with them at *Coffee-Houſes*, &c. at ſundry other times; but there, to prevent diſcovery, they ſpoke of the Deſign at a great diſtance.

To this Evidence, Mr. *Bateman* objected, that if he had been conſcious of what was laid to his Charge, he was fit for *Bedlam*; ſaying, *He wonder'd if he had heard him ſpeak ſuch words, he had not accuſed him ſooner:* but was anſwered, that Mr. *Goodenough* was not to be had till after the Rebellion in the *Weſt*; and that *Lee*'s ſingle Teſtimony in Caſe of *High Treaſon*, in ſo high a nature, was not ſufficient.

Then Mr. *Richard Goodenough* was called, who being ſworn, depoſed, That being in Company with Mr. *Bateman* (to the beſt of his Remembrance) at the *King's-Head Tavern* in *St. Swithin's-Alley*, near the *Royal-Exchange*, and having ſome Diſcourſe about the intended Inſurrection, and of *Wade* and others that had engaged to promote it; Mr. *Bateman* not only *approv'd of the Deſign, but promiſed to uſe his Intereſt in raiſing Men; and not only to be aſſiſting in the Diviſion allotted him, but in ſurpriſing the* City, Savoy, *&c. and in driving the Guards out of* Town. To this he objected, that he was not at the *King's-Head* with *Goodenough*; to which Mr. *Goodenough* reply'd, *He had not ſworn poſitive to the place, though he verily believed that was the place; but however, as to the Diſcourſe and Words then ſpoken by Mr.* Bateman, *he was poſitive.*

The Evidence being thus full againſt Mr. *Bateman*, and Liberty granted him to make what Defence he could, he deſired that Sir *Robert Adams* might be heard, in relation to a falſe Report the ſaid Mr. *Lee* had raiſed of Sir *Robert* and others; and Sir *Robert* being in Court, gave Evidence, that there had been a Report abroad, ſaid to be raiſed by Mr. *Lee*, that he (*viz. Mr.* Lee) *had beaten three Knights, and that Mr.* Lee *came to him and aſked his pardon, acknowledging the thing in itſelf was altogether falſe.*

To the ſame purpoſe Sir *Simon Lewis* was called, but appeared not.

Anos Child being called by Mr. *Bateman*, to teſtify his Knowledge of Mr. *Lee*, and being aſked what he could ſay againſt him, declared, *That he knew nothing to the contrary, but Mr.* Lee *was an honeſt Man.*

One *Baker* being called by Mr. *Bateman*, to teſtify that Mr. *Lee* would have ſuborned him againſt him to his Prejudice, ſome Years ſince, of which he had made an Affidavit before Sir *William Turner*, and the ſaid *Baker* not then appearing in Court, he deſired Sir *William Turner* to give ſome account of *Baker*'s Examination, which the ſaid Sir *William* had taken; but it being about two Years ſince, Sir *William* declared, *He could not charge his Memory with any of the Particulars contained therein.*

Mr. *Tompkins*, Sir *William Turner*'s Clerk, being called, and aſked what he could ſay concerning any Examination of *Baker*'s taken before Sir *William*, that related to *Lee*; he ſaid, *there was an Examination taken* Anno 1683, *wherein Mr.* Lee *was mentioned; but to the beſt of his Remembrance it was returned before the King and Council, and he could not give any account of the Particulars.*

Then Mr. *Bateman* deſired to know upon what Statute he was indicted, and was informed by the Court, That *the* Treaſon *wherewith he ſtood charged, was comprehended within the 25th* of Edward III. *and the 13th of* Car. II. *by* Overt-Act; and having little more to ſay in his own Defence, after a favourable hearing of all he had materially to offer, and his Son having been allowed by the Court to aſſiſt him, in looking over his Notes, and calling his Witneſſes, by reaſon he, through ſickneſs, pretended himſelf incapable: Then the *Lord Chief Juſtice* of the *King's Bench* ſumm'd up the Evidence at large, and omitted nothing that might be for the advantage of the Priſoner, whereby the matter was fairly, fully, and clearly left to the Jury; and thereupon Mr. *Bateman* was taken from the Bar. After which the other Priſoners being called and tried, and the Jury ready to go forth to conſider of their Verdict, Mr. *Bateman*'s Daughter came in and beſought the Court, *that* Baker, *whom ſhe ſaid ſhe had found out, might be heard againſt Mr.* Lee; but Mr. *Lee* being gone, and the Trial already over, the King's Counſel oppoſed it, unleſs Mr. *Lee* could be found (which he could not be at that time); and the Court having delivered their Opinion that it was not convenient to examine any Witneſs after the Jury had received their Charge, it being a very ill Precedent, and of dangerous Conſequence; yet ſome of the Jury deſiring it, the Court, to prevent any Objections that might be made, conſented, and *Baker* had leave to ſpeak: whoſe Evidence was, *that being in Company with Mr.* Lee, *ſome time in the Year* 1683, *and diſcourſing about divers matters, he bid him go to the Sign of the* Peacock, *and to the* Angel *and* Crown, *to a* Surgeon *and a* Linnen-Draper, *whom he named, the former of which he remembered to be the Priſoner, and to inſinuate himſelf into their Company, and diſcourſe them; and when he demanded of Mr.* Lee *to what end he ſhould do it, or about what he ſhould diſcourſe them, he told him it might be about State-Affairs, and by that means he would find a way to make him a great Man; and when he excuſed his attempting to intrude into ſuch Company as was above him, he being but a Shoe-maker, Mr.* Lee *told him he knew that he kept Company with ſuch and ſuch Men, and why could he not as well do it with thoſe he had mentioned.* And of this, he ſaid, his Examination was taken before Sir *William Turner*; but this being nothing to the purpoſe, but was rather looked upon as a Deſign Mr. *Lee* had to make a diſcovery of the Conſpiracy, if he could have procured further Evidence to have corroborated his own, and *Baker* being looked upon as a broken Fellow, and that he lodged near the *Seſſions-Houſe*, and yet came not in before, though often called; the Conſideration of the whole matter was left to the Jury, and an Officer being ſworn to attend them, went out, and after about half an Hour's debating that, and what elſe was before them, gave in their Verdict, *That* Charles Bateman, *then at the* Bar, *was Guilty of the* High Treaſon *as laid in the Indictment*; which Verdict was accordingly recorded, and the Priſoner re-conveyed to *Newgate*: And being again brought to *Juſtice-Hall*, on *Friday* the 11th of *December*, in order to receive Sentence; and upon holding up his Hand, being aſked *What he could ſay for himſelf, why the Court ſhould not give Judgment againſt him according to the* Law; *he deſired to know whether Mr.* Goodenough *was fully pardoned*, and was told, *that as for the Out-lawry he was pardoned, and that his Pardon hath been allowed and approved of in that Court, and in the Court of* King's-Bench, *and for any thing elſe he was not proſecuted.* Then he ſaid, *his Opinion was altogether for Monarchy, and that he hoped he ſhould have an Advocate with the King*; but had nothing more material to offer.

Then Mr. *Recorder*, after having ſpoke ſeveral things in aggravation of that great Crime, whereof, after a fair and favourable Trial, he was convicted, adviſed him not to flatter himſelf with hopes of Life, and thereby delay his Repentance neceſſary for his future Happineſs, and pronounced the Sentence, which was, *That he ſhould return to the place from whence he came, from thence be drawn to the Place of Execution, there to be hang'd by the Neck, and whilſt alive be cut down, and his Bowels to be taken out and burnt; his Head to be ſever'd from his Body, and his Body divided into four Parts, and that his Head and Quarters be diſpoſed at the Pleaſure of the King.*

Upon this he prayed a Divine might have leave to come to him, as likewiſe his Relations; which being allowed, he departed the Court, and was on *Friday* the 18th of *December*, executed at *Tyburn* according to the Sentence.

Remarks

Remarks upon the Trial of Edward Fitzharris, Stephen Colledge, *Count* Coningſmark, *the Lord* Ruſſel, *Col.* Sidney, Henry Corniſh, *and* Charles Bateman; *as alſo on the Earl of* Shafteſbury's *Grand Jury*, Wilmer's Homine Replegiando. *and the Award of Execution againſt Sir* Thomas Armſtrong. *By Sir* John Hawles, *afterwards Solicitor-General.*

THE ſtrange Revolution which hath of late happen'd in our Nation, naturally leads one into the Conſideration of the Cauſes of it. The Danger of ſubverting the eſtabliſh'd Religion, and invading Property, alone could not be the Cauſes: For if it be true, that the ſame Cauſes have generally the ſame Effect; it is plain, that in the Reign of a precedent Monarch, the Subverſion of the eſtabliſh'd Religion was as much deſign'd, or at leaſt was believ'd to be ſo, as of late; and it is not material whether what was ſuſpected was true, or not; and Property was as much invaded as of late, by impoſing Ship-Money, and other Taxes in the Nation, but more eſpecially Ship-Money; which at firſt was light and eaſy, but in Progreſs of Time was increas'd, according as it was found the Nation would bear it. And at length it was feared, as there was juſt Reaſon ſo to do, that it would become as burdenſome as what is now impoſed on the *French* Nation by the *French* King; and yet, when the War broke out, if the Hiſtory of thoſe Times, or the Perſons who lived about thoſe Times, are to be believ'd, the Majority of the Nation took part with the King. There were therefore ſome other Reaſons for the Diſaffection of the Nation to the late Government, and they may be rank'd under theſe ſix Heads:

Exorbitant Fines; cruel and illegal Proſecutions; outrageous Damages; ſeizing the Charters; diſpenſing with the Teſt and Penal Laws; and undue Proſecutions in criminal, but more eſpecially in capital Matters.

For the Firſt, I ſhall only obſerve, that when the Houſe of Commons, in the Parliament 1680, took that Matter into Conſideration, and intended to impeach ſeveral Perſons for the ſame, the higheſt Fine, at that Time complain'd of, was but 1000*l.* and yet in few Years they were heighten'd to 10,000*l.* 20,000*l.* 30,000*l.* and 40,000*l.*

For the Second, the Puniſhment of *Oates*, *Dangerfield*, and Mr. *Johnſon*; and the cloſe Impriſonment of Mr. *Hampden*, Sir *Samuel Barnardiſton*, and of ſeveral other Perſons, as they were againſt the Law, ſo they were wit out Precedent.

For the Third, tho' the Damages given to *Bolſworth* were the firſt outrageous Damages given, which were taken Notice of, and in Truth were ſuch; yet in little Time Damages for Matters of like Kind were quickly improved to 10,000*l.* 20,000*l.* 40,000*l.* nay 100,000*l.* the Truth of which a great many living Witneſſes, to their Sorrow, can teſtify.

For the Fourth, the ſeizing the City, and other Charters, upon the Pretences on which they were queſtion'd, was without Example.

For the Fifth, the diſpenſing with the Teſt and Penal Laws was as miſchievous as it was illegal; it making Perſons capable, who were incapacitated by Law of being in Places, of exerciſing Offices, for whom the Perſons who had Power to confer or beſtow the ſame, had more Affection, than for the Perſons who at that preſent enjoy'd them: The Conſequences of which were quickly ſeen, in turning out the preſent Poſſeſſors, to make Room for others; which was the Thing, which, as a *Scotch* Biſhop ſaid of another Matter, *ſet the Kiln a-fire.*

Of theſe five Particulars ſomething hereafter may be ſaid; at preſent, this Treatiſe is only to conſider how far the Proceedings in capital Matters, of late Years, have been regular or irregular: And as to that, I ſhall not at all conſider how far the Perſons hereafter mention'd were guilty of the Crimes of which they were accus'd, but how far the Evidence againſt them was convincing to prove them guilty, and what Crimes the Facts prov'd againſt them in Law were.

THE firſt Perſon I ſhall begin withal ſhall be *Fitzharris*; and that it may not be wonder'd, that the Trial and Condemnation of a Perſon, who was confeſſedly an *Iriſh Papiſt*, ſhould be complain'd of; and one whoſe Crimes were ſuch, that if the Law declar'd had not made Capital, it had been juſt, in reſpect of the Malefactor, for the Legiſlative Power to have enacted, That he ſhould ſuffer the ſevereſt Puniſhment uſually inflicted for the higheſt Crime: yet, in reſpect of the common Good, it had been juſt and fit to have pardon'd him, if he would have confeſs'd who were his Conſpirators and Setters-on; for I am apt to think, that if that Matter had been thoroughly look'd into, ſome Perſons, afterwards Witneſſes in the Lord *Ruſſel*'s, Colonel *Sidney*'s, and Mr. *Hampden*'s Trials, had either never been produc'd, or had not been credited if produc'd; nor would my Lord of *Eſſex*'s Throat have been cut; and my Lord *Ruſſel* and Colonel *Sidney* might have worn their Heads on their Shoulders to this Day.

All will agree, that there was a great Struggle between the *Whigs* and *Tories*, as they were then call'd, for hanging or ſaving that Man: Both agreed he deſerv'd to be hang'd; the firſt thought it their Advantage to ſave him if he would confeſs, the laſt thought it was fit to hang him for fear he would confeſs. And to explain the Matter, it is fit to go a little higher: It cannot but be remembred, that before the breaking out of the Popiſh Plot, Mr. *Claypole* was impriſon'd in the *Tower* for deſigning to kill the King, in ſuch Place and Manner as *Oates* afterwards diſcover'd the Papiſts intended to do it. In *Trinity* Term, 1678, he had an *Habeas Corpus* to the *King*'s-*Bench*, and was brought thither in order to be bail'd, and produced Perſons of Worth to bail him; but the Penalty of the Bail ſet by the Court was ſo high, and the Court ſo aggravated the Crime for which he was committed, and the Likelihood of the Truth of it, that the Bail refus'd to ſtand, and *Claypole* was remanded to the *Tower*. But the Term after, when the Matter, of which he was accus'd, appear'd barefac'd to be the Deſign of other People, he was let go, for fear the Examination of it ſhould go further in proving the Popiſh Plot, than any thing at that time diſcover'd. And if it were now diſcover'd, upon whoſe and what Evidence he was committed, it would go a great way in diſcovering the Truth of many Matters, as yet in the Dark (but that Deſign miſcarry'd, becauſe the Intrigue was diſcover'd before it took Effect; and yet a like Deſign was ſtill carried on, and many of the Clergy of the Church of *England* had been prevail'd with to cry the *Popiſh* up as a *Fanatick* Plot). The *Papiſts* and the Clergy of the Church of *England* being in the late Times equally Sufferers, and oppreſs'd by the *Fanaticks*, they naturally grew to have a Kindneſs for each other, and both join'd in hating the *Fanaticks*; and therefore pretended, at leaſt, that they did not believe any thing of the *Popiſh Plot*, but that Report was given out by the *Fanaticks*, whilſt they themſelves were deſigning ſomething againſt the Church of *England*. The *Papiſts* having ſo great a Part of the Clergy of the Church of *England*, ready to believe any thing of a *Fanatick Plot*, which they ſhould forge, and obſerving that that which gave Credit to the *Popiſh Plot*, was Writings concurring with Oral Teſtimony, which it did; for very little of the Truth of the *Popiſh Plot* depended on the Credit of *Oates*, *Bedloe*, or any other Perſon, moſt of the Facts of that Deſign, when diſcover'd, proving themſelves: To inſtance in one; *Oates* diſcover'd *Coleman* had Intelligence with *Le Chaiſe* of a Deſign on *England*, and that *Coleman* had Papers teſtifying as much; when thoſe Papers were ſeiz'd, and own'd by *Coleman*, and the Purport of them was what *Oates* ſaid they were, it was not material, whether *Oates* was a Man of Truth or not; the Papers, without *Oates*'s further Evidence, ſufficiently prov'd the Deſign: I ſay, the *Papiſts*, having obſerv'd what the Evidence was which gave Credit to that Plot, reſolv'd to purſue the ſame Steps, and therefore *Dangerfield* was made uſe of to leave Papers in Colonel *Manſel*'s Lodging, who was an Acquaintance of my Lord *Shafteſbury*'s, importing a † Plot; but that was ſo fooliſhly carried on, and the then * *Attorney-General*, who had the Examination of that Matter, not being qualify'd with the Aſſurance his Succeſſor had to carry on a Thing that had neither Senſe nor Honeſty in it, made ſuch a ſcurvy Report of the Matter to the King and Council, that they were enforc'd to vote *Manſel* Innocent, *Dangerfield* Guilty, and that it was a Deſign of the *Papiſts* to lay a Plot to the *Diſſenters* Charge, and a further Proof of the *Popiſh Plot*. But that *Attorney-General* being remov'd to a Place of more Honour, though of leſs Profit, and * another put in his Place, the *Papiſts* reſolv'd to carry on the ſame Deſign; and no Perſon a fitter Inſtrument than *Fitzharris*, in reſpect of his Religion and his Acquaintance; but before his Deſign came to Perfection, it was diſcover'd.

* *Sir* Creſwel Levinz.

He was firſt impriſon'd in *Newgate*, where ſome Perſons (amongſt whom Mr. *Corniſh*, as I remember, then Sheriff, was believed to be one, and it was not the leaſt of his Crime, that he endeavour'd to look into that *Arcanum*) went to examine him as to the Particulars of that Deſign; which was quickly taken Notice of, and the Priſoner, in Breach of the *Habeas Corpus* Act, remov'd from thence to the *Tower*, where he was kept cloſe Priſoner.

The Parliament at *Oxford* meeting ſoon after *Fitzharris*'s Apprehenſion, and the Houſe of Commons being inform'd of as much of his Deſign as was then diſcovered, they thought themſelves highly concern'd to examine him; but how to do it they knew not: only they reſolv'd (upon a Report which one of their Members made them of one *Hubert*, who confeſſed himſelf guilty of firing the City of *London*, upon which it was reſolv'd to examine him in the Houſe of Commons the next Morning, but before the Houſe ſat, *Hubert* was hang'd) that *Fitzharris* ſhould not be hang'd without their Knowledge and Conſent; and to effect it, they remember'd a Deſign to try the five *Popiſh* Lords in the *Tower* upon Indictments; whereupon, if they ſhould be acquitted, it was thought that theſe Acquittals might be pleadable to Impeachments. To prevent which, the Houſe had exhibited general Impeachments of High-Treaſon againſt them in the Houſe of Lords; which had ſuch Succeſs, that the Lords were never, and the Judges gave their Opinion that they could not be, tried on the Indictments, as long as the Impeachments were in Being; for which Reaſon, the Houſe of Commons exhibited a general Impeachment of High-Treaſon in the Houſe of Lords againſt *Fitzharris*, which was receiv'd; after which the Houſe of Lords made an Order, that *Fitzharris* might or ſhould be try'd in the *King*'s-*Bench* for the ſame Treaſon: ſuddenly after which that Parliament was diſſolv'd. Whether *Fitzharris*'s Buſineſs was the Break-neck of that Parliament, I know not, but it was ſhrewdly ſuſpected it was.

There was at that Time a * Chief Juſtice in the *King*'s-*Bench*, who was himſelf under an Impeachment of High-Treaſon, and had not, for that Reaſon, ſat in Court for ſome Terms preceding; and the Trial of *Fitzharris* being generally look'd upon to be as illegal as it was odious, it was thought convenient

* *Sir* William Scroggs.

† *Burnet*'s Hiſtory of his Own Times, *Vol.* I. *p.* 475.

to

to carry it on by a Perſon of better Credit; whereupon* one who had been a Puiſne Judge of that Court, and had behaved himſelf very plauſibly, and had gained Credit by being turn'd out, was thought to be the fitteſt Perſon to undertake it, and accordingly the then preſent Chief Juſtice was remov'd, and the other was preferred to his place.

Sir Francis Pemberton.

It being reſolv'd that *Fitzharris* ſhould be try'd, the Buſineſs was, how to get Witneſſes to give Evidence to a Jury, and how to get Juries to find the Bill, and to convict the Priſoner, which were difficult Preliminaries. A * Perſon who had been one of the Houſe of Commons which had exhibited the Impeachment, was a principal Witneſs; but if he ſhould give Evidence on the Indictment, he knew not how far he might be hereafter queſtionable and puniſhable for it, when a Parliament ſhould ſit again; but at laſt that Perſon was prevail'd upon to give Evidence, but by what means is beſt known to himſelf. And as for the Juries, Grand and Petty, they were ſatisfied with the Direction of the Court, that they not only might, but ought to find the Bill and Verdict, according to their Evidence. And I think the Court was ſo far in the right.

* *Sir* William Waller.

That Matter being adjuſted, a Bill of High-Treaſon was found againſt the Priſoner; whereupon he was preſently arraigned, and after much Conteſt, and Declaration of the Court, that they could hear nothing till he had pleaded in chief (which if he had done, the *Plea* he afterwards pleaded, which was the Juriſdiction of the Court, had come too late), he had Leave given him to plead the ſpecial Matter of the Impeachment; and accordingly Counſel were aſſign'd him to draw up and argue his *Plea* put in to the Juriſdiction of the Court; which was, *That he was impeached in a ſuperior Court for the ſame Treaſon.*

Great Endeavours were uſed to have the *Plea* over-ruled, without ſo much as hearing the Priſoner's Counſel for the maintaining it. The Pretences were, that the Priſoner on his *Plea* ought to have produced the Record of his Impeachment, and that the *Plea* of the Impeachment for High-Treaſon in general was naught, without ſpecifying what the High-Treaſon was for which he was impeach'd; for an Impeachment, or an Indictment of High-Treaſon in general was naught; that the King had power to proceed on an Impeachment or Indictment for the ſame thing, at his Election: That the Allegation, *that* Fitzharris *was impeach'd, which Impeachment ſtood in full force*, not having mentioned an Impeachment before, was naught. But afterwards the *Attorney-General* demurred, and the Priſoner joined in the Demurrer. And then a Day was given to argue the *Plea* till *Saturday* the 7th of *May*, at which time the *Attorney* added to the Exceptions he took to the Plea, Whether a Suit in a ſuperior Court can take away the Juriſdiction of another inferior Court, who had an original Juriſdiction of the Cauſe, of the Perſon, and of the Fact, at the time of the Fact committed?

To maintain the Plea, the Counſel for the Priſoner alledged, that an Impeachment differ'd from an Indictment; the firſt was at the Suit of the Commons of *England*, and was like an Appeal, or rather an Appeal reſembled an Impeachment; that the Proceedings were different in the Trials: In the firſt, the Trial is by the Houſe of Lords; in the laſt, of a Commoner, by a Jury of Commons. In the laſt, but little time was allowed for giving or conſidering of the Evidence; in the firſt, a much longer time. That this Matter was never practiſed before; that the King may pardon a Criminal proſecuted by an Indictment, but not by an Impeachment, no more than if proſecuted by an Appeal. If he ſhould be acquitted on the Indictment, it might be a Queſtion, whether that may be pleaded in Bar to the Impeachment? and if not, the Priſoner ſhould be brought twice in jeopardy of his Life for the ſame Crime, contrary to the Rule of Law.

To the Objection, that the *Plea* was not certain; it being pleaded as an Impeachment of High-Treaſon, not ſetting forth the High-Treaſon in particular; it was anſwer'd, that an Impeachment differ'd from an Indictment: For by the Cuſtom of *Parliament*, which is the Law of the Land, ſuch a general Impeachment is good; but by the Law, a general Indictment of High-Treaſon, without ſpecifying what, when, where, or how, is not good; and therefore the *Plea* of an Indictment and an Impeachment is variant.

To the Objection, that there was no Impeachment mention'd before the Averment of *quæ quidem impetitio*, it was frivolous; for it was before mention'd that he was impeach'd, and then by a neceſſary Conſequence there was an Impeachment.

As to the Objection, that the King might, in which Court he would, proſecute for High-Treaſon, it was little to the purpoſe; for the Caſe did not come up to it, the Impeachment being the Suit of the Commons, and not of the King; and that the Courts of *Weſtminſter-Hall* had refus'd to meddle with matters relating to the *Parliament*. That though the Impeachment was general, yet it was made certain by the Averment; that it was for the ſame Crime for which the Indictment was: That the *Attorney-General* might have taken Iſſue, that there was no ſuch Impeachment as was pleaded; or elſe he might have ſaid, that the Impeachment was not for the ſame Treaſon for which he was indicted; but having demurr'd, he had confeſs'd both to be true. That at common Law, if an Appeal of Murder had been brought, the King could not proceed on the Indictment, till the Appeal was determin'd; that the Judges, whereof ſome were then in Court, had given their Opinions to the King and Council concerning the five Popiſh Lords, that they could not be try'd upon Indictments, ſo long as general Impeachments were depending for the ſame Treaſon: and yet their Caſes and this differ'd; there the Indictments were found before the Impeachments preferr'd, and here, after the Impeachment.

In the reply to vitiate the *Plea*, it was inſiſted, That it did not conclude *ſi Curia procedere debeat* as well as *vult*, as was uſual for *Pleas* of that nature to do; that perhaps this Matter, if the Priſoner had been acquitted upon the Impeachment, might have been pleaded in bar to the Indictment, but it was not pleadable to the Juriſdiction of the Court; that in the Caſe of the five Lords, the Indictments were removed into the Houſe of Lords; that Appeals in Treaſons are taken away by the Firſt of *Henry* the IVth; that in the *Plea* it ought to be averr'd, what *Lex & Conſuetudo Parl.* are; that till Articles carried up, no Man impeach'd is oblig'd to anſwer; that in all Caſes of Appeals, a Man is put twice in jeopardy of his Life, if he be try'd upon an Indictment within a Year.

To take a ſhort Review of what hath been recited, it was thought the King's Counſel run the Court upon a Rock, and it was hard for them to get off. The Court had adviſ'd them to take time to conſider what Courſe they would take; but the King's Counſel were haſty, as they always were, when they were reſolved to carry a Matter right or wrong; and having three bad ways, they choſe the worſt.

If they had taken Iſſue on the Record, or the Averment, that the Impeachment and Indictment were not for the ſame Treaſon, they might have pretended that the Journal of the Houſe of Lords was not a Record, or that the Debates in the Houſe of Commons were not good Evidence; or if they had reply'd, the Order of the Houſe of Lords for trying the Priſoner in the *King's-Bench*, to the Plea, they might have inſiſted on the Power of the Houſe ſo to do; but having demurr'd, they confeſſed the Truth of all the Matter of the Plea, and wav'd the Benefit of that Order, and ſtood upon Points of Law, either conceded by the Court, or reſolv'd by the Judges before, or ſuch neceſſary Inferences from them as were impoſſible to be deny'd.

It could not be deny'd, but a general Impeachment of High-Treaſon, by the Cuſtom of Parliament, was good; it could not be deny'd, but, by the Reſolution of the Judges in the Caſe of the Lords in the *Tower*, a general Impeachment of High-Treaſon ſtopt Proceedings upon an Indictment for the ſame Matter. It did not differ the Caſe, that the Indictments in the *King's-Bench* againſt the Lords were remov'd into the Houſe of Lords; for every one knows new Indictments might have been preferred againſt them for the ſame Crimes. And if that had been the Reaſon of the Judges Reſolution, why did not the Judges then in Court, all, or moſt part of whom were Judges at the giving that Opinion, deny the Opinion, or the Reaſon alledg'd? which they did not. It was not a Reaſon to diſallow the Plea, becauſe particular Articles uſe to follow general Impeachments, and the Impeach'd are not bound to anſwer till the particular Articles were exhibited, which is true; for by the ſame Reaſon, a Defendant cannot plead an Action depending againſt him for the ſame Matter in a ſuperior Court, unleſs the Plaintiff hath declar'd againſt him in the ſuperior Court, which is not true. It was not a Reaſon that all Records in inferior Courts muſt be pleaded particularly, as Indictments, and the like; becauſe ſuch Records muſt be certain and particular, or elſe they are erroneous, and cannot be pleaded; but an Impeachment may be general.

Where the Matter of a Plea is naught, no Form can make it good; though where the Matter of a Plea is good, an ill Form may ſpoil it. If therefore a general Indictment or Record is naught, as in all the Caſes cited againſt the Plea, it was no ſpecial Averment to reduce it to a certainty, or any Form can make it a good Plea: But a general Impeachment is good, and therefore it may and muſt be pleaded generally; and pleading it ſpecially would make it falſe, if there were no ſubſequent Articles, as in this Caſe there were not, to aſcertain it.

It is to no purpoſe to run through all the Ramble of the Counſel or Court againſt the Plea, when they all ſaid the Matter of the Plea was not in queſtion, but the Form; and yet when ſo often aſk'd, in what of the Form it was defective, they were not able to anſwer. If it be agreed that the Matter of a Plea is good, but it is defective in Form, they always ſhew how it ought or might have been mended; which in this Caſe was never done: And as this Caſe was new in ſeveral Particulars, ſo it is in this, that in reading all the Arguments of this Plea, no Man knows, by what was diſcours'd, what was the Point in queſtion.

After the Arguments, the Chief Juſtice, in ſhow at leaſt, very favourably offers the Priſoner's Counſel liberty to amend the Plea, if they could; which they (apprehending as they had Reaſon, for I think none can ſhew how it might have been mended, rather a Cateh than a Favour) refus'd to do; whereupon the Court took time to conſider of it, and on the 11th of *May*, there being a great Auditory, rather to hear how the Judges would bring themſelves off, than to know what the Law of the Plea was, the Chief Juſtice, without any Reaſons, deliver'd the Opinion of the Court, upon Conference had with other Judges, that his Brothers, *Jones*, *Raymond*, and himſelf, were of Opinion that the Plea was inſufficient; his Brother *Dolben* not reſolv'd, but doubting concerning it, and therefore awarded the Priſoner ſhould plead to the Indictment, which he did, *Not Guilty*; and his Trial order'd to be the next Term.

I think it would puzzle any Perſon to ſhew, if ever a Court of *Weſtminſter-Hall* thought a Matter to be of ſuch difficulty as fit to be argued, that they gave their Judgments afterwards without the Reaſons: 'Tis true, that the Courts of Civil Law allow Debates amongſt the Judges to be private among themſelves; but the proceedings at Common Law always were, and ought to be, in *aperta curia* *. Had this Practice taken place heretofore, † as it hath of late (but all ſince this Precedent), no Man could have known what the Law of *England* was, for the Year-Books and Reports are nothing but a Relation of what is ſaid by the Counſel and Judges in giving Judgment, and contain the Reaſons of the Judgment, which are rarely expreſs'd in the Record of the Judgment; and it is as much the Duty of a Judge to give the Reaſons why he doubts, as it is of him who is ſatisfied in the Judgment. Men ſometimes will be aſham'd to offer thoſe Reaſons in publick, which they may pretend, ſatisfy them, if conceal'd; beſides, we have a Maxim in Law undeniable, and of great uſe, that any Perſon whatever may rectify or inform a Court or Judge publickly or privately, as *Amicus Curiæ*, a Friend to the Court, or a Friend to Juſtice: But can that be done, if the Standers-by know not the Reaſon upon which the Court pronounce their Judgment? Had the Three Judges, who were clear in their Opinion, given their Reaſons of that Opinion, perhaps ſome of the Standers-by might have ſhew'd Reaſons unthought of by them, to have made them ſtagger in, if not alter that Opinion; or if Juſtice *Dolben* had given the Reaſon of his Doubt, perhaps a Stander-by might have ſhewn him a Reaſon unthought of by him, which would have made him poſitive that the Plea was or was not a good Plea.

If a Man ſwears what is true, not knowing it to be true, though it be logically a Truth as it is diſtinguiſh'd, yet it is morally a Lye; and if a Judge give Judgment according to Law, not knowing it to be ſo, as if he did not know the Reaſon of it at that time, but bethought himſelf of a Reaſon

* 2 *Co.* Inſt. 103. † *Of old Time before* Edw. III. *the Reaſons us'd to be entered on record in caſes of difficulty; but ever afterwards were conſtantly pronounced by the Court, that they might be publiſh'd in the Books of Caſes and Reports.* 4 *Co.* Inſt. 4.

for

for it afterwards, though the Judgment be legal, yet the pronouncing of it is unjuſt.

Judges ought to be bound up by the Reaſons given in publick, and not ſatisfy or make good their Judgment by after-thought of Reaſons. How very ill did it become the Chief Juſtice *Popham*, a Perſon of Learning and Parts, in the attainting Sir *Walter Raleigh*, of which Trial all ſince that time have complain'd? when he gave his Opinion, that the *Affidavit* of the Lord *Cobham*, taken in the abſence of Sir *Walter*, might be given in Evidence againſt him, without producing the Lord *Cobham* Face to Face to Sir *Walter* (which was deſir'd by him, altho' the Lord *Cobham* was then forthcoming). When he ſumm'd up the Evidence, he ſaid, * *Juſt then it came into his Mind, why the Accuſer ſhould not come Face to Face to the Priſoner, becauſe he might retract his Evidence; and when he ſhould ſee himſelf muſt die, he would think it beſt that his Fellow ſhould live to commit the like Treaſon; and ſo in ſome ſort ſeek Revenge.* Which, beſides that it is againſt the common Law, and Reaſon, it is againſt the expreſs Statute of *Edw.* VI. which takes care, that in Treaſon the Witneſs ſhall be brought Face to Face of the Perſon accus'd.

Did it become a juſt Man to give his Opinion, and bethink himſelf of a Reaſon afterwards? And I am miſtaken if it will not herein appear, that many Perſons complained of, have not been guilty of the ſame Weakneſs or Injuſtice, call it which you will; ſo fooliſh are the beſt Lawyers and plauſible Speakers, when they reſolve to carry a Point, whether juſt or not: However they may deceive the Ignorant, yet they talk and argue very abſurdly to the Apprehenſion of the majority of Mankind. And they had been ſooner diſcover'd, but that the Diſcoverers were quickly ſuppreſs'd and cruſhed, as Scandalizers of the Juſtice of the Nation. And I think this may be juſtly called the firſt mute Judgment given in *Weſtminſter-Hall.*

But to return to *Fitzharris*'s Trial, which came on the 9th of *June*; and then the King's Counſel made uſe of their Arts in managing the Jury. And firſt, there were a great many Perſons for Jurors to whom Mr. *Attorney* had no ſtomach; ſome challenged for Cauſe, for that they were no Freeholders, as *John Kent*, *Giles Shute*, *Nathaniel Grantham*, and ſeveral others; and the Challenge allow'd to be a good Challenge by all the Court; for though the Chief Juſtice only ſpoke, yet all the Court aſſent to what one Judge ſays, if they do not ſhew their diſſent. I do not take notice of this, as complaining of it, for I think it is a good Cauſe of Challenge in Treaſon; but then I cannot but wonder at the Aſſurance of the ſame King's Counſel, who denied it to be a good Cauſe of Challenge in the Lord *Ruſſel*'s Trial. It is true, that was a Trial in the City, but that Matter had no Conſideration in the Judgment; for after the Lord *Ruſſel*'s Counſel had been heard, all the Judges deliver'd their Opinions, That at common Law, *No Freehold* was no challenge in Treaſon; and that the 1 and 2 *Phil. & Mar.* had reſtor'd the Trial in Treaſon to be what it was at common Law: Of which number of Judges, Sir *Francis Pemberton* and Sir *Thomas Jones* were two; nay, Sir *Francis Pemberton* aſk'd Mr. *Pollexfen*, *Whether he found any Reſolution at common Law, that no* Freehold *was a Challenge in Treaſon.* And that Judgment is afterwards cited in Colonel *Sidney*'s Trial, as the Opinion of all the Judges of *England*, That *no Freehold* was no Challenge to a Juror in Treaſon at common Law; and Colonel *Sidney*'s Trial was in a County at large.

But if it was not a Challenge at common Law, I would know how it came to be a Challenge in *Fitzharris*'s Caſe? There was no intervening Act of Parliament to alter the Law between the two Trials, that I know of.

Another Art us'd, was to challenge for the King without Cauſe, where no Cauſe could be ſhewn, ſuch Jurors as they did not like.

The Priſoner was troubled at this, and appeals to the Court, whether the Attorney-General was not oblig'd to ſhew his Cauſe of Challenge; but is anſwer'd by the Court, that he need not till all the Pannel was gone through, or the reſt of the Jurors challeng'd, which is true; but had the Priſoner been advis'd to challenge the reſt of the Jury, as he would have been if he had had Counſel, the Attorney muſt have waved his Challenge, or put off the Trial. And ſince he was not allowed Counſel, why ſhould not the Court, according to their Duty, as they have ſaid it is, advis'd him ſo to do? I am ſure, in Count *Coningſmark*'s Trial, when Sir *Francis Winnington* challenged a Juror without Cauſe for the King, the Court preſently aſk'd the Cauſe; and ſuch Anſwer was made by the Proſecutor's Counſel as was made to *Fitzharris:* Whereupon the Court told the Count, that the way to make them ſhew their Cauſe of Challenge, was to challenge all the reſt of the Jury; and thereupon the Challenge was waved. They were different Practices, tending to different Ends; and accordingly it ſucceeded; *Fitzharris* was convicted, and the Count acquitted.

Upon the Trial the Evidence was this; *Fitzharris* was, the 21ſt Day of *February* 1681, with *Everard*, and gave him Heads by word of Mouth, to write the Pamphlet in the Indictment mentioned, to ſcandalize the King, raiſe Rebellion, alienate the Hearts of the People, and ſet them together by the ears; the Libel was to be preſented to the *French* Ambaſſador's Confeſſor, and he was to preſent it to the *French* Ambaſſador; and it was to ſet theſe People together by the ears, and keep them claſhing and miſtruſting one another, whilſt the *French* ſhould gain *Flanders*, and then they would make no bones of *England:* For which Libel *Everard* was to have forty Guineas, and a monthly Penſion, which ſhould be ſome thouſands of Pounds. *Everard* was to be brought into the Cabal, where ſeveral Proteſtants and Parliament-Men came, to give an account to the Ambaſſador how things were tranſacted. *Everard* aſked what would be the uſe of the Libels? *Fitzharris* ſaid, we ſhall diſperſe them we know how; they were to be drawn in the Name of the *Nonconformiſts*, and to be put and fathered upon them. This was the Sum of *Everard*'s Evidence.

Mr. *Smith* prov'd *Fitzharris*'s giving Inſtructions to *Everard*; and Sir *William Waller* and others prov'd the Libel, and the Diſcourſe about gaining *Flanders* and *England:* Other Witneſſes were examin'd to prove *Fitzharris*'s Hand. For the Priſoner, Dr. *Oates* ſaid, *Everard* told him the Libel was to be printed, and to be ſent about by the Penny-Poſt to the proteſting Lords, and leading Men of the Houſe of *Commons*, who were to be taken up as ſoon as they had it, and ſearched, and to have it found about them. He ſaid the Court had a hand in it, and the King had given *Fitzharris* Money for it already, and would give him more if it had ſucceſs.

Mr. *Corniſh* ſaid, when he came from *Newgate* to the King, to give him an account in what Diſpoſition he found the Priſoner to make a Diſcovery; the King ſaid, he had had him often before him and his Secretaries, and could make nothing of what he did diſcover; that he had for near three Months acquainted the King he was in purſuit of a Plot, of a Matter that related much to his Perſon and Government, and that in as much as he made Proteſtations of Zeal for his Service, he did countenance and give him ſome Money; that the King ſaid he came to him three Months before he appeared at the Council-Table.

Colonel *Manſel* ſaid, that Sir *William Waller* gave him an account of the Buſineſs in the preſence of Mr. *Hunt*, and ſeveral others; and ſaid, that when he had acquainted the King with it, the King ſaid he had done him the greateſt piece of ſervice that ever he had done him in his Life, and gave him a great many thanks: But he was no ſooner gone, but two Gentlemen told him, the King ſaid he had broken all his Meaſures, and the King would have taken him off one way or other: and ſaid that the Deſign was againſt the Proteſtant Lords, and Proteſtant Party. Mr. *Hunt* confirm'd the ſame thing; and added, that he ſaid the Deſign was to contrive thoſe Papers into the hands of the People, and make them Evidences of Rebellion; and appealed to Sir *William Waller*, who was preſent, whether what he ſaid was not true? Mr. *Bethel* ſaid, *Everard* before he had ſeen *Bethel*, or heard him ſpeak a Word, put in an Information of Treaſon againſt him, at the Inſtigation of *Bethel*'s mortal Enemy; which Information was ſo groundleſs, that tho' it was three Years before, yet he never heard a word of it till the *Friday* before.

Mrs. *Wall* ſaid, *Fitzharris* had 250 *l.* 200 *l.* or 150 *l.* for bringing in the Lord *Howard* of *Eſcrick*; ſhe added, that *Fitzharris* was looked upon to be a *Roman* Catholick, and upon that account it was ſaid to be dangerous to let him go near the King; that he never was admitted to the King.

The Lord *Conway* ſaid, that the King had declared in Council, that *Fitzharris* had been employed by him in ſome trifling Buſineſſes, and that he had got Money of him; but added, as of his own Knowledge, that the King never ſpoke with him till after he was taken, which was the 28th of *February* laſt.

All the Evidence being over, it was ſumm'd up by the Counſel, That upon all the Circumſtances of it, *Fitzharris* was the Contriver and Director of the Libel; that it was a treaſonable Libel, and a Jeſuitical Deſign; that the Excuſe he made, as if *Everard* drew him into it, or trepanned him into it, was in vain, nothing of that being prov'd. That *Everard* could do nothing alone, and therefore Sir *William Waller* muſt be in the Contrivance; but that was unlikely: That the Priſoner would inſinuate that the King hir'd him to do it, becauſe the King gave him Money, but that was out of Charity; and therefore concluded, with a great many Words, that an *Engliſh* Proteſtant Jury of twelve ſubſtantial Men could not but find the Priſoner Guilty.

The Court added, that though Dr. *Oates* ſaid, *Everard* ſaid it was a Deſign of the Court, and was to be put on ſome Lords, and into ſome Parliament-Men's Pockets; yet *Everard* was there upon Oath, and teſtified no ſuch thing in the World; and for the Impeachment in the Lords Houſe, they were not to take notice of it.

After which the Jury inform'd the Court, that they heard there was a Vote in the Houſe of Commons, that the Priſoner ſhould not be try'd in any inferior Court: To which the Chief Juſtice ſaid, That that Vote could not alter the Law, and that the Judges of that Court had Conference with all the other Judges concerning that matter; and it was the Opinion of all the Judges of *England*, that that Court had a Juriſdiction to try that Man. After which, Juſtice *Jones* was of Opinion, that if he were acquitted on that Indictment, it might be pleaded in bar to the Impeachment; and Juſtice *Raymond* deliver'd his Opinion to the ſame purpoſe. It is ſtrange that all the Judges ſhould be of that Opinion; yet before it was ſaid, Juſtice *Dolben* doubted. It is more ſtrange, that if Juſtice *Dolben* was not of that Opinion, he would hear it ſaid he was, and not contradict it. It is moſt ſtrange, that if the Judges of that Court were of that Opinion, they had not declar'd ſo, in the arguing or giving Judgment on the Plea; for that was the Matter of it, being pleaded to the Juriſdiction of the Court, that they had not power to try the Priſoner for that Crime, ſo circumſtanced.

If the Plea had been over-rul'd as to the Matter, none would have been ſo impertinent as to go about to maintain the Form of it.

Now, to ſay truth in behalf of the Publick, and not on behalf of *Fitzharris*, the Evidence was unfairly ſummed up; for *Fitzharris* never pretended *Everard* drew him in, or was to trepan him: It is true, he aſk'd *Everard* what the Deſign of the Pamphlet was, and whether he was or not put upon it to trepan others? Who anſwer'd, he was not. But afterwards being too nearly preſt by the Attorney-General, he ſaid, *Fitzharris* told him the Uſe of the Libels were to diſperſe them he knew how; that they were to be drawn in the Name of the *Nonconformiſts*, and put upon them. And *Oates* ſaid, *Everard* ſaid the Libels were to be printed, and ſent abroad by the Penny-Poſt to the proteſting Lords, and leading Men of the Houſe of Commons, and the Perſons ſeiz'd with them in their Pockets; which is all ſtrong Evidence that the Libel was deſign'd to trepan others, and that was all along the Import of *Fitzharris*'s Queſtions, tho' cunningly not anſwer'd by ſome of the Witneſſes, and as cunningly omitted in ſumming up the Evidence.

It is true, the Chief Juſtice ſaid, *Everard* ſaid no ſuch thing as *Oates* had ſaid; but why was not *Everard*, who was then preſent, aſk'd, Whether he ſaid what *Oates* had given in Evidence?

There cannot be ſhewn any Precedent where a Witneſs contradicts, or ſays more or leſs than a Witneſs that went before him, by the hear-ſay of that Witneſs; but the firſt Witneſs is aſk'd, what he ſays to it? Why was not Sir *William Waller*, who was alſo preſent, aſk'd what he ſaid to the Evidence of Mr. *Manſel* and Mr. *Hunt?* And who it was that inform'd Sir *William* what the King ſaid? It was no way in proof, nor pretended by *Fitzharris*, that any Perſon was concern'd in that matter, but *Everard* and *Fitzharris*, tho' it was ſhrewdly ſuſpected by the Houſe of Commons; and no Man that reads the Trial, but believes there were many more concern'd not yet diſcover'd: But the Counſel might have brought in any Judge of

* Vol. I. page 218.

the Court by the Head and Shoulders to be a Confederate, as well as Sir *William Waller*, who was a *Jack-a-lent* of their own ſetting up, in order to knock him down again.

It was not pretended by *Fitzharris* that the King gave him any Money to frame that, or any other Libel; there was Evidence, that he had got Money of the King for ſome little matter he was employed in, perhaps for bringing in Libels diſperſed abroad, or diſcovering Plots.

Upon the whole Evidence, it was plain that *Fitzharris* was an *Iriſh* Papiſt; it was plain he was the only viſible Contriver of the Libel; who were behind the Curtain is not plain, and to know them, was the Deſign of the Impeachment.

It was plain it was a deviliſh Jeſuitical Deſign, as the Court and Counſel, in ſumming up the Evidence, agreed it to be; it was plain, that the Libel was ſuch, that if diſperſed with intention to ſtir up the King's Subjects againſt him, it had been High-Treaſon within the Statute of the 13th of the King: But what the Intention of the contriving of the Libel was, was not very certain; and therefore, conſequently, what the Crime of it was, was uncertain.

To take the Evidence all the ways, as to the Deſign of the contriving of the Libel, it is capable of being interpreted; the eaſieſt Conſtruction is to ſay, he framed a Libel with intention to pretend to the King, that he had intercepted a Libel privately diſperſed; and to make it more likely, it ſhould be framed in the Nonconformiſts Names, to make his Report the more credible (for of Papiſt or Church-men it could not be believed), to get more Money of the King; and that matter, by all his Queſtions to the Witneſſes, he moſt drove at: and that would at moſt be but a Cheat.

A more criminal, but leſs credible Conſtruction, is to believe he deſign'd to diſperſe them, to excite and prevail upon the Diſcontented to take up Arms.

For what Effect had that Pamphlet, when it was (for it was afterwards) diſperſed, upon the Minds of the People? Or what Effect could any Man of Senſe think it could have? For though it was a virulent, yet it was as fooliſh a contrived Libel as ever was writ; yet I own, if it had been writ and diſperſed with that Deſign, it had been High-Treaſon within the Statute of *Ed.* III.

But the moſt natural Conſtruction of the worſt Deſign of it, was to trepan the Parliament-Men, and make the Libels Evidences of a rebellious Conſpiracy: This *Everard* confeſſes *Fitzharris* told him was the Uſe to be made of them; and *Everard* could not know the Deſign of them, but by what *Fitzharris* told him. And *Oates* well explains what *Everard* meant by the Words, in his Evidence, *put the Libel on the Nonconformiſts*, by what *Everard* told him.

But yet even that, though in itſelf the higheſt Crime a Man can be guilty of, next putting it in execution, is but a Conſpiracy; which was mildly puniſhed in *Lane* and *Knox* their Caſe, though this exceeded that; that being a Deſign only againſt one Perſon, this againſt many.

Yet though this was of no higher Crime by the Law, as now eſtabliſh'd, than a Miſdemeanor, it was fit for the Legiſlative Power to have puniſhed it in the manner it was puniſhed; which yet the Legiſlative Power ought to reſent as an Injury, for an inferior Court's ſnatching the Exerciſe of that Power out of their Hands, which only belongs to the ſupreme Authority. That this Crime, upon conſtruction of the Evidence taken in the beſt Senſe, is no Treaſon; though the Libel ſhould in all probability incite the Subject to levy War, which it was not likely to do, or if in Fact it had been the Cauſe of a Rebellion, yet if it was not deſigned by the Contriver to that purpoſe, it was not Treaſon by the Statute of *Edward* III. or *Charles* II. for in the laſt Statute, it is deſigning to levy War, and in the Statute of *Edward* III. it is a ſtrained Conſtruction, to make deſigning to levy War, Treaſon; yet none ever pretended to ſtrain the Senſe of that Statute farther than deſigning to do it.

If the ill Effects the Libel did, or might produce, made it Treaſon, then Sir *Samuel Aſtrey*, who read it in Court at the Trial, and the Printer, that afterwards printed and publiſh'd it, and Sir *William Waller*, who read it to Mr. *Hunt*, and others, were guilty of Treaſon; for the Libel carried no Venom or Charm with it the more, for being framed by *Fitzharris* or *Everard*, or for being publiſhed by either of them, than if publiſhed by another Perſon.

The difference is, *Aſtrey* read it aloud, as his Duty; the Printer printed and publiſhed it for Gain; Sir *William Waller* publiſhed it as a Novelty; and if *Fitzharris* contrived it, to put it upon the Nonconformiſts, or Parliament-Men, and not to ſtir up a Rebellion, though it tended to all the ill Conſequences mentioned in his Indictment, yet it was not Treaſon.

But it will be urged, how ſhall *Fitzharris*'s Intentions be proved? It was a Queſtion which made a mighty ſputter in arguing the Plea. How ſhall it be proved, that the Impeachment was for the ſame Treaſon for which the Indictment was? But in the Trial of *Fitzharris*, that Queſtion was fully cleared; for it was proved there, that the very Libel then produced in Court, was the ſame Libel read in the Houſe of Commons, upon which the Impeachment was voted.

And to ſay truth, nothing can be put in Iſſue, but is capable of Trial: *Quo animo* a thing is done in all Overt-Acts of a Deſign, is one of the main Queſtions; * or to ſpeak in Law Phraſe, whether done *proditorie* or not, an Adverb of great Uſe and Senſe, though heretofore ſlighted; and under which, I believe, a great many Perſons will be enforc'd to ſhelter themſelves from being puniſhed by the Law eſtabliſhed.

No Man will pretend that Libel did any Man miſchief but the Contriver; nor in probability could have done, if not uſed to the purpoſe *Everard* ſaid to *Oates*. Yet other Perſons have been guilty of as illegal Acts, of worſe Conſequences in proſpect, and much worſe in effect, and it did not amount to Treaſon. I dare ſay, the Allegation, that they diſturbed the Kingdom by their Acts, and War cauſed to be moved againſt the King, is true of them, and they are guilty of all the Aggravations uſed in Indictments of Treaſon.

To inſtance in ſome of many; Did it not make a mighty heart-burning in the City againſt the Government, and raiſed great Jealouſies between the King and People, when the Sheriffs, *North* and *Rich*, were impoſed on the City? Did not the taking away the City's Right of electing Sheriffs, and the ſuſpicions for what end it was done, beſides the Illegalities that followed; if what Sir *Edward Herbert* ſays in his late Vindication, *Fol.* 16. be Law, as it hath an aſpect as if it were, that Grand-Juries returned by ſuch as are Sheriffs in fact, but not in right, are illegal, and Convictions on their Preſentments are illegal and void, give great diſturbance: and that Opinion ſeems to be contenanced by my Lord *Coke*'s third *Inſtit. Fol.* 32. in his Comment on the 11th of *Henry* IV. and conſequently my Lord *Ruſſel*'s, and other Attainders void? Did it not add to the heart-burning, the puniſhing thoſe Citizens as Rioters, who were at *Guildhall*, innocently conteſting their Right of electing? Was it not an increaſe of the Miſchief, the bringing the *Quo Warranto* againſt the City, whereby the Credit of the City was loſt, and many Orphans ſtarved, and more impoveriſhed, beyond the poſſibility of recovery? And it was yet heightened by the Judgment given in the higheſt Caſe that ever came into *Weſtminſter-Hall*, by two Judges only, and that without one Word of Reaſon given at the pronouncing, according to the Pattern of *Fitzharris*'s Caſe, and was the ſecond mute Judgment. Did it not fright all honeſt Men from being on Criminal Juries, when *Wilmer* was ſo illegally proſecuted for not giving a Verdict againſt his Conſcience, by an *Homine Replegiando*, and Information? And did not that make all Merchants, who had Tranſactions beyond Sea, afraid to ſend their Servants thither, for fear they might be laid by the Heels till they fetched them back again? Did it not ſtartle the Lords, and the leading Men of the Houſe of Commons, mentioned ſo often in *Fitzharris*'s Trial, when the Earl of *Eſſex*, Lord *Ruſſel*, Colonel *Sidney*, Mr. *Hampden*, and ſeveral others, were clapped up cloſe Priſoners in the *Tower*? Did it not deter an honeſt Man from appearing to witneſs the Truth, when Sir *Patience Ward* was convicted of Perjury? Did it not provoke two great and noble Families, when the Lord *Ruſſel* and Colonel *Sidney* were ſo illegally and unhandſomely dealt withal, as ſhall be hereafter declared? Did it not provoke all the Nation, except the Clergy and Soldiery, when all the Charters of *England* were ſeiz'd, and not re-granted, but at exceſſive Rates, to the ſtarving the Poor, who ſhould have been fed with the Money which went to purchaſe the new Charters, and reſerving the diſpoſition of all the Places of Profit and Power, within the new Corporations, to the King, but which indeed the Confedrates ſhar'd among themſelves? Nay, the very Election of Burgeſſes, the freeneſs of which is the great Fundamental of the Government, was monopolized, and put into a few hands. Did not the unreaſonable Fine, and cruel Puniſhments inflicted, oppreſs many, terrify all, and conſequently made the Government odious to the Subject? Did not the Cruelties acted in the *Weſt*, enrage above a third part of the Nation? Did not the turning out many of the Soldiery and Clergy, without any Reaſon; and for that purpoſe erecting arbitrary Courts, and granting Diſpenſations to Perſons by Law diſabled, to enable them to have and enjoy the Places and Offices of ſuch as were illegally turn'd out, and of all who ſhould be in like manner turn'd out? And was it not ſeen what the Conſequences of thoſe things would be, by all who did not wink their Eyes, or who were not blinded by the Profit they made of ſuch illegal and cruel Acts? Was not the King at laſt ſenſible, that the Conſequence of what is before recited would be what afterwards happened? And did he not in leſs than a Month's time, when too late, throw down all that *Babel* of Confuſion which had been ſo long a-building? and did all in his power, and would have done more if he could, to have ſet things as right as they were before the Parliament of *Oxon*? for from thence the Extravagancies may be dated. But alas! more Miſchief can be, and was done by weak Brains, than the beſt Wits can retrieve; thoſe that were dead could not be brought to life; the reſtitution of the City's Charters was but in ſhew a Relief. How ſhall all thoſe defend themſelves who have acted under all the illegal Sheriffs conſtituted, and not elected? How ſhall thoſe defend themſelves, who have acted under Officers appointed by the new Charters, which by the Reſtitution are gone as if they never had been? How ſhall Sheriffs, Goalers, and other Officers, who have had, or now have Cuſtody of Priſoners, and having not taken the Teſt, truſt to the Validity of a Diſpenſe, behave themſelves? Shall they continue to keep their Priſoners in cuſtody, or let them go? If the laſt, they are ſubject to Actions of Eſcape; if the firſt, they are liable to falſe Impriſonment. Theſe, and a great many more Miſchiefs, not yet ſeen, are the natural reſults of theſe illegal Actions.

I never reflect on theſe things, but I remember *Tully*, in his Offices, lays down as a Rule, that nothing is profitable but what is honeſt, and gives many Reaſons for it; but nothing ſo convincing, as the Examples he brings in publick and private Matters. And tho' the Empire was vaſt, and he bore a great Figure in it, and was very knowing, and was well read in the *Greek* and *Roman* Hiſtories, yet he was not able to bring a hundredth part of Examples, to prove his Poſition, as have been in this little Iſland in the ſpace of eight Years. And the Perſons, by whoſe Advice theſe things were tranſacted, are the more inexcuſable, if it be true what a certain Nobleman (who bore a conſiderable Character in the two late Kings Council) once ſaid to me was true. He was complaining that the King was miſled by the Advice of his Lawyers. I aſked him whether the King put his Judges and Counſel upon doing what was done, without conſiderng whether it was legal, as the common Vogue was he did; or that his Lawyers firſt adviſed what to be done, was Law? He anſwered me, on his Honour, the King's Counſel at Law firſt adviſed, the King might do by Law what he would have done, before he commanded them to do it.

Yet I agree, none of the matters, though ſo inconvenient and grievous, are Treaſon by the Statutes of *Ed.* III. or *Car.* II.

For Profit in ſome Caſes, Revenge in others, the endeavouring means to to eſcape Puniſhment, and a natural propenſity to Cruelty in many, were the true ends driven at; and not the bringing their Prince into the hatred of his Subjects, though that was a neceſſary conſequent of all recited, and of many more matters omitted. And let *Fitzharris*'s Crime, and thoſe recited, be but examined, his was but a *Peccadillo* to the leaſt of thoſe; though this was acted by an *Iriſh Papiſt*, and theſe by *Engliſh Proteſtants*, Sons of the Church of *England* as by Law eſtabliſhed, as they call themſelves; though I doubt, not ſincere Proteſtants, as my Lord *Ruſſel* ſaid; Words which were matter of Laughter to thoſe who brought him to the Block.

But though neither *Fitzharris*'s Crime, taken in the laſt Senſe, nor the above Crimes, were High-Treaſon by any Statute; and the Judges have not power to puniſh any other Treaſons: yet in all times the Parliaments

* *See Trial of* Woodburne, State Trials Vol. VI. p. 222.

have

have practiſed, and it is neceſſarily incident to all ſupreme Powers, in all Governments, to enact or declare extravagant Crimes to be greater than by the eſtabliſhed Law they are declared to be, not by virtue of the Clauſe in the Statute of *Edward* the Third, whereby ſome have, by miſtake, thought that a Power was reſerved to the *Parliament* to declare other matters Treaſon than what is therein expreſs'd: For admit that Clauſe had been admitted, there are none can doubt, but in Point of Power, the *Parliament* could (how far in Juſtice they might, is another Queſtion) have declared any other matter to be Treaſon; and the Words of that Clauſe are very improper Expreſſions, either to veſt or ſerve a Power in the *Parliament*; for the Words are only prohibitory to the Judges to adjudge any other matters Treaſon than thoſe expreſs'd in the Act, though they were ſomewhat like thoſe expreſs'd; and therefore might be ſuppos'd Treaſons; and it is a ſort of monition to Offenders, that they ſhould not preſume to be guilty of enormous Crimes, upon preſumption that they were not Treaſons within that Act. For in the Preamble 'tis ſaid, becauſe many other like Caſes of Treaſon (which in Senſe are Caſes like Treaſon declared in that Act) may happen in time to come, which could not be thought of or declared at that preſent; therefore if any ſuch ſhould happen before any Juſtice; the Juſtice ſhould tarry, and not proceed to give judgment of Treaſon on it, till it ſhould be judg'd in Parliament Treaſon or Felony. How well the Judges, in late days, have obſerved this prohibitory Law, let the World judge; and moſt certainly the Parliament might have declar'd in *Fitzharris*'s Caſe, as they may in thoſe other, that the Crimes were Treaſon, Felony, Miſpriſion of Treaſon, Treſpaſs; or what other Crime known in the Law, and inflict what Puniſhment they thought fit: and it is no injuſtice for the ſupreme Power to puniſh a Fact in a higher manner than by Law eſtabliſhed, if the Fact in its nature is a Crime, and the Circumſtances make it much more heinous than ordinarily ſuch Crimes are. It was not injuſtice in the Parliament of the ſecond and third of *Philip* and *Mary* to enact, that *Smith* and others, who were ſuppos'd to be guilty, as Acceſſaries, to a barbarous Murder, and were equally, if not more guilty than the Principal, to enact, as they did, that if they ſhould be found guilty as Acceſſaries, they ſhould not have their Clergies, which at the time of committing the Fact Acceſſaries to Murder were allowed to have. It is true, to declare or enact a Fact, after it is committed, to be a Crime, which when committed was in itſelf none, ſuch as tranſporting Wool beyond Sea, and the like; would be high Injuſtice.

Remarks on Colledge's *Trial.*

BUT to return whence I have digreſs'd, *Fitzharris* being executed according to his Sentence, though there was great grumbling amongſt the Proteſtants, that thoſe who ſet him on work were conceal'd, and never like to be diſcover'd now he was dead; yet all was quiet, and the Conſpirators, who reſolv'd, though *Fitzharris* miſcarried in his Deſign, yet the *Plot* ſhould go on; but what it ſhould be, or where the Scene of it ſhould be laid, or who the *Plotters* ſhould be, they were not well reſolv'd.

Great Noiſe of Warrants being iſſu'd out there was, but at laſt all center'd in an inconſiderable Fellow, one *Stephen Colledge*, a Joyner by Trade, who for his Honour, as a Priſoner of State, was committed to the Tower for High Treaſon. At firſt it was deſign'd to lay the Scene in *London*, and accordingly a Bill of Indictment of High Treaſon was exhibited to the Grand Jury (whereof *Wilmer* was Foreman) at the Seſſions-Houſe: But the Buſineſs of *Fitzharris* was ſo new, and ſmelt ſo rank, that the Bill could not be digeſted, but was ſpew'd out with an *Ignoramus*; for which *Wilmer* was afterwards forc'd to fly his Country.

Then it was reſolv'd the Scene ſhould be at *Oxford*, and accordingly the King's Counſel, with *Iriſh* Witneſſes, at the Aſſizes, poſt thither, and prevail with the Grand-Jury to find the Bill; but by what Arts is not known, for he was privately ſhut up by them: and I ſhould wonder, if he, who frequently, in the hearing of thoſe who underſtood better than himſelf, had Aſſurance enough to impoſe upon the Courts, ſhould ſcruple in private to impoſe any thing on an ignorant Jury.

I know not how long the Practice in that Matter of admitting Counſel to a Grand-Jury hath been; I am ſure it is a very unjuſtifiable and unſufferable one. If the Grand-Jury have a Doubt in point of Law, they ought to have recourſe to the Court, and that publickly, and not privately, and not rely upon the private Opinion of Counſel, eſpecially of the King's Counſel, who are, or at leaſt behave themſelves as if they were Parties.

It is true, it is ſaid they are upon their Oaths; and though it be not expreſs'd in their Oaths, that they ſhould do Right between the King and Subjects, yet that is imply'd in the Oath, I agree. But have they behav'd themſelves as if they were under an Oath? Beſides, all Men are not capable of giving Advice to be rely'd on in ſo great a Matter as Life; but the Manner of doing it being in private can never be juſtify'd. I know, in *Fitzharris*'s Caſe, the King's Counſel were cajoling the Grand Jury in private for ſome Hours: but I did not think fit to take notice of it in that Trial, becauſe I think both the Grand and Petty-Jury did very well; they acted according to the beſt of their Underſtanding, which is all that God or Man requir'd of them; they aſked pertinent Queſtions, they were over-ruled in ſome, not fully anſwer'd in others; not that I think either of them gave a Verdict according to Law upon the Fact, as it appear'd upon the Evidence; but that was not the Fault of the Jury, but of the King's Counſel, and of the Court, who miſled the Jury. I thought it more proper to take notice of it in this Trial, wherein the firſt Bill was rejected by an underſtanding Jury, and all Men wonder'd how the ſecond came to be found *Billa Vera*: and, for that Reaſon, one of the King's Counſel boaſted at Court, of his Service and cunning Management in the matter.

The Bill being found, the next matter was to bring the Priſoner to his Trial: and as he had more Honour than what uſually is beſtow'd on ſo mean a Man to be committed to the *Tower*, tho' in truth it was to keep him from all means of Defence; ſo to carry the matter on, he was allow'd to have, by order of the King and Council, a Counſel and Sollicitor to come to him, and adviſe him for his Defence at all Events; a Favour deny'd to *Fitzharris*, for his Counſel was to adviſe to the matter of the Plea only: but that Favour in ſhew was only to betray him, as ſhall be ſhewn. And a third Favour he had, which no Man of his Quality ever had; there were then three of the King's Counſel ſent from *London*, and all the Counſel that could be pick'd up upon the Spot, which were three more, and no leſs than four Judges to proſecute and try him; but that was to make ſure work of him.

The 17th of *Auguſt*, 1681, he came to his Trial: his Indictment, as to part, was in common Form for Treaſon, but particularly for deſigning to ſeize the King's Perſon at *Oxford*, mixt with Words he ſhould ſay, as, That there was no good to be expected from the King, he minded nothing but Beaſtlineſs, and that he endeavour'd to eſtabliſh Arbitrary Power and Popery. To which being requir'd to plead, he deſir'd a Copy of the Indictment, a Copy of the Jury, to know upon what Statute he was indicted, and Counſel to adviſe him whether he had any thing pleadable in Bar; all which were deny'd him. Then he deſir'd he might have his Papers, which were taken from him after he was brought from the Priſon, and before he came into Court, at an Houſe over-againſt the Court; for ſo it ſeems the King's Counſel had order'd the matter, that the Goaler *Murrel*, and the Meſſenger *Sawel*, after they had him out of the Priſon, ſhould run him into an Houſe, and take away all his Papers, which they believ'd were the Inſtructions, as in truth they were, of the Counſel aſſign'd him when in the *Tower*, and bring the Papers to them; whereby they would not only diſable him of his Defence, but they could be better inſtructed how to proceed in a way for which he had not provided himſelf of any Defence.

Murrel and *Sawel* did as the King's Counſel directed them. Much wrangle there was whether he ſhould have his Papers or not; all the Court agreed he ſhould not have them till he had pleaded *Guilty*, or Not *Guilty*; and afterwards he ſhould have the Uſe of ſome, and not of others, becauſe they did not appear to be written by himſelf, but by ſome Counſel or Sollicitor; and as they ſaid, none is allowed in Treaſon, unleſs aſſigned by the Court. The Chief Juſtice *North* ſaid, they were not taken away by him; but, ſays *Colledge*, they were taken away by the Keeper, under pretence of bringing them to his Lordſhip. The Court ſaid they knew not what Papers he meant, and knew nothing of it: he ſaid, the Indictment mention'd ſomething of Miſdemeanor, as well as Treaſon, but he knew not how to make his Exceptions without his Papers. I have thought fit to mention all theſe things, becauſe this Trial was the Inlet to all that followed, and gave Encouragement to ſpill nobler Blood. The Injuſtice of the Violence us'd to the Priſoner, muſt be meaſur'd from the Reaſons given for it, that the Papers were Inſtructions from Counſel and Sollicitors, and none in Law was allow'd in Treaſon. 'Tis true, no Counſel are allow'd for the Priſoner in a Trial upon an Indictment of any Capital Matter; but in an Appeal for Capital Matters, Counſel are allow'd even on the Trial. The Reaſon given, that the Indictment is the Suit of the King, and no Counſel or Witneſs is allowable in a Capital Matter againſt the King, is fooliſh, as ſhall be hereafter ſhown; and as vain is the Reaſon that the Judges are Counſel for the Priſoner, which they ought to be *: but I doubt it will be ſuſpected, that in this Caſe, and many others, they did not make the beſt of their Client's Caſe; nay, generally have betray'd their poor Client, to pleaſe, as they apprehended, their better Client, the King: for ſo they ſay they are to be Counſel likewiſe for the King in Indictments, that is to ſay, they are to be indifferent and upright between both, ſo certainly they are to be in Appeals; therefore that is not the Reaſon why no Counſel is allowed the Priſoner in the Indictment: but the true Reaſon in probability is, that the Priſoners in Indictments are generally ſo very poor that they could not be at the charge of having Counſel, and ſo Non-uſage gave colour of a Law.

The other Reaſon my Lord *Coke* gives for it, *viz.* that much of the Truth may be diſcern'd by the Priſoner's Behaviour, or Anſwers, which would be conceal'd if he ſpoke by another, is not ſatisfactory; for the ſame is to be ſaid in an Appeal. As to the Publick, 'tis not material whether a Man is proſecuted and puniſh'd by an Indictment, or an Appeal; and that Appeals are leſs frequent than Indictments, is only that the firſt is more chargeable than the laſt; for though we hear not of late of any Appeals but in Murder, yet they lie in Robbery, Burglary, Felony, and in all Crimes at Common Law puniſhable by loſs of Life or Member: but though the Rule in Indictments is, That no Counſel is allow'd, yet it is confin'd to the Trial. No Law, Common or Statute, nor any Uſage, ſays, a Priſoner ſhall not have Counſel to adviſe him before or after the Trial; and in Murder, and all other Crimes, it is always admitted; and why not in Treaſon?

In Treaſon, ſay ſome, 'tis criminal for one to adviſe or ſollicit for the Priſoner; and the King's Counſel ſaid, he had known one indicted for being a Sollicitor for one in High-Treaſon; and ſays the Court, it is criminal for one to be Sollicitor or Counſel in Caſes of High Treaſon, unleſs aſſign'd by the Court: and whether it be ſo or no, is worth Inquiry.

Firſt, No Law-Book as to this Matter makes any difference between Treaſon, and other Crimes; and Adviſing and Solliciting is ſpoken of in general Terms; which being reduc'd to Particulars, will ſhew the Abſurdity of it.

Suppoſe I, obſerving the Indictment on which the Priſoner was arraignd, was erroneous, and ſhould therefore adviſe him to move and quaſh it for that Error: for, ſay I, if you ſhould be try'd on this Indictment, and found guilty, unleſs you move in Arreſt of Judgment, you will be attainted, and then you can take no advantage of that Error; and if you be acquitted, you may be indicted again, and try'd again, becauſe the firſt Indictment was erroneous.

If this be Law, as none can deny it, is it not lawful to adviſe him; and it is not fit for the Court to quaſh the Indictment faulty, notwithſtanding all the Cant of Dilatories, Subterfuges, and defending himſelf by plain Matter of Fact. Or ſuppoſe I adviſe in Fact, that I hear that ſuch

* 2 Co. *Inſt.* 178.

a Witneſs

a Witneſs is come againſt him, I know he is hired to do the Jobb, and I will prove it on him if call'd: Or ſuppoſe I tell him, I know ſuch a Witneſs is convict of Perjury, and if he will call me, I will produce the Records of his Conviction; can any Lawyer ſay theſe things are criminal? But if I ſhould adviſe a Priſoner to eſcape out of Priſon, ſhewing him the way of doing it, it is criminal.

In all Caſes comforting a Traitor is Treaſon *; but it is meant where you do it to keep him from Juſtice †; for elſe feeding a Traitor in Priſon is Treaſon, which none will affirm ‡. So that reducing general Words to particular Facts, clears the Sophiſtry of them: nor is it criminal to be a Sollicitor in Treaſon, for where there is no poſitive Law, as in this Caſe there is not, natural Reaſon muſt take place; and better Reaſon cannot be given than what the Priſoner in this Caſe gave: If a Man be coop'd up, and not ſuffer'd to go about his Buſineſs himſelf, and no Friend muſt be employ'd to do it for him, how is it poſſible for him to make his Defence? I know it is ſaid his Innocency muſt defend him; but the Folly of that Saying ſhall be ſhewn in another place. But ſay they, The Court ſhall aſſign him a Counſel and Sollicitor; but when, and for what? only for a Point of Law. May not a Priſoner want a Sollicitor for a Matter of Fact? Suppoſe he had occaſion for a Witneſs which he could not readily find, or occaſion for a Copy of a Record, for want of which Mr. *Corniſh* ſuffer'd; was it not reaſonable for him to have a Sollicitor? And when ſhall the Court aſſign him a Sollicitor? only when the Priſoner comes upon his Trial, and then it is too late to have any uſe of him; as *Colledge* was arraign'd at twelve, and try'd at two o'clock the ſame Day; and as was Mr. *Corniſh*'s Caſe. But, ſays the King's Counſel, they had known one indicted for High-Treaſon for being a Sollicitor in ſuch a Caſe, though I do not believe it; yet that Authority goes no farther to prove the Matter, than an Indictment I knew againſt a Perſon once, for ſtealing an Acre of Land; and againſt another for wickedly and deviliſhly breaking an Award, whereby two unjuſt Arbitrators directed to the Priſoner to convey his Land to a certain Lord, without any Satisfaction or Recompence, prov'd thoſe Matters to be Felonies.

But though a Priſoner may be adviſ'd, yet that Advice muſt not be reduc'd to writing. Then ſuppoſe one Man's Memory be good, and can bear all the Advice given him, and another Man's Memory bad, and cannot do it; Is not the laſt hang'd for having a bad Memory, rather than for his Crime? But though it may be reduc'd to writing, yet it muſt be his own Hand-writing, and not another's; how ridiculous is the Diſtinction? Suppoſe the Priſoner cannot write, then he is hang'd for his Parent's Fault or Misfortune, for not educating him, or for not being able to educate him better.

Which is ſomewhat of kin to the late Practice in the Weſt, where many Men were hang'd for having old *Jewiſh* Names, as *Obadiah*, or the like, with a Jeſt, that their Godfathers hang'd them. But ſuppoſe it is not lawful in general to be a Counſel or Sollicitor, with, or to a Priſoner committed for High-Treaſon; yet the Proſecution being the King's, he may give a Privilege which the Law of Courts doth not allow, and in this Caſe it was ſo done: for, to the Confuſion of thoſe who did this Injury, and of thoſe Judges who would not do the Priſoner Right, they have printed the Orders of the King and Council, which appointed Mr. *Weſt* and *Aaron Smith* to be his Counſel and Sollicitor.

If it was lawful for the Priſoner to have Counſel, and to have Advice in writing; it was very unlawful, and as high a Miſdemeanour in the King's Counſel to order his Papers to be taken away, as they were capable of being guilty of; both the Priſoner and the Matters of his Defence being under the Protection of the Court.

It is not an ancient Practice the ſeizing of Papers, though of late us'd; it began, I believe, upon my Lord *Coke*, whoſe Papers were ſeiz'd and carried to the Secretaries Office, upon the like Pretences as of late, and when return'd, were guilty of many Bonds and other Securities, to a great many thouſand Pounds value, which never came to light. It was afterwards practis'd upon ſome Members of Parliament, and, as I remember, voted illegal, as undoubtedly it is: for though ſometimes you may meet with Papers which may be Evidence againſt the Priſoner; yet it is poſſible that other Papers than the Priſoner's may be mix'd with his to make good an Accuſation; nay, which is worſe, ſome of the Papers may be withdrawn, which may be the only Matter of his Defence, and that hath been often practis'd. And I cannot but remember a Story about this Matter: When Sir *William Jones* died, it was ſaid, that one from *Whitehall* offer'd Sir *William Jones*'s Servant a great Sum of Money but to let him ſearch his Maſter's Study to find a Paper which would diſcover great Matters. A certain Perſon diſcourſing with a Privy-Counſellor about it, the Privy-Counſellor ſaid, It was not true; for, ſays he, if we had had a mind to have done it, could we not ſend a Meſſenger on pretence of ſearching for treaſonable Papers, and bring all the Study to *Whitehall*, and keep what we would of them?

But though that hath been often practis'd, yet this was the firſt time that ever a Priſoner had the Inſtructions for his Defence taken away from him; and the Manner was worſe than the thing, it being done juſt as he was coming to his Trial, relying upon his Writing, not his Memory, for his Defence; beſides the Agony ſo great an Injury put him in, when he had ſo great a Concern upon him, as the Trial for his Life, and he could not but know by all that Preparation, that it was more than ten to one againſt him: all which is well ſeen in his Trial, where he ſo pathetically and ſenſibly preſs'd the Court for Juſtice in this Matter, which they excus'd with ſuch mean Anſwers, that all Mankind muſt ſee they were ſatisfy'd of the Injuſtice, and were reſolv'd not to do him Right: They knew not which way he came by the Papers, they knew not but he may be criminal who brought them him; they knew nothing of his Papers, they knew not what Papers he meant; that his Lordſhip did not take them away, and ſuch-like ſtuff: as if it was not the Duty of the Court to relieve the Priſoner againſt the Oppreſſion of any ſuch Perſons but themſelves; elſe why did they not aſk *Murrel* and *Sawel* who ſtood by, and were charged with taking them, for the Papers, and have ſatisfy'd themſelves of them? But in truth they knew before what they were. And *Colledge* was a true Prophet, when finding his Life ſo beſet, he ſaid, This was a horrid Conſpiracy to take his Life: but it would not ſtop there, for it was againſt all the Proteſtants of *England*. And the Rule the Court made at laſt was as unjuſt, That he ſhould have the uſe of ſome of his Papers after he had pleaded not Guilty, but not before; for ſuppoſe there was Matter in them which could not be made uſe of after ſuch Plea, as a Plea to the Juriſdiction of the Court, a Pardon, otherwiſe acquitted, and the like, could not be pleaded, or advantage taken of them after not Guilty pleaded; although there was not ſuch, yet there might have been ſuch Pleas for ought the Court knew. How unjuſt then was it for him to plead not Guilty before he ſhould have the uſe of his Papers? But there was Matter in them for quaſhing the Indictment; and he hinted ſo much to the Court, as that the Indictment contain'd Crimes of different Nature, as Treaſon and Miſdemeanour, and I think it was good Cauſe to quaſh the Indictment.

In all Civil Matters, two Matters of different Natures cannot be put into one Action, as Debt and Treſpaſs; two Capital Crimes of Dictment Natures cannot be join'd in one Indifferent, as Murder and Robbery: and for the ſame, and another Reaſon, Treaſon and Miſdemeanour cannot be join'd in one Indictment; for the Jury may obſerve, that one part of the Indictment, which in itſelf is but Miſdemeanour, as that he ſaid, The King minded nothing but Beaſtlineſs, *&c.* though charg'd in the Indictment as Treaſon, was prov'd, and not the material Parts of the Indictment, as deſigning to ſeize the King's Perſon, *&c.* and finding ſome part of the Indictment prov'd, might find him Guilty generally, which extends to every Article of the Indictment, and ſo the Jury deceiv'd, and the Priſoner in danger; or ſuppoſe he was acquitted of ſuch an Indictment, if it ought to have been quaſh'd, whether the Priſoner ſhew the Error or not, he may be try'd again upon another good Indictment for the ſame Treaſon. If therefore what he offer'd was an Error, or but like an Error in the Indictment, by the Law which favours Life, and the jeopardy on Life, the Court ought not to have try'd him on that Indictment, but have directed another Indictment to have been found. It is a vain Objection to have ſaid, That that would have been troubleſome. Is the Miſchief of that comparable to that of putting a Man twice in jeopardy of his Life for the ſame thing? But it would have been a Delay. I ſay none; for there was a Grand Jury in Court, and within the two Hours time the Court adjourn'd (to give the King's Counſel Opportunity of viewing the Priſoner's Papers which were taken from him, and to conſider of the Method of his Proſecution by them, which they did, and alter'd it from what they at firſt deſign'd it) the King's Counſel might have had a new Bill found; but peradventure they could not prevail with that Grand Jury to have found a new Bill; they remembred they had ill luck with the firſt Bill at *London*, which I believe was the true Reaſon: but I'll do the Court no Injury, in ſuppoſing that to be the Cauſe of the Adjournment which was not; 'tis true, in the printed Trial, 'tis pretended they adjourn'd in order to Dine; yet thoſe that knew the Adjournment was by the Direction of the King's Counſel, and overheard their whiſpering with the Chief Juſtice (which is both an indecent and an unjuſt thing, and is neither better nor worſe than a Plaintiff or Defendant's whiſpering a Judge while his Caſe is before him trying); and I know that the Judges had breakfaſted but a little before, and had no great Stomach to their Dinners, and therefore believe, that that before aſſign'd, and not what was pretended, was the true Cauſe: They might better have put off their Dinner to their Supper, than their Supper to their Breakfaſt, as they did, the Trial laſting till early next Morning.

But becauſe of Irregularities of Court and Counſel, in all theſe Matters, are ſhifted off and excus'd by two Sayings not underſtood generally; the firſt whereof is, That the Court is to act for the King, and the Counſel are for the King, and no Perſon muſt come near the Priſoner, to the Prejudice of the King, as in *Fitzharris*'s Caſe was often ſaid; a Witneſs was permitted to go on in an impertinent Story, of a Tranſaction between him and my Lord *Shaftesbury*, in my Lord *Ruſſel*'s Trial, of which the Priſoner complain'd that it was deſign'd to incenſe the Jury; and though the Chief Juſtice declar'd it was not Evidence, yet a great while afterward he went on in a like manner: nay, the Counſel in ſumming up the Evidence, repeated the ſame Matter, which was permitted becauſe it was *for the King*; and yet, when the Earl of *Angleſea* began to ſay what the Lady *Chaworth* told him, he was ſnubb'd, and cut ſhort; and Mr. *Edward Howard* was ſerv'd the ſame Sauce, becauſe it was *againſt the King*: It is fit, therefore, to know what is meant in Law by thoſe Words. No body doubts what the Courts or King's Counſel of late Days meant, but in Law they are not ſo meant: for though many things are ſaid to be the King's, as the Protector of his People, and more concern'd in their Welfare than any private Perſons; yet they are ſo in Preſervation, and not in Property or Intereſt. The Highways are the King's, in preſervation for the paſſage of his Subjects; and whoever obſtructs them wrongs the King, as he is hurt when his Subjects are hurt; but in Property, the Soil generally belongs to private Perſons. The King is hurt when his Subjects are oppreſs'd by Force, becauſe he has engag'd to defend them; and therefore the Offender is puniſh'd by the King, to deter the Offenders, and others, from committing the ſame Offences; which is for the benefit of the Publick. But as a Man may be oppreſs'd by open Force, ſo he may be oppſeſs'd by private Inſinuations and falſe Accuſations, and the King has engag'd to defend his Subjects from ſuch; not that it is poſſible to prevent them, but by conſequence, that is, by puniſhing ſuch as ſhall be found guilty of thoſe Crimes, which heretofore were puniſh'd with the higheſt arbitrary Puniſhments we read of. The Conſequence is, that it is for the King to puniſh Offenders, to acquit the falſe accus'd, and to puniſh the falſe Accuſers; that is to ſay, in all Caſes to do right according to Law and Truth.

Surely Queen *Elizabeth* gave the beſt Explanation of the § Words, when the Lord *Burleigh*, ſeeing Sir *Edward Coke*, the then Attorney-General, coming towards her, he ſaid, *Madam*, here is your Attorney-General, *Qui pro Domina Regina ſequitur*. Nay (*ſays ſhe*) I'll have the Words alter'd, for it ſhould be, *Qui pro Domina Veritate ſequitur*.

For the King, and *for Truth*; they are ſynonymous Words; *for* the King *againſt the* Truth is a Contradiction. And the Judges and King's Counſel having taken an Oath to adviſe the King according to the beſt of their Cunning, which is according to Law and Truth; if therefore the King's Counſel uſe means, and the Court permit them ſo to do, to ſuppreſs Truth, or to diſable the Priſoner from making his Innocence appear, as in *Colledge*'s

* *Co.* Inſt. 138. † 2 *Co.* Inſt. 183. 2 *Co.* Inſt. 134. ‡ H, P. C, 218. § 3 Cok. Inſt. 79.

ledge's Case was done, if they urge Things as Evidence of the Crime whereof the Prisoner is accus'd, which by Law are not Evidence, as in this Case, in the Lord *Russel's* Case, Colonel *Sidney's* Case, Mr. *Hampden's*, and Mr. *Cornish's* Case, and in many more they did, and as in some of them shall be hereafter shewn. If they insinuate any Fact as Evidence, which is not prov'd, as in my Lord *Russel's* Trial, that my Lord of *Essex* kill'd himself; if they wrest as Evidence of the Fact, what in Sense is not so, as in Colonel *Sidney's* Case, the writing his Book, (nay, for any Thing appeared, it was writ before King *Charles* the Second came to the Crown) they are Counsel against the King, being against Truth, as well as against the Prisoner.

I think no Man will deny the Truth of this Proposition, That it is as much the King's Interest to have an Innocent accus'd of Treason, acquitted, as it is to have a Nocent accus'd of Treason, convicted. If that be true, then let any one shew me a Reason, if he can; for there is no Law against it, why he may not have the same Liberty of clearing his Innocence, as the Prosecutor hath of convicting him; I mean by free and private Access of all Persons to the Prisoner, as is us'd in all other capital Matters. If it be said he may get some to corrupt the Witnesses against him, or suborn others for him, the same may be said in all other Matters; but in Treason that is not a likely Matter, for generally the Prisoner never knows what he is accus'd of, and consequently cannot know his Accuser, nor how to provide a Counter-Evidence, till he comes to be arraign'd, and then it is too late: for generally he is presently tried after his Arraignment, as was the Case of *Colledge*, and my Lord *Russel*, and Mr. *Cornish*; and Persons committed for Treason are so much the less able to corrupt or suborn Witnesses, than any other Criminals, that they generally, according to the late Practice, have no Accuser brought Face to Face to them, on their Commitment as all other Criminals have, who always are committed upon an Accusation made upon Oath in their hearing, and their Defence heard before their *Mittimus* made; and whatever the Pretence may be, yet in Experience, it is found, that more Perjuries are committed in Prosecutions for Treason by the Accusers, than by the Witnesses for the Prisoner.

One reason is, A Witness in Treason is more difficultly convicted than in any other Crime: For Treason is an *Ignis fatuus*, 'tis here and there, as *Colledge* was first in *London*, then in *Oxford*; it is not confin'd to Place or Time, as all other Crimes are; in all other Crimes, as Murder, Robbery, or the like, it must be proved to be within the County where laid; it must be of the Person named in the Indictment, which are Evidences of Fact, which in some Sort prove themselves. And there was but one that I remember (for *Oates* I do not count one) was ever justly convicted of Perjury in Treason, and that too was for Want of Cunning, for he foolishly swore to Time as well as Place, which a Witness in Mr. *Hampden's* Trial would never be brought to do: Besides Malice and Revenge, which in Prosecutors and Accusers in Treason are generally the Motives, go farther than Money or Kindness, which if us'd in any Case, are the Motives of false Witnesses for the Prisoner.

Now as *for the King* and *for the Truth* are the same, so *for the King* and *for the Law* are the same. The Laws are the King's, as he is to see the Execution and Preservation of them; so *for* the King *against* the Law is a Contradiction.

Therefore to try a Prisoner upon a vicious Indictment, as was done in *Colledge's* and Colonel *Sidney's* Cases, is against the King as it is against the Law, for by that means he is in danger to be hang'd if convicted; or tried twice, if acquitted; which is against Law.

It is no Salvo of the Matter what the Judges said in *Colledge's* Case, that the Evidence of Misdemeanour is no Evidence of Treason; for the same may be said in an Indictment of Murder and Robbery; nor that the Judges would take care to inform the Jury which was Evidence of Treason, which of Misdemeanour, which they promis'd to do, but were not as good as their Words, as shall be shewn: for the Court may forget so to do, and the Jury may forget what the Court said to them of that Matter.

But notwithstanding all this, if the Prisoner was innocent, there could be no Harm done to him, for his Innocence would defend him: This was a Saying, and as mortal it was to *Fitzharris*, to *Colledge*, to Colonel *Sidney*, to Mr. *Cornish*, and several others, as was the Letter ⊖ amongst the *Greeks*. It is true, my Lord *Coke* us'd the Expression, but in another Sense than that of late practis'd. I would fain know what they meant by the Expression; Is it, that no Man will or ever did swear falsely against a Prisoner in Treason? If that be true, how came the same Persons to be so violent against *Oates* for what he swore against *Ireland*? or do they mean, that, let an Accuser swear never so violently and circumstantially against a Prisoner, yet if he be innocent it will do him no harm? If that be true, I would fain know how the Prisoner shall escape; is it that his Innocence shall appear in his Forehead, or an Angel come from Heaven and disprove the Accuser? Neither of which we have observed, tho' all have said, and I believe, that some Persons have been very innocently executed. Or shall the Accuser be detected by the bare Questions of the Prisoner? That I think will not be neither; and therefore to instance in the only Person who hath of late escaped in a Trial of Treason, where there was a Design against his Life, which was my Lord *Delamere*, if he had not had Witnesses to have prov'd the Persons mention'd to have been with him at the Place and Time sworn against him to be in other Places, it was not his Denial had serv'd his Turn, but he would have run the same Fate with my Lord *Brandon*. Nay, I am apt to think, had he been tried by a Jury of Commoners pack'd, as, at that Time, they usually were, he had not escap'd.

The Truth is, when I consider the Practice of late Times, and the Manner of Usage of the Prisoners, it is so very much like, or rather worse than the Practice of the Inquisition, as I have read it, that I sometimes think it was in order to introduce Popery, and make the Inquisition, which is the most terrible Thing in that Religion, and which all Nations dread, seem easy in respect of it. I will therefore recount some undeniable Circumstances of the late Practice: A Man is by a Messenger, without any Indictment precedent, which by the common Law ought to precede, or any Accuser or Accusation that he knows of, clapt up in close Prison, and neither Friend or Relation must come to him; he must have neither Pen, Ink or Paper, or know of what, or by whom he is accus'd; he must divine all, and provide himself a Counter-Evidence, without knowing what the Evidence is against him. If any Person advise or sollicit for him, unless assigned by the Court by which he is try'd, they are punishable: He is try'd as soon as he comes into the Court, and therefore of a Sollicitor there is no Occasion or Use; if the Prisoner desires Counsel upon a Point of Law, as was done in my Lord *Russel's* Trial, the Counsel nam'd must be ready to argue presently, and the Court deliver their Judgment presently without any Consideration. The Prisoner indeed hath Liberty to except to thirty-five of the Jury peremptorily, and as many more as he hath Cause to except to, but he must not know beforehand who the Jury are; but the King's Counsel must have a Copy of them: He must hear all the Witnesses produced to prove him guilty together, without answering each as he comes, for that is breaking in upon the King's Evidence, as it is called; tho' it hold many Hours, as it happen'd in most of the Trials: he must not have any Person to mind him what hath been sworn against him, and forgotten by him to answer; for if that were allow'd, the Prisoner perhaps may escape Hanging, and that is against the King: There is a Proclamation to call in all Persons to swear against him, none is permitted to swear for him; all the impertinent Evidence that can be given is permitted against him, none for him; as many Counsel as can be hir'd are allow'd to be against him, none for him. Let any Person consider truly these Circumstances, and it is a Wonder how any Person escapes: it is downright tying a Man's Hands behind him, and baiting him to Death, as in Truth was practis'd in all these Cases. The Trial of *Ordeal*, of walking between hot Iron Bars blindfold, which was abolished for the Unreasonableness of it, tho' it had its saying for it too, that God would lead the Blind so as not to be burnt if he were innocent, was a much more advantageous Trial for the Suspected than what of late was practis'd, where it was ten to one that the Accus'd did not escape. If any of these Things have been legally practis'd, I have nothing to say against it, but I have never read any Thing of Common or Statute Law for it. And I can with better Assurance say, than any Person who hath practis'd these Things, that no Law in *England* warrants them; and if not, then consider the Unreasonableness of these Methods.

There is yet one Objection to be answer'd; which being a very great Hardship upon the Prisoner, gives some Colour of imposing other Hardships upon him, to wit, that a Witness cannot be examin'd for the Prisoner on his Oath, in a Trial upon an Indictment of a capital Matter. It is not because the Matter is Capital, for then no Witnesses ought to be examin'd upon Oath for the Appellee in a capital Matter: Neither is it because it is against the King, for then no Witness ought to be examin'd on Oath for the Defendant in a Trial upon an Indictment of any criminal Matter; yet in Indictments of all criminal Matters, not capital, 'tis permitted to the Prisoner.

To say Truth, never any Reason was yet given for it; or I think can be, if you believe my Lord *Coke*, 3*d Instit. fol.* 79. of which Opinion my Lord *Hale* is, in his Pleas of the Crown *, that that Practice is not warranted by any *Act of Parliament*, Book-Case, or antient Record, and that there is not so much as *scintilla Juris* for it: for he says, when the Fault is deny'd, Truth cannot appear without Witnesses. As for what is pretended, that it is swearing against the King, and therefore it is not allow'd of; 'tis a canting Reason, which, put into sensible *English*, a Man will be asham'd to own. And as slight is the Reason, that it being a Matter of so high a Moment as a Man's Life, the Prisoner will be the more violent and eager, and the Witnesses may be more prevail'd upon to swear falsely, more than they would be in a Matter of less Moment: the Weakness of that Reason hath been in Part, and shall be further shewn. I think none will deny, but the End of Trials in any Matters Capital, Criminal, or Civil, is the Discovery of Truth: Next, 'tis as necessary for the Prisoner to have Witnesses to prove his Innocence, as it is for the King to have Witnesses to convict him of the Crime: which Proposition is agreed by the Practice, it being always permitted, that the Prisoner shall produce what Witnesses he can, but they are not to be upon Oath. In the last place, since Truth cannot appear, but by the Confession of the Party, or Testimony of Witnesses of both Sides, it is necessary to put all the Engagement as well on the Witnesses of Part of the Prisoner, as of Part of the King, to say the Truth, the whole Truth, and nothing but the Truth, as the Nature of the Matter will bear: and as yet no better Means has been found out than an Oath; which if deny'd to the *Prisoner's Witnesses*, either he is allow'd too great an Advantage to acquit himself, or he is not allow'd enough.

If all that his Witnesses say without Oath, shall have equal Credit, as if they swore it, then he hath too much Advantage; for Men may be found who will say falsely, what they will not swear, as is plain enough. How often doth a Defendant say in a *Plea* at Law, that a Deed is not his, which yet in an Answer in *Chancery*, he will confess to be his? If his Witnesses shall not have Credit because not sworn, to what Purpose then is it permitted him to produce them? If they shall have Credit, but not so much as if sworn, I ask how much Credit shall be given? Is it two, three, or ten Witnesses without Oath shall be equivalent to one upon Oath? And besides, that Question never was or can be answered, what Credit shall be given them? There is an unreasonable Disadvantage put on the Prisoner, that a Witness produced on his Part, of equal Credit with the Witness against him, shall not have equal Credit given him, because he is not on his Oath; whereas he is ready to deliver the same Things on his Oath, if the Court would administer it to him: and yet that Difference was taken in *Fitzharris's* Case, as to the Credibility of *Everard* and *Oates*, the first being upon his Oath, the last not.

I do not offer this as any Reflection upon the late Proceedings, but as a Reason why Matters in capital Proceedings ought not to have been carried further than heretofore they were, against the Prisoner, by Example of so unreasonable a Practice.

But to return to the Trial of *Colledge*, which came on in the Afternoon, when the Attorney insisted that the King's Witnesses ought not to be

* Tit. *Evidence*, p. 264. *See* Hist. P. C. Vol. II. cap. 37. p. 283.

examin'd out of the hearing of each other, in which he was over-ruled, but the Rule not obſerv'd, nor was it material: for the King's Counſel having the Priſoner's Writings, and by them obſerv'd how he intended to make the Witneſſes againſt him contradict themſelves, they did not produce ſuch Witneſſes as were not inſtructed to concur in the Evidence of the ſame Matter, but produc'd only ſuch as were inſtructed to give Evidence of diſtinct Matters. And therefore *Dugdale* was firſt produc'd, who gave Evidence of vilifying Words ſpoke of the King at ſeveral Times, at *Oxford* and *London*, by the Priſoner, to himſelf alone; that he ſhewed the Witneſs ſeveral ſcandalous Libels and Pictures, and ſaid he was the Author of them; and that he had a ſilk Armour, a Brace of Horſe-Piſtols, a Pocket-Piſtol, and Sword; that he ſaid, *he had ſeveral ſtout Men to ſtand by him, and that he would make uſe of them for the Defence of the Proteſtant Religion*; he ſaid, *the King's Party was but an Handful to his Party.* *Stevens* ſwore the finding of the Original of the *Raree-Show* in the Priſoner's Chambers. *John Smith* ſwore his ſpeaking ſcandalous Words of the King, and of his having his Armour; and that when he ſhew'd it the Witneſs, he ſaid, *Theſe are Things that will deſtroy the pitiful Guards of* Rowley; that he ſaid, *he expected the King would ſeize ſome of the Members of Parliament at* Oxford; *which, if done, he would be one ſhould ſeize the King*; that he ſaid, Fitzgerald, *at* Oxon, *had made his Noſe bleed; but before long, he hoped to ſee a great deal more Blood ſhed for the Cauſe; that if any, nay, if* Rowley *himſelf, came to diſarm the City, he would be the Death of him.* *Haynes* ſwore he ſaid, *Unleſs the King would let the* Parliament *ſit at* Oxon, *they would ſeize him, and bring him to the Block*; and that he ſaid, *the City had one thouſand five hundred Barrels of Powder, and one hundred thouſand Men ready at an Hour's Warning.* *Turberville* ſwore, he ſaid at *Oxford*, that *he wiſh'd the King would begin; if he did not, they would begin with him, and ſeize him*; and ſaid, *he came to* Oxford *for that Purpoſe.*

Mr. *Maſters* ſwore, that in Diſcourſe between him and the Priſoner, he juſtified the *Proceedings* of the *Parliament* in 1640, at which the Witneſs wondered; and ſaid, How could he juſtify that *Parliament* that rais'd the Rebellion, and cut off the King's Head? To which the Priſoner reply'd, That that *Parliament* had done nothing but what they had juſt Cauſe for, and that the *Parliament* which ſat laſt at *Weſtminſter* was of the ſame Opinion; that he called the Priſoner Colonel in Mockery; who reply'd, Mock not, I may be one in a little Time.

Sir *William Jennings* ſwore as to the fighting with *Fitzgerald*, and the Words about his Bleeding.

For the Priſoner.

Hickman ſaid he heard *Haynes* ſwear, *God damn him*, he car'd not what he ſwore, nor whom he ſwore againſt, for it was his Trade to get Money by ſwearing. Mrs. *Oliver* ſaid, *Haynes* writ a Letter in her Father's Name unknown to her Father. Mrs. *Hall* ſaid, ſhe heard *Haynes* own that he was employed to put a *Plot* on the Diſſenting-Proteſtants. Mrs. *Richards* ſaid, ſhe heard him ſay the ſame Thing. *Whaley* ſaid, *Haynes* ſtole a ſilver Tankard from him. *Lun* ſaid, *Haynes* ſaid the *Parliament* were a Company of Rogues for not giving the King Money, but he would help the King to Money enough out of the *Fanaticks* Eſtates. *Oates* ſaid, *Turberville* ſaid, a little before the Witneſſes were ſworn at the *Old-Bailey*, that he was not a Witneſs againſt the *Priſoner*, nor could give any Evidence againſt him; And after he came from *Oxford*, he ſaid, he had been ſworn before the Grand-Jury againſt the *Priſoner*, and ſaid, the Proteſtant Citizens had deſerted him, and *God damn him*, he would not ſtarve. That *John Smith* ſaid, *God damn him*, he would have *Colledge*'s Blood. That he heard *Dugdale* ſay, that he knew nothing againſt any *Proteſtant* in *England*; and being tax'd that he had gone againſt his Conſcience in his Evidence, he ſaid it was long of Colonel *Warcup*, for he could get no Money elſe: that he had given out that he had been poiſon'd, whereas in Truth it was a Clap. *Blake* ſaid, that *Smith* told him *Haynes*'s Diſcovery was a Sham-Plot, a Meal-Tub Plot.

Bolron ſaid, *Smith* would have had him given Evidence againſt Sir *John Brooks*, that Sir *John* ſhould ſay there would be cutting of Throats at *Oxford*, and that the Parliament-Men went provided with four, five, ſix, or ten Men a-piece; and that there was a Conſult at *Grantham*, wherein it was reſolv'd, that it was better to ſeize the King than to let him go, whereas he knew of no ſuch Thing: that he would have *Bolron* to be a Witneſs againſt *Colledge*, and told him what he ſhould ſay, leſt they ſhould diſagree in their Evidence; that he heard *Haynes* ſay, he knew nothing of a Popiſh or Preſbyterian Plot; but if he were to be an Evidence, he car'd not what he ſwore, but would ſwear any Thing to get Money. *Mowbray* ſaid, *Smith* tempted him to be a Witneſs againſt *Colledge*, and was inquiſitive to know what Diſcourſe paſſed betwixt him and my Lord *Fairfax*, Sir *John Hewly*, and Mr. *Stern*, on the Road; and ſaid, that if the Parliament would not give the King Money, and ſtood on the Bill of Excluſion, that was Pretence enough to ſwear a Deſign to ſeize the King at *Oxford.*

Everard ſaid, *Smith* told him he knew of no *Preſbyterian* or *Proteſtant Plot*, and ſaid, Juſtice *Warcup* would have perſuaded him to ſwear againſt ſome Lords a *Preſbyterian Plot*, but he knew of none; he ſaid *Haynes* told him it was Neceſſity, and hard Pay drove him to ſpeak any Thing againſt the *Proteſtants*; and being queſtion'd how his Teſtimony agreed with what he formerly ſaid, anſwer'd, he would not ſay much to excuſe himſelf; his Wife was reduc'd to that Neceſſity, that ſhe begg'd at *Rouſe*'s Door, and mere Neceſſity drove him to it, and Self-preſervation, for he was brought in guilty when he was taken up, and was oblig'd to do ſomething to ſave his Life, and that it was a Judgment upon the King or People; the *Iriſhmen*'s ſwearing againſt them was juſtly fallen on them, for outing the *Iriſh* of their Eſtates.

Parkhurſt and *Symons* ſaid, they had ſeen at *Colledge*'s Houſe his Arms, about the latter end of *November*. *Yates* ſaid, *Dugdale* beſpoke a Piſtol of him for *Colledge*, which he promis'd to give *Colledge*. And upon Diſcourſe ſome Time after the *Oxford* Parliament, *Yates* ſaid, *Colledge* was a very honeſt Man, and ſtood up for the Good of the King and Government. *Yes*, ſaid *Dugdale*, *I believe he does, and I know nothing to the contrary.* *Deacon* and *Whitaker* ſaid they knew *Colledge* was bred a Proteſtant, and went to Church, and never to a Conventicle that they knew of, and thought him an honeſt Man. *Neal*, *Rimington*, *Janner*, and *Norris*, to the ſame Purpoſe; and *Norris*, that *Smith* (in Company where was Diſcourſe of the Parliament-Mens being agreed to go to *Oxford*) ſaid, he hoped they would be well provided to go, if they did go. *El. Hunt* ſaid, a Porter, in her Maſter's Abſence, brought the Prints taken in *Colledge*'s Houſe eight Weeks before; and ſaid, *Dugdale* told her, after her Maſter was in Priſon, he did not believe *Colledge* had any more hand in any Conſpiracy againſt his Majeſty, than the Child unborn: and he had as lieve have given an hundred Pounds he had never ſpoke what he had; and that he had nothing to ſay againſt her Maſter, which would touch his Life.

Having ſummed up all the material Part of the Evidence in the Order it was given, for or againſt the Priſoner; let us ſee whether, upon the whole, an honeſt underſtanding Jury could, with a good Conſcience, have given the Verdict the then Jury did; or whether an upright Court could, with a good Conſcience have declared they were well ſatisfied in the Verdict given, as all the four Judges in that Caſe did, though the Chief Juſtice *North* only ſpoke the Words. And though it is too late to advantage the deceaſed, yet it will do right to the Memory of the Man, to whoſe dextrous Management on his Trial, many now alive owe the Continuance of their Lives to this Day. It was not their Innocence protected the Lord *Fairfax*, Sir *John Brooks*, and many others before-mention'd, and many not named in the Trial, but *Colledge*'s baffling that Crew of Witneſſes, and ſo plainly detecting their Falſhood, that the King's Counſel never durſt play them at any other Perſon but the Earl of *Shafteſbury*, as ſhall be ſhewn; and failing there, they were paid off, and vaniſh'd, and never did more Harm viſibly: what under-hand Practices they might be afterwards guilty of, I know not.

Who could believe any one of thoſe four Witneſſes, *Dugdale*, *Haynes*, *Turberville*, and *Smith*, if it were for no other Reaſon than the Improbability of the Thing; for (as *Colledge* ſaid) was it probable he ſhould truſt Things of that Nature with Papiſts, who had broke their Faith with their own Party, who could lay greater Obligations of Secrecy upon them than he was able to do? That he, a Proteſtant, ſhould truſt People who had been employed to cut Proteſtants' Throats? And neither of them ever diſcovered any of the Things they ſwore, till after the *Oxford* Parliament, tho' moſt of them were pretended to be ſpoken and tranſacted before.

Who could believe *Dugdale* in any of his Evidence againſt the Priſoner, when *Oates* teſtified againſt him, that he ſaid he knew nothing againſt any Proteſtants in *England*? And being tax'd by *Oates*, that he had gone againſt his Conſcience in his Evidence againſt *Colledge* to the Grand Jury at *London*, he ſaid, *It was long of Colonel* Warcup, *for he could get no Money elſe*; which is a plain Confeſſion he had ſworn wrong, and of the Cauſe for which he did it, and of the Perſon who induced him to do it. That he had given out that he was poiſon'd, whereas his Diſeaſe was a Clap: which was an ill Thing in him, as it imply'd a Charge of poiſoning him on other Perſons. And when *Elizabeth Hunt* teſtified againſt him, that he ſaid, after *Colledge* was in Priſon, that he did not believe *Colledge* had any more Hand in any Conſpiracy againſt the King than the Child unborn; and that he had as lieve have given an hundred Pound he had never ſpoken what he had; and that he had nothing to ſay againſt *Colledge* which could touch his Life: And when *Yates* teſtify'd againſt him, that when *Yates* ſaid *Colledge* was an honeſt Man, and ſtood up for the Good of the King and Government; *Yes*, ſaid *Dugdale*, *I believe he does, and I know nothing to the contrary.*

Who could believe *Haynes* in any Part of his Evidence againſt the Priſoner, when Mrs. *Hall* and Mrs. *Richards* ſaid, he own'd he was employ'd to put a Plot upon the Diſſenting Proteſtants? when *Whaley* teſtified againſt him that he was a Thief, and had ſtole *Whaley*'s Tankard? when *Lun* teſtify'd that *Haynes* ſaid the Parliament were a Company of Rogues for not giving the King Money; but he would help the King to Money enough out of the *Fanaticks* Eſtates? when *Hickman* teſtify'd againſt him he heard him ſay, *God damn him*, he car'd not what he ſwore, nor againſt whom he ſwore, for 'twas his Trade to get Money by ſwearing? When Mrs. *Oliver* ſaid, that he had writ a Letter in her Father's Name, without her Father's Knowledge? When *Bolron* teſtified againſt him, that he ſaid he knew nothing of a *Popiſh* or a *Preſbyterian Plot*, but if he were to be an Evidence, he car'd not what he ſwore, but would ſwear any Thing to get Money? When *Everard* teſtified againſt him, that he ſaid, Neceſſity and hard Pay drove him to ſay any Thing againſt the *Proteſtants*; and being tax'd that his Evidence againſt *Colledge* agreed not with what he had formerly ſaid, he ſaid, *he could not excuſe it, but his Poverty and Self-preſervation drove him to it?* Which was a plain Confeſſion of the Falſhood of his Evidence, and of the Reaſon of it; and added, it was a Judgment upon the King or People, the *Iriſhmen*'s ſwearing againſt them, for outing the *Iriſh* of their Eſtates: which can have no other Senſe, than the *Iriſhmen*'s forſwearing themſelves againſt the *Engliſh* was a Judgment, *&c.*

How could *Turberville* be believed in any Part of his Evidence againſt *Colledge*, when *Oates* teſtified againſt him, that he ſaid, a little before the Witneſſes were ſworn againſt *Colledge* at the *Old-Bailey*, that he was not a Witneſs againſt him, nor could give any Evidence againſt him; and yet afterwards, at *Oxon*, *Turberville* told him he had ſworn againſt *Colledge* to the Grand-Jury, and ſaid, the Proteſtant Citizens had deſerted him, and *God damn him, he would not ſtarve:* which Words, I think, need no Explanation.

And laſtly, how could *Smith* be believed in any Part of his Evidence againſt the Priſoner, when it was teſtified againſt him by *Blake*, that he ſaid *Haynes*'s Diſcovery was a Sham-Plot, a Meal-Tub Plot? The Meaning of the Words, I think, are well-known: That he would have had *Bolron* ſwear againſt Sir *John Brooks*, the Lord *Shafteſbury*, and *Colledge*, Things of which he knew nothing, and told him what he ſhould ſwear, leſt they ſhould diſagree in their Evidence. When it was teſtified againſt him by *Oates*, that he ſaid *God damn him*, he would have *Colledge*'s Blood? when it was teſtified againſt him by *Mowbray*, that he tempted *Mowbray*, to be a Witneſs againſt *Colledge* and Sir *John Brooks*, and was very inquiſitive to know what Diſcourſe he had with the Lord *Fairfax*, Sir *John Hewley*, and Mr. *Stern*, on the Road to *Oxon*; and ſaid, if the Parliament did not give the King Money, but ſtood on the Bill of Excluſion, that was Pretence enough to ſwear a Deſign to ſeize the King at *Oxon?* when *Everard* and many others teſtified he ſaid he knew of no *Preſbyterian* or *Proteſtant Plot.* Now, if *Colledge*'s Witneſſes were credited, it was impoſſible the King's Witneſſes could be credited; that was agreed by the Court to be true upon

the Trial. The Anſwer on the Trial was, that the King's Witneſſes were on their Oaths, the Priſoner's were not; which was a Reaſon in Words, but not in Senſe.

And ſurely what *Colledge* ſaid on that Matter, without any Knowledge in the Law, cannot be anſwer'd. *It is not fair Dealing*, ſaid he, *with a Man for his Life, becauſe the Witneſſes againſt him, upon their Oaths, deny the things the Witneſſes for him prove; therefore the Witneſſes againſt him muſt be believed, and the Witneſſes for him diſbelieved, when yet the Witneſſes for him were ready, on their Oaths, to maintain what they ſaid for him.*

Nor is the Law ſo: for taking the Law to be, that a Witneſs for the Priſoner ſhall not be ſworn, which is only made good by Practice; the ſame Law, that is to ſay Practice, is, that a Witneſs without Oath, for the Priſoner, is of equal Credit with the Witneſs againſt him upon Oath, and none can ſhew the contrary till of late Days.

To give one Example of many, where it was neceſſary for the Priſoner to produce a Witneſs to prove his Innocency, and where the Witneſs for him was as much believed as the Witneſs againſt him: There was a Perſon, whoſe Name I do not remember, arraign'd (at the ſame time that an Indictment of High Treaſon was endeavour'd to be found againſt the Lord *Shafteſbury*) for robbing another of Money, and of a hired Horſe, of which likewiſe the Perſon was robb'd. The robbing of the Money and a Horſe was proved by himſelf, and ſeveral others; but that the Priſoner was the Perſon that committed the Robbery, none poſitively ſwore but the Perſon robb'd; who likewiſe ſwore, that the Horſe on which the Priſoner was taken, was the Horſe taken from him; againſt which the Priſoner prov'd, by the Perſon of whom the Horſe was agreed to be hired, that the Horſe the Priſoner was taken upon, was not the Horſe he let to hire to the Perſon robb'd; whereupon the Priſoner was acquitted; and yet the Priſoner's Witneſs was not on his Oath, and the Perſon robbed was on his Oath: which, beſides that it proves the Matter for which it is brought, ſhews the Folly, as well as Injuſtice of the Practice of impriſoning Men, without letting them know for what, and without confronting them with the Witneſſes againſt them, upon the Commitment. For how could this Man have known what Witneſſes to produce, unleſs he had known what in particular he was indicted for? And how could he have ſent to ſuch Witneſſes, unleſs he had had the liberty of ſending to the Perſons who were to be Witneſſes for him? And it ſhews the Folly of thoſe Sayings, that a Man's Innocence muſt defend him, and that the Evidence againſt the Priſoner muſt be as clear as the Sun at Noon-day. All will agree that the Priſoner in this Caſe was innocent, and yet that alone, without producing a Witneſs to prove his Innocence, would have ſtood him but in little ſtead; and how could he have known what ſort of Evidence to have ready, unleſs he knew what he was accus'd of?

I do not mean what Crime he was accus'd of, as Treaſon, Murder, Robbery, Theft, or any other Crime; but unleſs he knew the Perſon robbed, when, where, and other Circumſtances; which, ſay ſome, is not to be permitted in Proſecutions of High-Treaſon; for if ſo, then no Man ſhall be hanged for High-Treaſon; unleſs there was as ſtrong Proof againſt him, as is requir'd in any Indictment of any capital Matter: and that, they ſay, is not to be expected in Treaſon; for no Man will call two Witneſſes to be Evidences of his Words or Actions, being Overt-Acts of his Deſign of High-Treaſon. The Objection is too fooliſh to be anſwer'd; for it is neither better nor worſe, than that if a Man ſhall not be hang'd for Treaſon without Evidence, he ſhall never be hang'd for Treaſon; for no Evidence, and Evidence which the Law rejects, is the ſame in Senſe, though different in Words: and as the Intent of the Mind is difficult to prove on the Part of the King, ſo is the Priſoner's Part of producing Counter-Evidence much more difficult; and therefore the Law hath taken care, by the Statute of *Edward* the Third, that the Intent ſhall be proved by an Overt-Act; and by the Statute of *Edward* the Sixth, that that Overt-Act ſhall be proved by two Witneſſes. And therefore, ſince the Law hath taken care that there ſhall be a ſtricter Proof in High-Treaſon than in any other Crime, for the Judges to ſay a leſs Proof may be admitted to convict one of High-Treaſon than of any other Crime, is very ridiculous; unleſs they will at the ſame time ſay, that the Parliament who made thoſe Statutes, were Men of little Underſtanding, and not to be regarded. And certainly, it was a good Counter-Evidence which was given in Behalf of the Priſoner, by ſome Witneſſes, though ſlighted by the Court, and not permitted by the Court to be given by others, that there were great Endeavours to ſet up Sham-plots, and charge the *Proteſtants* with them: For let any one ſhew me a Reaſon, why the Evidence of Sham-plots, though they do not immediately concern the Priſoner, is not as good Evidence for him, as the Evidence of a real Plot, in which he was not concern'd, is againſt him. The laſt was permitted to be given in Evidence againſt my Lord *Ruſſel*, Col. *Sidney*, and others; though the firſt was not permitted to many Witneſſes in this Trial, and it was a material Objection which *Colledge* made, *That there was no Proof of any Perſons being concerned with him in the Deſign of ſeizing the King.*

It was an unadviſed Anſwer the Court gave, that he alone might be ſo vain as to deſign it alone: For if from thence an Inference is made, as was inſinuated by the Court to the Jury, that therefore he did alone deſign it, it was an Evidence of his being a Mad-man, not a Traitor. Had the Evidence been of the miſchiefing the King by Means which a ſingle Perſon is capable of uſing, as Stabbing, Shooting, and the like, the Matter is not impoſſible; but it being by means which it is impoſſible for a ſingle Perſon to execute, it carries ſuch diſbelief with it, that it is impoſſible to find a Man in his Senſes at the ſame time guilty of it. And a Man that is *non compos Mentis*, if my Lords *Coke** and *Hale*† are to be believ'd, cannot be guilty of High-Treaſon within that Branch of the Statute, *compaſſing and imagining*, &c.

It is true, a Mad-man may be guilty of Treaſon, in attempting the King's Perſon; but for that he is no more ſaid to be puniſh'd, than Beaſts of Prey are when kill'd; which are more properly ſaid to be deſtroy'd than puniſh'd for the publick good. But if ſo good a Counter-Proof in *Colledge*'s Caſe was not made, as ought to have been, ſome Allowances ought to be made for the Priſoner's ignorance of what he was accus'd of, his uſage and ſtrict Impriſonment before his Trial, the ruffling him juſt before his Trial in the Manner before declar'd, the depriving him of his Notes, the giving an Evidence of many Hours long againſt him, before he was permitted to anſwer any Part of it. And the uſe of Pen, Ink, and Paper was but of little advantage to him; for a Man that hath not been uſed to do it, cannot take Notes of any uſe. And in truth, he complain'd he had not taken Notes of half ſaid, but relied on the Court to do him Juſtice in ſumming up the Evidences; which they promiſed to do, but broke their Words.

It muſt likewiſe be conſider'd, that the concern a Man hath upon him, when he is upon Trial for his Life, is ſo far from fortifying, that it weakens his Memory: Beſides, the foul Practice, without any Remorſe, put upon him and his Witneſſes; ſome of them impriſon'd, that he could not have them at the Trial; others ſo threaten'd, that they durſt not appear for him, and the Cry of the Auditory againſt him and his Witneſſes, were mighty Diſcouragements. All theſe things being conſider'd, how could any underſtanding Jury take it on their Oaths, *That the Evidence againſt the Priſoner, of a Deſign to ſeize the King*, &c. *was as clear as the Sun at Noon-Day?*

As for the Evidence which Mr. *Maſters* gave, if it were true, it was no Evidence of Treaſon; an erroneous Opinion may make an *Heretick*, but not a Traitor: it is a very diſtant Conſequence, that becauſe he affirm'd that the Parliament in Forty had done nothing but what was juſt in reſpect of King *Charles* the Firſt, therefore the Priſoner was guilty of a Deſign againſt King *Charles* the Second: Beſides, that in all Probability, tho' Mr. *Maſters* might inveigh againſt the Parliament, *Colledge* might only juſtify them; by throwing the ill things done in that time upon the *Papiſts*, as *Colledge* in his Defence ſays; and Mr. *Maſters*, after much pumping, recollected himſelf, and ſaid he thought the Priſoner ſaid, the *Papiſts* had a hand in thoſe things; which prov'd the Truth of *Colledge*'s Aſſertion.

As for the Evidence of *Colledge*'s ſaying he might be a Colonel in time; if he hoped for what he ſaid, it was no Crime, or Proof of a Crime, 'tis no more than what every Soldier hopes for, and he himſelf had been one.

As for the Evidence of *Atterbury*, *Saibel*, and *Stevens*, of their ſeizing the Pictures; admit they ſwore true, it did not amount to the Proof of the Treaſon in the Indictment, or of any ſort of Treaſon: And yet if *Colledge*'s Maid ſaid true, it looks as if the Finders or ſome other Perſon ſent them to *Colledge*'s Houſe, in order to find them there.

Of all ſorts of Evidence, the finding Papers in a Perſon's Poſſeſſion is the weakeſt, becauſe no Perſon can ſecure himſelf againſt Deſigns upon him in that kind. And after *Dangerfield*'s Deſign upon Colonel *Manſel*, and the Evidence in *Fitzharris*'s Trial, that the Deſign of that Pamphlet was to convey Copies of it into ſome Members of Parliament's Pockets, and then ſeize them, that Piece of Evidence ought to have been ſpar'd, till thoſe and other Practices of the like kind had been forgotten.

The laſt Witneſs was Sir *William Jennings*, of *Colledge*'s ſaying he had loſt the firſt Blood in the Cauſe, but it would not be long before more would be loſt; what was that more, than that he thought more would be loſt in the Cauſe, which he interpreted the Proteſtant Cauſe? Suppoſe he thought ſo without Reaſon, and was miſtaken, where was the Crime? But if he thought ſo upon good Reaſon, and good Reaſon he had to think ſo, there was no pretence of a Crime in it. I believe moſt Men thought as *Colledge* did, from the time of the Buſineſs of *Fitzharris*; and what Imputation was it to him? Why were not all the Expreſſions he us'd in his Trial as good Evidence againſt him as that Saying? For he then ſaid, it *was an horrid Conſpiracy to take away his Life, and would not ſtop at him, for it was againſt all the Proteſtants of* England, and the like; which was his Opinion, and After-times ſhewed him a true Prophet.

One thing was very diſhoneſtly inſinuated, that the Priſoner was a *Papiſt*, which was only to incenſe the Jury againſt him, and it had its Effect; whereas it was very plain that he was a *Proteſtant*, tho' perhaps a Diſſenter, and therefore had not lately come to the publick Church; and under that Notion the *Papiſts* and ſome *Proteſtants* were contented that Diſſenters ſhould be puniſhed as *Papiſts*; yet if they could have proved him a *Papiſt*, no doubt they would have done it, for the Deſtruction of the Man was the Deſign of the Proſecution, and it matter'd not for what Treaſon he was convicted, ſo he was convicted. And he himſelf gave a pretty ſort of Evidence againſt himſelf, if they could have proved him a *Papiſt*: he prov'd, and confeſſed, he was educated a *Proteſtant*; and if they could have proved him reconciled to the *Popiſh* Religion, which was Treaſon, he help'd them a great deal in their Proofs: It was therefore very diſingenuous in the Chief Juſtice to reproach him at his Condemnation, that he had not made that Proof of his Religion as it was expected, when his Religion was not the Matter of which he was indicted; that was ſlily inſinuated to exaſperate, and no Proof pretended to be made of his being a *Papiſt*. But he had more Reaſon to complain of the Injuſtice of the Court in ſumming up the Evidence, who did it in ſuch a Manner, that if they had been Counſel for the Priſoner, as they pretended, they would have been juſtly ſuſpected to have taken a Fee of the other ſide to betray their Client.

For, as *Colledge* readily ſaid, if the Chief Juſtice had looked on his Notes, he would have found more Evidence againſt *Turberville*, and *Dugdale*, than he had repeated. And it was a lame Excuſe for the Chief Juſtice to ſay, he referr'd it to the Memory of the Jury, for he could not remember more; when, as I dare ſay, after about thirteen Hours Evidence, the Jury remember'd no more, than that they were to find him Guilty.

The Truth is, upon the whole, what *Colledge* ſaid was true; they took away all Helps from him for defending himſelf, and therefore they had as good have condemned him without a Trial. Notwithſtanding all which, the Courage of the Man never fainted, but after he was condemn'd, boldly aſked, *when he was to be executed?* To which the Lord Chief Juſtice reply'd, it depended on the King's Pleaſure; but ſmoothly ſaid, in thoſe Caſes of High Treaſon they did not uſe to precipitate the Execution, it ſhould not be ſo ſudden but that he ſhould have Notice to prepare himſelf. And in truth he had from the eighteenth, on which he was condemned, to prepare himſelf, to the one and thirtieth of *Auguſt* 1681, on which he was executed; a much longer time than was allow'd my Lord *Ruſſel*, or Mr. *Corniſh*, and many others. And the true Reaſon of ſo long a Reprieve, was to ſee how the Nation would digeſt the Matter, and whether the Man

* 3. Inſt. 4. 6. 4. Co. Rep. 124. b.

† H. P. C. p. 10, 43. Hiſt. of P. C. Vol. I. p. 37.

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by the Terror of Death could be prevail'd upon to become a Tool to deſtroy other Innocents: But when it was found that the People were quiet, and that the Priſoner could not be prevail'd upon to do an ill thing to ſave his Life, his Execution was order'd; yet as a ſhew of Mercy, his Quarters were permitted to be bury'd; a Favour he ſlighted, with ſaying that he car'd not whether he was eaten up with Flies or Worms. The ſame Favour was likewiſe ſhewed *Fitzharris*, but the true Reaſon of both was, That they had a mind that the Trials and pretended Crimes, for which *Fitzharris* and *Colledge* were condemned, ſhould be forgotten; which would not be ſo ſoon done, if their Quarters were always expos'd to view. But though all People were quiet, yet there was great grumbling, and moſt honeſt Men were afraid; and the Conſtancy of *Colledge* at his Execution was ſuch, that it made the moſt violent againſt him relent.

Remarks on the Earl of Shaftesbury's *Grand Jury.*

THE next Perſon queſtion'd was the Earl of *Shafteſbury*, againſt whom a Bill of High-Treaſon was preferr'd to the *Grand Jury*, at the *Seſſions-Houſe*, on the 24th Day of *November* 1681. The Evidence was publickly given in Court, and was this; Mr. *Blathwaite* ſwore he found the Papers then produc'd in a Velvet Bag in the great Trunk, which was taken by Mr. *Gwynne* in the Lord *Shafteſbury*'s Houſe. Mr. *Gwynne* ſwore all the Papers in the Velvet Bag, when he deliver'd them to Mr. *Blathwaite*, were taken by him in the Lord *Shafteſbury*'s Houſe: Sir *Leoline Jenkins* ſwore, the Paper produc'd was the Paper deliver'd him by Mr. *Blathwaite*, and it was unalter'd. Then the Paper was read, the Effect of which was a Project of an *Aſſociation* ſigned by no Perſon, and whoſe Hand-writing it was, none knew. *John Booth* ſwore, that he was engag'd to Captain *Wilkinſon*, who pretended to have a Commiſſion from the Lord *Shafteſbury* and ſeveral others to go for *Carolina*; he was about that time introduced into the Earl's Acquaintance by the Captain, where was a Diſcourſe about *Carolina* Buſineſs; he was four or five times between *Chriſtmas* and *March*, with the Earl and the Captain: that the Captain told him he was to command fifty Men to be the Earl's Guard at *Oxon*, and would have had him to be one: That if the King did not conſent to ſeveral *Acts* of *Parliament* and other Things, they were to purge the *Guards* and *Court* of ſeveral Perſons; and though the Captain told him that firſt, afterwards he heard the *Earl* ſay the ſame things, particularly about a Week or ten Days before the Parliament ſat at *Oxon*, he gave ſome Intimation of this to *Walter Banes*, and then writ it down, and ſent it to the Council ſealed in a Cover. *Turberville* ſwore, that the Lord *Shafteſbury* ſaid about *February*, there was but little good to be done with the King as long as his Guards were about him. *Smith* teſtify'd a great deal of Diſcourſe between him and the Lord *Shafteſbury* of ſomething ſaid reflecting on the *King*; and that he ſhould ſay, that if the King ſhould offer any Violence to the *Parliament* at *Oxford*, he would meet with a ſtrong Oppoſition, for that the Gentlemen who came out of the Country, came well provided with Horſe and Arms to oppoſe, and that they might lawfully do it, if he offer'd any Violence to them whilſt they ſat. *Haynes* ſwore, that the Earl ſaid if the King did not give *Haynes* his Pardon, he and others would raiſe the Kingdom againſt him; that *Haynes* gave the Earl an exact Account of Tranſactions ſince King *Charles* the Firſt's coming to the Crown, and that the Earl ſaid the Duke of *Buckingham* had as much Right to the Crown as any *Stuart* in *England*. *John Macnamarra* ſaid, the Earl ſaid, the King was *Popiſhly affected*, and took the ſame Methods his Father did, which brought his Father's Head to the Block, and they would bring his thither; and this was ſaid in the Preſence of *Ivey*, and he thought of his Brother; and ſaid, the King deſerv'd to be depos'd as much as King *Richard* the Second. *Dennis Macnamarra* likewiſe teſtified the laſt Words, and that it was the latter end of *March*, or beginning of *April*. *Ivey* ſaid, the Earl ſaid, if the King deny'd *Haynes* a Pardon, they would riſe upon him and force him to give one, and that they deſign'd to depoſe him and ſet up another in his ſtead. *Bernard Dennis* ſaid, he had a great deal of Diſcourſe with the Earl, who bid him ſpeak to his Friends in *Ireland* to be in a readineſs to aſſiſt the Commonwealth of *England*, for they intended to have *England* under a Commonwealth, and extirpate the King and his Family.

Then the Court told the Jury the Indictment was grounded on the Statute of King *Charles* the Second, but they ought to conſider both of that Statute, as alſo the 25th of *Edward* III.

The Queſtion is, whether the *Grand Jury* ought to have found the Bill on this Evidence. Firſt it ought to be conſider'd, what the Duty of a *Grand Jury* is; and I think it is not what the *Chief Juſtice* * ſaid, to conſider only whether there be probable ground for the King to call the Perſon accuſed to an Account, much leſs do I think that the reaſon of finding a Bill by the *Grand Jury* was for the Honour of the King, or Decency of the Matter, leſt Perſons accuſed ſhould be called to an Account by the King where there is no kind of Suſpicion of the Crime committed by them, as the Court ſaid, (which laſt Matter was never aſſigned as a Reaſon of finding a Bill by the *Grand Jury* before) but I take the Reaſon of a *Grand Jury* to be this, that no Man for a capital Matter ſhall ever be *queſtioned by the King*, unleſs a *Grand Jury* take it on their Oaths that they believe the Matter of the Accuſation true; I put an Emphaſis on the Words *queſtioned by the King*.

* *Sir* Francis Pemberton.

It is true, it is generally ſaid, that the Buſineſs of a *Grand Jury*, in capital Matters, is *in favorem vitæ*; but that taken ſimply is not true, for then what Reaſon can be aſſign'd why a Man ſhall be arraign'd on an Appeal of Murder, Robbery, or the like, which touches his Life, as much as an Indictment of thoſe Crimes, without having the Matter of the Appeal firſt found to be true by a *Grand Jury?* But the true Reaſon of a *Grand Jury* is the vaſt Inequality of the *Plaintiff* and *Defendant*, which in an Indictment is always between the King and his Subjects; and that doth not hold in an Appeal, which is always between *Subject* and *Subject*: and therefore the Law in an Indictment hath given a Privilege to the Defendant, which it hath done in no other Proſecution, on purpoſe, if it were poſſible, to make them equal in the Proſecutions and Defence, that equal Juſtice may be done between both. It conſiders the *Judges*, *Witneſſes*, and *Jury* are more likely to be influenced by the King than the Defendant; the *Judges* as having been made by him, and as it is in his Power to turn them out, puniſh, to prefer, or reward them higher; and though there are no juſt Cauſes for them to ſtrain the Law, yet there are ſuch Cauſes, which in all Ages have taken place, and probably always will. This was the Reaſon of running *Prerogative* ſo high in the Judgment of *High-Treaſon* before the *Stat.* of *Ed.* III. that no Man, as that Statute ſays, knew what was not *High-Treaſon*: This was the Reaſon of expounding that *Statute* oftentimes between the making of it, and the making of the Statute of Queen *Mary*, that People were at as a great loſs, till the laſt Statute, as they were before the making of the firſt; and even ſince the Statute of Queen *Mary*, the Expoſition on the Statute of *Ed.* III. has been ſo extravagant and various, that People are at this Day as much at a loſs to know what is not *High-Treaſon*, as they were before the Statute of *Ed.* III. Nor was it, nor is it, poſſible, but that the great Power of enriching, honouring, rewarding, and puniſhing lodg'd in the King, always had, and yet muſt have an Influence on the *Witneſſes* and *Jury*; and therefore it is that the Law has ordered, that at the King's Proſecution, no Man ſhall be criminally queſtioned, unleſs a *Grand Jury*, upon their own Knowledge, or upon the Evidence given them, ſhall give a Verdict, that they really believe the Accuſation is true.

I own, of late Days, they have ſaid the Duty of the *Grand Jury* is to find, whether the Accuſation be probable or no. But that Saying is warranted by no poſitive Law, or antient Authority; and therefore the Duty of the *Grand Jury* muſt be founded in the *Oath* adminiſtred to them, which is as ſtrict as the *Oath* adminiſtred to the *Petit Jury*: and to ſay truth, the Verdict of the *Petit Jury* takes credit from the Verdict of the *Grand Jury*; which is not only the Reaſon of the Difference in the Names of the two Juries, but is likewiſe the Reaſon why an Attaint for a falſe Verdict doth not lie againſt a *Petit Jury*.

The Oath of the Grand Jury, is, *To preſent the Truth, the whole Truth, and nothing but the Truth*: The Oath of the *Petit Jury* is, *well and truly to try, and true Deliverance make, between the King and the Priſoner at the Bar*, &c. which ſignifies the ſame thing as to preſent the Truth, &c. It is true, ſome Reaſons have been offer'd, which, if conſider'd, are Words without Senſe; as that the Preſentment of the *Grand Jury* is but in order to bring the Priſoner to his Trial, and he not before the *Grand Jury* to make his Defence himſelf: but that can be no Reaſon why Probabilities ſhould ſatisfy the Jury, becauſe it doth not anſwer the Deſign of the Law, which will have a Man convicted by the poſitive Oaths of *two Juries*, conſiſting of more than twenty-four, in all Indictments.

Next, why is a *Grand Jury* compoſed of more ſubſtantial and underſtanding Men than a *Petit Jury*, if their Buſineſs be mere Formality, or a Matter of leſs Weight than the Buſineſs of a *Petit Jury?* In the laſt place, why leſs Evidence is required to convict a Man in his abſence, than is required to convict him if preſent? It is far from an Argument, that leſs Evidence is requir'd to convict one if abſent, than if preſent, that it ſeems to me that more Evidence ſhould be requir'd to do it. Men may, and often do make very fair Stories in the abſence of a Perſon accuſed, that when preſent, he eaſily anſwers; and there being no poſitive Law for the Direction of a *Grand Jury* in that Matter, a *Grand Jury-man* is excuſeable, nay, it is his Duty to give a Verdict according to the plain underſtanding of the Words of his Oath, which is to preſent the Truth, as far as he is convinced of it; and that Truth muſt be found according to his Knowledge, or as it is repreſented to him by Witneſſes.

And as for the Witneſſes, they muſt be Perſons of Credit; and all Perſons are ſuppoſed to be ſo, unleſs the *Grand Jury* know the contrary, or have been ſo credibly informed. 'Tis true, a *Grand Jury* ought not to believe *Coffee-houſe* Stories, or light Stories; but common Fame by credible Perſons, which is *Vox Populi*, ought to prejudice them againſt a Witneſs, ſo as to diſbelieve him: and it is no Anſwer to ſay, as the *Chief Juſtice* in this Caſe ſaid, that the Credibility of the Witneſs is not to be conſidered by the *Grand Jury*, becauſe the King is not preſent to defend the Credit of his Witneſſes: though the Fact in that Caſe was not true, for the King's Attorney, Solicitor and Counſel were preſent, and I think the King is no otherwiſe preſent at any Criminal Proſecution; and the Jury knew by *Colledge*'s Trial, and by *Wilkinſon*'s Depoſitions before the King, that the Evidence of all the Witneſſes produced, except what were to the Paper, was queſtioned, but even that was afterwards quitted by the Court, when it would not be ſwallowed by the *Grand Jury*: for afterwards the Court told them, that if they of their own Knowledge knew any thing againſt the Witneſſes, they might conſider of it, but not of what they were credibly inform'd by others. And, beſides the Credibility of the Witneſſes, the Poſſibility or Probability of the thing ſworn is to be conſider'd by the *Grand Jury*; an impoſſible thing they ought not to believe, though ſworn to by never ſo many credible Witneſſes, and a very improbable thing they cannot poſitively on their Oaths ſwear they believe.

And not only the Fact, but what the Crime of the Fact alledged in the Bill of Indictment, the *Grand Jury*, as far as they are capable of judging Matter of Law, ought to conſider; ſo they were told in the Charge given them. 'Tis true, if they were ignorant in the Law, and the Court in their Directions miſled them, as if the Court ſhould tell them ſtealing a Horſe is High-Treaſon, and the *Grand Jury* find it accordingly, it is excuſable in the *Grand Jury*, though puniſhable in the Court. But wrong Directions by the Court, in finding a Fact where there is no Evidence, do not excuſe the *Jury*.

Now, to examine the Matter in Hand by theſe Rules, could any Perſon who knew my Lord *Shafteſbury*, or that had heard of, or believed his Cha-

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racter to be what it was, believe that it was poſſible for him to diſcourſe with the Witneſſes at the rate they ſwore, to ſome of them at the firſt, to others of them the ſecond time he ſaw them; to diſcourſe of Matters of Policy with *Booth* at one time, and afterwards with *Haynes*, and afterwards with *Macnamarra*, Fellows of ſo little Senſe, that he would have been aſham'd to have entertain'd them in the meaneſt Office about him; and yet as they pretended, he makes them his Privadoes in the Secret, of not ſo much what he would have had them, but of what he intended himſelf to do?

Who could believe any thing *Turberville*, *Smith* or *Haynes* ſhould ſay, where there was ſo much of their Falſhood, and of their Deſigns to ſwear falſly, prov'd againſt them in *Colledge*'s Trial? Or of *Ivey*, and the three *Macnamarra*'s after that Trial, who, though they were not produc'd at it, becauſe the King's Counſel by *Colledge*'s Notes ſaw he was able to falſify them, yet ſome Witneſſes in that Trial prov'd their Deſign of ſwearing falſly?

Who could believe *Booth*'s Story of liſting ſo many Men under *Wilkinſon*, to be at my Lord *Shafteſbury*'s diſpoſe at *Oxon*, after *Colledge*'s Trial, and after what *Wilkinſon* had teſtify'd to the King and Council, though not then prov'd to the *Grand-Jury*?

A Judge indeed cannot take notice of any thing not prov'd (though he may and ought to be a Witneſs, if he knew any thing material of the Matter try'd before him and others); but a *Grand-Jury* may take notice of any thing they know or believe. The Paſſages at *Colledge*'s Trial were pretty notorious, being authentically publiſh'd by *Fra. North*, and the Examination of *Wilkinſon* by as authentick a Paper.

It was unaccountable, that the Witneſſes conceal'd what they heard the Earl ſpeak ſo long, of which none of them pretended to give any Reaſon; nor was it any Excuſe to thoſe who ſign'd a Petition to the City, in which they ſuggeſted they were tempted to ſwear againſt their Conſciences, to ſay they knew not what was in the Petition: He that ſets his Hand to a thing as if he aſſented to it, but doth not, is a Man of Falſhood. Suppoſe one ſets his Hand to a Bond, ſaid to be ſeal'd and deliver'd, not having ſeen it ſeal'd and deliver'd, is not he guilty of little leſs than *Forgery?* But admitting thoſe Witneſſes had ſworn Truth, yet the Jury ought not to have found the Bill; for they ought to find the Bill true according to all the material Circumſtances of it, as well as the Subſtance of it, which was *High-Treaſon*. One material Circumſtance of it was, that it was ſaid to be High-Treaſon within the Statute of *Charles* II. And that made another Circumſtance of the Indictment material, which was the time when that Treaſon was committed; becauſe by that Statute the Proſecutions of Treaſon on that Statute ought to be within ſix Months after it is committed, and the Indictment ought to be within three Months after the Proſecution: and he being impriſon'd in *July*, and the Bill ſuggeſting that the ſuppos'd Treaſon was committed the 18th of *March* before, and divers other times, both before and after, which might be interpreted to have been after the Priſoner's Commitment; had the Jury found the Bill as laid, they had found the Treaſon to have been committed, not only within the time the *Proſecution* by that Statute ought to be, but alſo within the time the *Indictment* ought to have been preferr'd; whereas in truth the Earl had been impriſon'd above three Months before the *Indictment* preferr'd, and there was no Evidence of any Treaſon committed by him after his Impriſonment: and therefore the finding the Bill as laid had been injurious, to bring a Man in queſtion for his Life on that Statute, whereas by Law he ought not to have been.

For it was reſolv'd in *Colledge*'s Caſe, that the Proſecution for Treaſon on that Statute ought to be within ſix Months, and the Indictment within three Months, though the Court was of another Opinion in the Lord *Ruſſel*'s Trial.

And that this Indictment was on that Statute, was expreſsly ſaid to the *Grand-Jury*, and upon good Reaſon; for the Court in their Charge ſaid, that the Intention of levying War, or deſigning to impriſon the King, was not Treaſon, till the Statute of *Charles* the Second; though in the Lord *Ruſſel*'s Trial it was held to be Treaſon by the Statute of *Edw.* III. and therefore the time of the Treaſon committed was material to be found by the *Jury*.

As for the Writing found in the Earl's Study, it was no manner of Evidence of Treaſon, admitting what the Witneſſes ſwore as to the finding it to be true; becauſe it was not prov'd that it was proſecuted or compos'd by the Earl of *Shaftesbury*, or by his Order, and that piece of Evidence was in that particular a meer Original.

In *Fitzharris*'s Caſe, it was prov'd the Libel was compos'd by his Direction; Colonel *Sidney*'s Book was prov'd to be like his Hand; it was pretended that *Colledge* ſaid he was the Author of the *Raree-Show*, and no Example of this Evidence was ever made uſe of before.

Neither was it Evidence of Treaſon as to the Matter, for there was not one Word againſt the preſent King, but his Succeſſor, if he ſhould be ſuch a Perſon.

It is true, one of the King's Counſel ſaid that one Paſſage in it was, that they would join to deſtroy the Mercenary Forces about *London*, and thence inferr'd it was downright levying War againſt the King and his Guards; whereas there is not any ſuch word or thing in the Paper as he pretended to cite: and if it had been in the Paper, it would have been but Evidence of a Treaſon within the Statute of the late King. And then the time of Writing it ought to have appear'd; and if that had been clear'd, yet for the above Reaſons it was no Evidence; and the *Grand-Jury*, tho' ſome of them afterwards ſmarted for it upon other Pretences, did like honeſt underſtanding Gentlemen; and had they done otherwiſe, to avoid the Ignominy of being call'd, though in truth it was an honour to be, an *Ignoramus Jury*, they had juſtly deſerv'd the Reproach which ſince have lighted on other Juries, ſuch as Mr. *Corniſh*'s, and the like. And having ſpoken of this *Ignoramus Jury*, for which, two of them, if not more, were afterwards upon other Pretences ſeverely handled; I think fit to ſay ſomething of the Sufferings of one, for being in a preceding *Ignoramus Jury*, becauſe it was a meer Novelty; and that was Mr. *Wilmer*.

Remarks on Mr. Wilmer Homine Replegiando.

HIS Proſecution, though it was but Criminal and not Capital, did as much Miſchief, as it ſtruck a Terror into all *Grand Juries*, as any the before mentioned Matters; and it was by the *Homine Replegiando* iſſued out againſt him. As for the Information againſt him, I ſhall ſay nothing, becauſe the Injuſtice of both will appear in the Diſcourſe of the firſt. Mr. *Wilmer* had ſent a Boy beyond Sea by Agreement, as Mr. *Wilmer* ſaid, whether true or not, as to this matter is not material; a *Homine Replegiando* is granted againſt Mr. *Wilmer* for this, at whoſe Proſecution is not material: for any Perſon upon Suggeſtion, back'd by an *Affidavit*, may have it granted. The *Sheriff* would have return'd on the Writ, that the Boy was ſent by his own Agreement and Conſent with Mr. *Wilmer*; which Return was not allow'd, and the Sheriffs were told that they muſt either return they had replevied the Boy, and they muſt have him in Court, or elſe they would be laid by the heels; or elſe they muſt return that Mr. *Wilmer* had *Eſloigned* him, which is carrying him away, where the Sheriff could not find him; and then a *Withernam* would iſſue againſt Mr. *Wilmer*, upon which he would be taken and kept in Priſon till he produced the Boy: and no other Return ſhould be allowed than one of thoſe two, and if they did not make one of thoſe two Returns, they ſhould be committed. Now if the Law be ſo, the Court muſt be innocent, but the Law ought then to be reformed in that Particular; but if the Law was not, as I think it is not, I think Mr. *Wilmer* and the Nation had great Injuſtice done them; for it was quickly ſeen what the Miſchief of that Judgment was, and therefore it was endeavoured to be reformed by an Act of King and Council afterwards. Firſt, I ſay, it is lawful for a Maſter to covenant with a Servant to ſerve him beyond Sea; in the next place, it is lawful for a Maſter to ſend his Servant beyond Sea according to ſuch Agreement. And if both theſe Propoſitions be true, as I think no Man will ſay they are not, it is a natural Conſequence to ſay, that the Law hath provided a Return upon a Writ of *Homine Replegiando*, if it ſhould be ſued out againſt ſuch Maſter for a Servant ſo ſent beyond Sea, which may indemnify the Maſter in ſo doing; and that Return can be no other than the ſpecial Matter which in this Caſe was refuſed to be accepted. 'Tis no Argument that no ſuch Return is ever read of in any Book: For the Law hath determined, that ſome Returns are good, and others bad; yet it hath not ſaid, what are all the good Returns which may be made on an *Homine Repiegiando*; and the Sheriff is no more confin'd to Returns, than a Man in the pleading of his Caſe, which my Lord *Coke* ſays may vary according to the Nature of his Caſe; and yet the Law hath ſaid what is a good Plea, and what a bad one, but hath not expreſt all the good or bad Pleas. And therefore it is no Argument againſt ſuch a Return, that no Precedent of it can be found, 'tis enough that no Judgment can be produced againſt it; and the Reaſon of both may be, that the Caſe never happened before, that is to ſay, that never any Perſon was ſo malicious before, as to ſue out an *Homine Replegiando* againſt a Maſter for a Servant ſent by Agreement beyond Sea: and Returns muſt be varied according to the Caſe. Perhaps no Precedent can be found of a Return on that Writ, that the Perſon ſought for is dead; yet all Perſons will agree it is a good Return, it is ſo in Replevin of Cattle, and even that Example falſifies the Doctrine of the Court, that there are but two Returns on that Writ allowable by Law. It is not an Argument for diſallowing the Return, that the Perſon ſent beyond Sea was a Child not capable of making ſuch a Contract (though I believe, if the matter were look'd into, he was of age ſo to do), for nothing of that doth, or can appear in the Writ or Return: It ſtands, therefore, ſimply upon this, Whether the Sheriff may on an *Homine Replegiando* return, that the Perſon ſuppoſed to be in cuſtody, being of full Age, was by mutual Agreement ſent beyond Sea by the Perſon in whoſe cuſtody, by the Writ, he is ſuppoſed to be? which I think is far from a Doubt. But notwithſtanding all theſe Hardſhips on *Juries*, it was ſeen to be plainly impoſſible to procure any Bills of Indictment for *High-Treaſon*, much leſs any Perſons to be convicted on the like Evidence, except in *London*, where are ſome of the beſt, as well as the worſt of Men in the Nation; and even there it was not to be done, as long as the *Juries* were ſenſible and honeſt Men, which would be as long as the Election of Sheriffs was in the Citizens; and, to the Honour of the City, it was ſeen that they choſe only honeſt Men to be their Sheriffs; and that when they ſaw the publick Safety depend on honeſt Officers, though at other times they had rather pay a Fine, than undergo the Trouble and Charges of that Office, yet at that time no Man, legally choſen, refuſed to ſtand, though they were reproached and puniſhed for it: and if Mr. *Box* refuſed, it was becauſe he would not join with *North*, who was impoſed on the City; for which reaſon it was reſolved to take from the City the Right of chuſing Sheriffs, but by what means was not preſently reſolved on.

That the City might forfeit their Right of electing, there was no great doubt; as if the Sheriffs were dead, and new ones were not choſen in a convenient time, ſo that there was a defect of Juſtice, or the like: but nothing of that kind could be laid to their Charge; and therefore a new unheard-of matter was thought on, and ſet a-foot, which was, to make the City forfeit their being a Corporation; and being annihilated, the Grants made to them by the Crown, as the Right of electing Sheriffs was, would revert to the Crown again.

A *Quo Warranto* was therefore brought againſt the City in *Hilary* Term, 1681, to ſhew by what Warrant they pretended to be a Corporation, and to have their Privileges mentioned in the Writ; to which the City pleaded, and ſet forth their Right; and the King reply'd, and ſet forth ſeveral Matters done by them, contrary to the Duty of a Corporation: upon which there was a *Demurrer*, of which Judgment was not given till *Trinity* Term

Term, 1683. I will ſay nothing of the Right of the Proceeding, it having been largely and learnedly argu'd for the City; but if the Matter were ſo clear a Caſe, as the King's Counſel and Court would have it to be, how came it to paſs that in *Henry* the Eighth's time, when the King was ſo earneſtly bent to diſſolve the Religious Corporations, in which the publick Inclination join'd with him, the doing it by *Quo Warranto* was not thought of? It was very plain, that thoſe pretended Religious did not obſerve the Rules, nor perform the Ends for which they were incorporated; and certainly their Miſdemeanors, againſt the Intent of their being incorporated, were better Cauſes of Forfeiture, than was the City's petitioning for a Parliament, *&c.* Yet that King took other Methods; he had formal Conveyances of their Lands from moſt of thoſe Corporations, and formal Surrenders of their Corporations, ſign'd by every Individual of the Corporations, and thoſe afterwards confirm'd by Act of Parliament. And ſure the late King had as much Right to bring a *Quo Warranto* againſt *Magdalen* College for refuſing, contrary to their Duty, to admit the Preſident the King nominated, if the King had a Right to nominate the Preſident (as ſome Judges aſſerted he had), as King *Charles* the Second had againſt the City: and it was once in Debate, Whether the Proceeding againſt that College ſhould be by *Quo Warranto*, or before the *Eccleſiaſtical Commiſſioners?* The laſt was reſolv'd on, not as more legal or effectual, but as more expeditious; in the one, the Proceedings being *de Die in Diem*; in the other, from Term to Term. This only I will obſerve, that when the Judgment againſt the City was given, which was of the greateſt Concern to the Nation ever conteſted in any Court of *Weſtminſter-Hall*, it was done by two Judges only, and no Reaſon of that Judgment rendered: whereof *Withins*, who was one, I think, heard but one Argument in the Caſe. It is true, they ſaid *Raymond*, when alive, was of the ſame Opinion; and ſaid *Saunders*, who was then paſt his Senſes, was of the ſame Opinion; though I was told by one who was preſent, when the two Juſtices came to aſk his Opinion in the matter, he had only Senſe enough to reproach them for troubling him about the matter, when they were ſenſible he had loſt his Memory. And to ſay truth, the delivering the Senſe of an abſent Judge, though it hath been ſometimes practis'd, is not allowable; for ſometimes they deliver another Opinion than what the abſent Judge is of. Judge *Withins* did ſo in ſeveral Caſes, when he delivered the Opinion of Sir *Edward Herbert*, which Sir *Edward Herbert* afterwards, in open Court, diſown'd: Judge *Holloway* ſerv'd Judge *Powel* the ſame Trick, if the laſt ſaid true. The long depending of the *Quo Warranto* had alarm'd all the Nation, who were yet quiet, hoping that Judgment would be given for the City, as ſome of the Judges and of the King's Counſel had given out it would; but the contrary was reſolv'd on, and therefore the Nation, at the time of the giving the Judgment, muſt be amus'd with ſomewhat elſe, and nothing ſo proper as a Plot: but there was difficulty in that alſo; for if the pretended Plotters ſhould be acquitted, it would make the Matter worſe; and nothing would ſecure that, but impoſing what Sheriffs they pleas'd on the City; and accordingly *North* and *Rich* being pitch'd on, the one by a ſhameleſs Trick, and the other by open Force, were impos'd on the City.

Having gain'd that Point, the Proceedings in the *Quo Warranto* were much quicker than before, and two Arguments were only permitted in it of each ſide, the one in *Hilary* Term, the other in *Eaſter* Term; and ſo the Caſe was ripe for Judgment in *Trinity* Term following, but muſt be; and was uſher'd in, with the Diſcovery of a pretended Plot: Which ſo amaz'd the Nation, that though Judgment in the *Quo Warranto* was given two Days after the pretended Diſcovery, nobody took any notice of it for ſeveral Months after it was given. The truth was, no body durſt mutter againſt it, or queſtion the Legality of it; it was enough to have brought any Perſon into the Plot to have done it, it would have been call'd *flying in the Face of the Government, queſtioning the Juſtice of the Nation*, and ſuch like *Cant*.

Remarks on the Lord Ruſſel's *Trial.*

THE Plot being nois'd abroad, the Perſons before-hand reſolv'd on were ſeiz'd on, and the Lord *Ruſſel*, and others were clapp'd up cloſe Priſoners.

The Lord *Ruſſel* having been for ſome few Weeks a cloſe Priſoner in the *Tower*, was, the 13th of *July*, 1683, brought to the *Old-Bailey*, and arraign'd for High-Treaſon, in deſigning to raiſe a Rebellion, *&c.* and the ſame Morning was try'd. He deſir'd he might not be try'd that Day, for he had ſome Witneſſes which would not be in Town till Night: Which being deny'd, then he deſir'd that the Trial might be put off till the Afternoon; which was likewiſe deny'd. He aſk'd whether he might not make uſe of any Papers he had; which was allow'd. He deſir'd he might have a Copy of the Pannel of the Jury that was to paſs on him; he was told he had a Copy deliver'd to his Servant ſome Days before.

The Jury being call'd, he challeng'd the Foreman for being no Freeholder in *London*. To argue which, Counſel were aſſign'd him; who preſently came into the Court, and having excus'd their not ſpeaking more to the Matter, for want of time to conſider of it, argu'd, That it was a good Challenge, becauſe at common Law every Juryman ought to be a Freeholder; that the Statute of 2 *Hen.* V. provides, none ſhall be a Juryman in capital Matters, but a Freeholder of Forty Shillings yearly: That there is no Difference between a City and County, and a County at large, at common Law; nor by that Statute 7 *Hen.* VII. which takes away the Challenge of *no Freeholder* in the Ward in *London*, and ſhews it was a good Challenge in *London* before that time: The 4th of *Hen.* VIII. which likewiſe takes away the Challenge of no Freehold in *London*, ſhews it was a good Challenge before that time; and the ſame was inferr'd from the 23d of *Henry* VIII: But though none of thoſe Statutes extended to Treaſon, yet if it was a good Challenge in Treaſon in *London* before thoſe Statutes, it was ſo ſtill.

The King's Counſel ſaid, at common Law it was not neceſſary that a Juryman in Treaſon, ſhould be a Freeholder; and though Treaſon is within the 2d of *Henry* the V, yet by the Statute of Queen *Mary*, the Statute of the 2d of *Henay* the Vth, as to Treaſon, was repeal'd; that it was a Point they would not have loſt to the City of *London*; that if the Priſoner ſhould peremptorily challenge Thirty-five, as by Law he might, there would ſcarce be found Thirty-five more Freeholders in the City, the Inheritance of the City being moſtly in the Nobility and Corporations, and conſequently Treaſons may be committed in the City, and there would not be enough to try it; and in the Caſe of the City of *Worceſter*, in *Quo Warranto* brought againſt them, that Challenge was taken and over-rul'd by the *King*'s-*Bench*, by Advice of the Judges of the *Common-Pleas*; that the *Venire* mentions no Freehold, but only *Probos & Legales Homines de Vicineto*.

† *Sir* Francis Pemberton.

Then the † Chief Juſtice aſk'd Mr. *Pollexfen*, Whether he did find any Judgment in Treaſon at common Law, that *no Freehold* was a Challenge? Who anſwer'd, he did not. Whereupon the Chief Juſtice reply'd, That then he did not ſpeak *ad idem*; for he took it, in caſe of Treaſon and Felony, at common Law it was no Challenge; and the Statute of *Henry* the Fifth, in that Point, was introductive of a new Law, and that Statute, as to Treaſon, was repeal'd by that of Queen *Mary*; and that a Caſe cannot be found of ſuch a Challenge in Treaſon ſince the Statute of Queen *Mary*, but it was Buſineſs of great Importance.

* William Montague, *Eſq.*

The * Chief Baron was of the ſame Opinion; for the ſame Reaſon, Juſtice *Windham* and Juſtice *Jones* were of the ſame Opinion; the laſt added, the rather becauſe the Priſoner is allow'd to challenge Thirty-five peremptorily: and Juſtice *Carlton* was of the ſame Opinion, and the rather, becauſe no Precedent had been offer'd of ſuch a Challenge before: Juſtice *Levinz* was of the ſame Opinion, for the ſame Reaſon: Juſtice *Street* was of the ſame Opinion, for the ſame Reaſons; and thought they had been very nice, when the Life of the King lay at ſtake, and all the Cuſtoms and Privileges of the City of *London* ſeem'd to be levell'd at in that point: Juſtice *Withins* was of the ſame Opinion.

Then the Chief Juſtice told the Priſoner, the Court over-rul'd his Challenge; but that he had no Hardſhip put upon him, for the Reaſon of Law for Freeholders was, that no ſlight Perſons ſhould be put upon the Jury; but in his Caſe there were Perſons of Quality and Subſtance put upon the Jury, which was the ſame in ſubſtance with a Jury of Freeholders.

Theſe being the Reaſons of over-ruling that Challenge, they may be ranked under theſe Heads: There was no ſuch Challenge at common Law; if there were, yet not in Treaſon. And if it were a Challenge in Treaſon, where a Trial is in a County at large, yet not where it is in a City and County; and if in a City and County, yet not in *London*.

The aſſigning many Reaſons for one and the ſame thing, makes the Judgment juſtly ſuſpected: for if when two Witneſſes to one Fact, varying in the Circumſtances of it, are juſtly ſuſpected in point of truth, ſeveral Reaſons for the ſame Judgment make the Knowledge or Integrity of the Judges juſtly ſuſpected; every Caſe in Law, as my Lords *Coke* and *Hale* ſay, ſtanding upon its own particular Reaſon: and therefore when many Reaſons are given, it looks as if the Judges were hunting about for Reaſons to make good what before-hand they are reſolved to vent for Law, rather than that their Judgment is the Reſult of thoſe Reaſons.

But to conſider them ſingly, I do indeed think there is no expreſs Reſolution, that at common Law in any Caſe of any capital Matter, it was a good Challenge (except the Caſe of *Fitzharris*, already taken notice of); but in civil Matters my Lord *Coke* is expreſs, that at common Law it was a good Challenge; and with him Sir *John Forteſcue* ſeems to concur, who, in his Expoſition on that Statute of *Henry* the Vth, ſays, if the Debts or Damages be under Forty Marks, the Juryman ſhall have Land to a competent Value, according to the Diſcretion of the Juſtices. My Lord *Coke* ſaith, in ſuch Caſe any Freehold ſufficeth; now how can that be true, if it were not neceſſary at common Law to have ſome Freehold? For the Statute makes no Proviſion for Debt or Damages under Forty Marks. It muſt therefore be by common Law that ſome Freehold was neceſſary, and that any Freehold ſhall ſuffice. And ſurely, if in civil Matters it was neceſſary for a Juror to have a Freehold, much more in capital Matters, and moſtly in Treaſon. It is very plain, that at common Law no Man was thought to be a ſufficient Man, but a Freeholder; and tho' now, and for ſome time paſt, the Value of Trade is equal to that of Land, yet heretofore it was not ſo, and by what was heretofore, the common Law is to be known.

The matter of Trade was heretofore ſo inconſiderable, and the Traders themſelves for that Reaſon ſo vile, that it was a Diſparagement for a Freeholder to marry with a Tradeſman, as is to be ſeen by the Statute † *Merton*: and therefore mere Tradeſmen, and not Freeholders, were not to be truſted with the Concern of a Trial in a civil Matter, and much leſs in a Capital, and leaſt of all in a Trial of High-Treaſon.

The Chief Juſtice *Pemberton* ſays, that the Reaſon of Freeholders was, that no ſlight Perſons ſhould be put upon a Jury where the Life of a Man, or his Eſtate, is in queſtion; it is plain, therefore, the concern of the thing to be tried, is the meaſure of the Subſtance of the Juryman. If that be true, the Trial in Treaſon is of the higheſt Concern: How then is it true, as ſome of the Judges concluded, that tho' Freehold might be requiſite in ſome Caſes at common Law, yet in Treaſon certainly not? It is indeed a Paradox to me.

And the peremptory Challenge of Thirty-five allowed the Priſoner, is no Reaſon againſt the Challenge of no Freeholder; for that is only a Privilege allowed the Priſoner *in favorem Vitæ*; and it might as well be argued, that no Challenge at all to the Petty-Jury ſhall be allow'd the Priſoner, becauſe he had a Grand-Jury paſt upon him before, which is alſo *in favorem Vitæ*; that no Man, at the King's Suit, ſhall be ſo much as queſtion'd for his Life, till above the Number of Twelve ſubſtantial Men have on their Oaths ſaid they think the Accuſation true; and after that, he is allow'd to challenge

† *See* Stat. of Merton, *cap.* 7. 2 Inſt. 92. Cok. Lit. 89.

peremptorily

peremptorily Thirty-five, and with Cauſe without number. To affirm, therefore, that no Freehold is not a Cauſe of Challenge, becauſe he may challenge peremptorily Thirty-five, is a *non ſequitur:* and though Non-uſage, that is to ſay, that this Challenge was never taken in Treaſon, was then uſed as an Argument, yet it is the weakeſt of Arguments which is to be found in *Littleton*; tho' even that Fact was not true, for the Challenge was taken and allowed before; unleſs you will diſtinguiſh and ſay, that in that Caſe it was taken by the King, and therefore good; and in this by the Priſoner, and therefore bad. I'm ſure that difference cannot be warranted, either by Authority or Reaſon; and what though *Cooke*, and the other Regicides, and other Perſons, did not take that Challenge, is it an Argument that they could not, or that they thought they could not? Perhaps they had forgotten to do it, as much as the Judges in this Caſe had forgotten their Reſolution in *Fitzharris*'s Caſe; or perhaps they could not take it, their Jury being Freeholders; or perhaps it was to no purpoſe, they being tried in *Middleſex*, where a Jury of Freeholders would quickly be found. Nor is it an Argument that no Caſe of this Challenge at common Law is to be found in the Books; for ſince the Statute of *Henry* V. to the time of Queen *Mary*, it could never be a Caſe; and from that time to this it could never be a Caſe in Felony: and the Law being ſo very plain, that if the Fact were with the Priſoner, it was always allowed, if againſt the Priſoner it was diſallowed, not as not good in point of Law, but as not true in point of Fact; therefore the Challenge perhaps was not taken notice of in the Books, which only report Difficulties.

It is true, of late, and it is but of late Practice, the whole Tranſactions of a Trial are publiſhed for the Benefit of the Publiſher, rather than for the common Good; and that indeed was the Motive of publiſhing *Fitzharris*'s Trial ſigned by *Fra. Pemberton*, and of *Colledge*'s Trial ſigned by *Fra. North*, and of my Lord *Ruſſel*'s ſigned by *William Pritchard*, Mayor, and Col. *Sidney*'s Trial ſigned by *George Jefferies*, and Mr. *Corniſh*'s Trial ſigned by *Thomas Jones*. And that is the Reaſon why, ſince that Statute, we find no Caſe of ſuch a Challenge in capital Matters, and before that Statute the Year-Books go but a little way.

It is enough there was no Reſolution that it was not a good Challenge, for it will be of the King's ſide to ſhew why that ſhould not be a good Challenge in Treaſon, which was in moſt, if not in all other Caſes.

It is pretty to obſerve what Steps were made in over-ruling this Challenge: ſome were of Opinion that it was no Challenge in any Caſe at common Law; ſo ſaid the Attorney and Sollicitor-General, the Chief Baron, Juſtice *Windham*, and Baron *Street*. The Chief Juſtice thought it no Challenge at common Law in Treaſon or Felony only, but that the Statute of *Henry* V. made it a Challenge in Treaſon and Felony; but whether the Statute of *Henry* V. made it a Challenge in Treaſon, the Chief Baron and Juſtice *Windham* doubted. Juſtice *Jones* thought it no Challenge at common Law in Treaſon; Juſtice *Levinz* would not determine whether it was a good Challenge in any Caſe at common Law, but he and Baron *Street* were clearly of Opinion it was not a good Challenge in *London*. The Chief Juſtice thought it a Buſineſs of great Conſequence, not only for the Priſoner, but for all other Perſons: Baron *Street* thought the Judges had been very nice in the matter, which, in the Phraſe of the Law, is giving themſelves a great deal of trouble in a matter very clear, or of no moment.

But though they differed in their Reaſons, yet all agreed in this, and in this only, that tried he ſhould be, and that preſently.

Then as for the Cuſtom of the City of *London*, to try without Freeholders, how did it appear to the Judges that there was any ſuch Cuſtom? Did they ever read of any ſuch Cuſtom in the City of *London?* Nay, were not the Statutes which were cited, where *no Freehold* was made no Challenge in *London* in particular Caſes, as ſo many expreſs Reſolutions, that there was no ſuch Cuſtom in the City? for if there had been ſuch Cuſtom, what need thoſe Statutes? To which the Judges never vouchſafed any Anſwer, becauſe in truth they could make none.

But it was objected, there was the Reſolution in the City of *Worceſter*'s Caſe, which I agree was of as good Authority, and of no better, than the Judgment in the principal Matter of the *Quo Warranto*. And it was likewiſe objected, there would be a failure of Juſtice in Cities, if the Challenge were good, for want of Freeholders.

I aſk, Would it have been a failure of Juſtice at common Law, or by reaſon of ſomewhat which hath happened of late Times? There is none who pretends to know any thing of the Hiſtory of *England*, that will ſay, that heretofore the Cities were not inhabited moſtly by the Gentry, and eſpecially the City of *London*; partly for Luxury, partly for their Security, and then there was no want of Freeholders in the Cities; but when matters became more quiet, and Trade increaſed, and made Houſes in the Cities more valuable, then were Houſes of equal Convenience, and leſs Price, ſituate in the Suburbs, or in the Country; the Gentry by degrees parted with their Houſes in the Cities to Tradeſmen for Profit, and removed themſelves to other Places. And I believe it may be remembred, that even the *Strand*, in the Memory of Man, could have furniſhed the County of *Middleſex* with a ſufficient Number of Freeholders; and yet now, for the above Reaſons, you can hardly find a Jury of Freeholders there.

Beſides, it muſt be remembred, that *London* heretofore had many of the King's Palaces in it; and the Country Gentlemen did not then, as now, take up with Lodgings, but were Inhabitants of Houſes; and if the failure of Juſtice happen by the above means, I am ſure it is againſt the Oath of the Judges to ſupply that Defect with their Reſolution; but it ought to have been ſupplied by an Act of the Legiſlative Power.

If the Neceſſity of the Thing warrants the Judgment, how unlearned were the Judges in *Henry* VII. and *Henry* VIII.'s Times, that they did not ſupply the Defect in Law in the City of *London*, and other Cities, by their Reſolutions? How vain were the Parliaments in thoſe Times, who ſupplied thoſe Defects in Law, mentioned in the Acts cited by thoſe Statutes, which were Works of time and trouble, if they had thought the Judges, by their Reſolutions, had power to do it? For if they had power to do it, they could have done it *extempore*, as in this Caſe.

For the laſt Objection, that the Writ mentions only *Probos & Legales Homines*, and ſpeaks nothing of Freeholders; *Legales* may be very well interpreted, to imply Men qualify'd by Law; but I take it, that *Homines* implies it: for by *Homines de Comitatu* are meant Freeholders of that County; and all others, in point of Truſt, are not conſidered in Law. My Lord *Coke*, in his Comment upon the 28th of *Eliz.* 1. *cap.* 8. which gives the Election of Sheriffs to the People of the County where the Sheriffwick is not in Fee, ſays, People there, means Freeholders of the County; and the ſame is underſtood by Writs to the Counties to chooſe *Coroners*, *Verdurers*, and the like, though the Writ ſays, *per communitatem Comitatus, & de aſſenſu Comitatus.*

And tho' the Writs of *Venire* in civil Matters, of late Days, mention what Freehold each Juror ſhall have, yet that is by the Statute of the 35th of *Henry* VIII. *cap.* 6. which expreſsly commands the Writ ſhall ſo expreſs it, in all Iſſues joined in *Weſtminſter*, to be tried between Party and Party; before which time it is plain, the *Venire*, even in civil Matters, did not expreſs any Freehold, and that Statute doth not extend to Iſſues join'd on Indictments.

Now if upon all which hath been ſaid, it is not plain, that the Challenge ought to have been allowed, yet ſure it was doubtful; and if ſo, and a matter of great Conſequence, as the Chief Juſtice ſaid it was, why might not the Counſel for the Priſoner have had a little more time to have conſidered of the Challenge before they had argued it, or the Judges have taken a little time to conſider the Matter before they had given their Judgment? I dare ſay, none of them could remember any poſitive Reſolutions one way or other, nor upon a ſudden was it expected they ſhould; and therefore, for their own ſakes, if not for the Priſoner's, they might have taken the Morning, if not the Day. The Priſoner deſired his Trial to be put off, for to have conſidered of it; in that time, perhaps, ſome of them might have remembred, or others might have put them in mind of their Reſolutions in *Fitzharris*'s Caſe; they might have conſidered how to diſtinguiſh between that Caſe and this, and not run away with it, that that Challenge was never made in Treaſon, as all the Judges affirmed. But my Lord *Ruſſel* was told by the Court, that they always tried the Priſoner, in Treaſon, the Day he was arraigned, and could not put off the Trial for a Morning, without the Attorney-General's Conſent. But ſurely that is not true: *Plunket* and *Fitzharris* were tried the Term after they were arraigned, though the Attorney-General oppoſed it. It is true, he ſubmitted to the Rule, as it was as much his Duty to do, as the Priſoner's; but if there be a difference between an Arraignment at *Weſtminſter* and the *Old-Bailey*, as to the ſpeeding the Trial, the Place will not vary the Reaſon of the thing, if there be not any Law for it, as there is not; but even at the *Old-Bailey*, the Trial in Treaſon hath been put off to another Seſſions, it was done in *Whitebread*'s Caſe, and in many other Caſes. If it be ſaid that was by the Attorney-General's Conſent, I ſay, that makes no difference; for the Judge is to be indifferent between the Attorney-General and the Priſoner. If the Court muſt order nothing but what the Attorney aſſents to, why is not the Priſoner try'd and adjudg'd by the Attorney alone? Or what needs all the Formality of a Trial? If it be ſaid, that that Trial was put off, becauſe the King's Witneſſes were not ready; I ſay, there is the ſame Reaſon to put off a Trial, becauſe the Priſoner's Witneſſes are not ready, and that was the pretended, though not the true Reaſon of putting off *Fitzharris*'s Trial to another Term, and there is no Law to the contrary.

It is totally in the Diſcretion of the Judges to put off a Trial; which Diſcretion ought to be governed by Reaſon.

But indeed this was extraordinary, and without any Precedent: it can never be ſhewn in the Caſe of the greateſt or meaneſt Perſons, being accuſed of the greateſt or leaſt Crime, that ever the delay of a Day, much leſs of a Morning, for his Trial, was deny'd, where he ſhewed but any colour for what he ſaid, when the Seſſions were to continue after the time he deſir'd, as in this Caſe it did. *Fitzharris* ſaid his Witneſſes were in *Holland*, and though he named no Perſons, yet his Trial was put off to the next Term; my Lord *Ruſſel* ſaid his Witneſſes could not be in Town till that Night, yet the reſpite till the next Day was deny'd: all Perſons agreed, that there was ſome extraordinary Reaſon for it, and before the Trial was over, the Riddle was out.

My Lord of *Eſſex* was kill'd, or to be kill'd that Morning; as to this Matter, it is not material whether by his own or another's Hand; they were ſenſible the Evidence againſt my Lord *Ruſſel* was very defective, and that Accident was to help it out; but that would not avail, unleſs it were a ſurprizing Matter upon the Jury: ſhould the Jury have had a Day's, or but a Morning's time to conſider of it, People might have been talking with the Jury. It was very material to aſk, what Influence that Accident would have on my Lord *Ruſſel*'s Trial, whether it was any Evidence againſt him: they might have been told, what was true, that no Perſon killed, was in Law ſuppoſed to have killed himſelf, till a Coroner's Inqueſt had ſat upon the View of his Body, and found it ſo; and if it had been ſo found, yet even that had been no Evidence againſt another, becauſe the Coroner's Inqueſt never found the Reaſon why a Man killed himſelf; and if they ſhould find the Reaſon, yet even that was no Evidence againſt another, becauſe that other was never called before the Coroner's Inqueſt to make his Defence. They might have been told a great many Circumſtances of the Improbability of the Killing himſelf; they might have obſerved that the King's Counſel were ſo far ſenſible, that it was no Evidence againſt my Lord *Ruſſel*, that they never attempted to prove the Earl of *Eſſex* was dead, or killed himſelf: it was only ſlily inſinuated, together with the Reaſon of it, which had its Effect, if the Report be true of ſome of the Jurymen's ſaying, *it went further with them than all the Evidence of the Witneſſes produced*; and if that be true, there was a reaſon, tho' not a juſt one, for ſpeeding that Trial beyond the ordinary Methods of Trials at the *Old-Bailey*.

But tho' my Lord *Ruſſel* had ſeemingly leſs favour in that Matter than any other Perſon, even than *Colledge*, who had the reſpite of two or three Hours between his Arraignment and Trial, (tho' that was not in favour to *Colledge*, but only to examine his Papers which they took from him, and inſtruct their Witneſſes accordingly) yet in other things he had more Favour or Juſtice done him: his Papers were not taken from him; it was agreed to be his Right to uſe them without queſtioning from whom he had them, what they were, or the like, as in *Colledge*'s Caſe was done; he had a Copy of the Pannel of the Jury, even before his Arraignment, given him; and the Chief Juſtice ſaid it never was denied in Caſe

of

of Life that he knew of, which was denied *Colledge* before he pleaded; becauſe then 'twas pretended there was no Iſſue join'd, till *Plea pleaded*, after which the *Venire* is awarded; tho' all Men know, that the Sheriff ſummon'd the Jury before the Arraignment, and even after Iſſue join'd. *Colledge* was denied a Copy of the Pannel, only he was told, he ſhould look every Juryman in the Face before he was ſworn; and as far as the Looks of a Man betray him, he ſhould be ſatisfy'd whether he was honeſt or not, which is an ill way of judging; for I think the Perſon * that gave that Rule, would have deceiv'd any Man by his Countenance, who had not known his Practices.

* *Lord Chief Juſtice* North.

But ſays the Attorney General †, in my Lord *Ruſſel*'s Caſe it was matter of Favour, and not of Right, therefore no Injuſtice to *Colledge*. I confeſs of all Men, who ever came to the Bar, he hath laid down the moſt Rules, which depend totally upon the Authority of his own ſaying: in *Colledge*'s Caſe he affirm'd, that the King's Witneſſes ought not to be kept out of the hearing of each other, when they gave their Evidence (a Method us'd in civil Matters, the Reaſon of which is well known, and none can ſhow any Law or Reaſon why it ſhould not be us'd in capital Matters), with as much Reaſon and Authority, as what is now ſaid.

† *Sir* Robert Sawyer.

Firſt, I do affirm there is no Authority in Law, which ſays a Priſoner ſhall not have a Copy of the Pannel; in the next Place I affirm, that after a Jury ſtruck in a civil Matter, each Party ought to have a Copy of the Pannel, in order to provide himſelf of a Challenge, if there be any Cauſe. In the laſt place I affirm, that by Law, more Favour is allow'd a Defendant in a Capital Matter, to defend himſelf, than in a Civil. And if theſe Propoſitions be true, let any Perſon, if he can, make out the Law or Reaſon of the above Aſſertions.

Of a like Stamp was the Saying of the Attorney, when my Lord deſir'd a Copy of the Matter of Fact laid againſt him, that he had Notice of it; for Queſtions were put to him about it, and he was with his Lordſhip himſelf, and examin'd him upon thoſe Queſtions, which was a Favour to him, that he might know what the Matter was he was accus'd of.

I do not affirm that ever it was practis'd, to give the Priſoner a Note of the Fact to be given in Evidence againſt him, proving Treaſon, or that it was ever denied till then, nor do I know of any Law *pro* or *con* in the Caſe; but if one would judge by Reaſon or Practice in parallel Caſes, I think it ought not to be deny'd.

I know not at preſent of more than two Sorts of general Indictments, and thoſe are of Treaſon and Barratry; the laſt is a general Indictment, for ſtirring up Suits without Reaſon, and without mentioning any Suit in particular: and therefore if by the Rule of the Court the Defendant was not help'd, which obliges the Proſecutor to give the Defendant, ſome reaſonable time before the Trial, a Note of what Suits he intends to give in Evidence againſt him, it was impoſſible for the Defendant to eſcape, if it had been his Misfortune to have had five or ſix Suits.

For I never yet ſaw a Witneſs produc'd againſt the Indicted, but he would ſwear the Indicted brought an Action againſt him without Reaſon; and yet I have often ſeen, that the Indicted having had notice, that that was one of the Suits he was intended to be charg'd with, hath been able to prove that he had good, or at leaſt probable Cauſe of Suit, which he could not have done if he had not notice. And in Treaſon, for deſigning to kill the King, there have been ſo many Interpretations of Facts tending that way, that it is almoſt impoſſible for an Innocent to defend himſelf, unleſs he had notice of the Fact intended to be inſiſted on at the Trial.

There are yet ſome Expreſſions which mightily puzzle me: the King's Counſel ſaid in the Argument of the Challenge, that they would not have the Point of being a *Juryman*, though not a Freeholder, loſt to the City of *London*; and one of the Judges ſaid, 'twas the Privileges of the City were ſtruck at in that Point. If by thoſe Expreſſions be meant, that it is for the benefit of the Publick that there ſhould be no failure of Juſtice, I agree to it; but if it be meant, that it is for the Benefit of the Citizens to be *Jurymen*, I deny it: and I think nothing ſhews it plainer, than that it is a Privilege that a Citizen ſhall not be drawn out of the City to be a *Juryman*; that a Nobleman ſhall not be on a *Jury*; that it is a Matter of Prerogative in the King, and Favour to a particular Perſon, to grant a Charter of Exemption from being on a *Jury*. So that, if I conſider the Law, I know what is meant by thoſe Expreſſions; if I conſider allow'd Practice, it is true, a *Juryman* may earn his Eightpence for a Trial; but that is too inconſiderable Pay for Perſons of Subſtance, as the *Jurymen* in this Caſe were ſaid to be, to be fond of the Employ, or to account it a Privilege. Yet even that was but in civil Matters; in criminal Matters not Capital, the *Jury* were heretofore paid if they acquitted the Defendant, but not if they found him guilty, tho' of late it hath been practis'd to give them more, and treat them higher if they convicted the Defendant, than if they acquitted him: But in capital Matters, as the Caſe in queſtion was, it was never allow'd, or at leaſt own'd, to pay the *Jury*, be the Verdict which way it would.

Having ſpoken to the *Preliminaries*, I proceed to the Trial, wherein Colonel *Rumſey* was firſt produc'd: he ſaid, he was ſent by my Lord *Shafteſbury* about the end of *October*, or beginning of *November*; who told him, he ſhould meet at one *Sheppard*'s the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Gray*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, to know of them what Reſolution they were come to about the Riſing at *Taunton*. *Sheppard* carry'd him where they were, and anſwer was made, Mr. *Trenchard* had fail'd them, and there would be no more done in the matter at that time; thereupon the Lord *Shafteſbury* took a Reſolution to be gone. Mr. *Ferguſon* ſpoke moſt of the Meſſage, and he thought the Lord *Gray* ſpoke ſomething to the ſame Purpoſe; he did not know how often he had been at that Houſe, he was there more than once, or elſe he heard Mr. *Ferguſon* make a Report of another Meeting to the Lord *Shafteſbury*, my Lord *Ruſſel* was in the Room, and that was all they ſaid at that time that he remembred, he was not there above a Quarter of an Hour. There was ſome Diſcourſe about ſeeing in what poſture the Guards at the *Mews* and *Savoy* were in by all the Company, to know how to ſurprize them if the Riſing had gone on; Sir *Thomas Armſtrong* and Mr. *Ferguſon* began, all debated it; he thought the Duke of *Monmouth*, the Lord *Gray*, and Sir *Thomas Armſtrong* were ſent to view them; the Riſing was appointed to be the 19th of *November*; he was ſpoke to by the Lord *Shafteſbury* to go to *Briſtol* if the Riſing had gone on, but in what Quality was not determin'd. The Lord *Ruſſel* agreed to the Debate. Being aſk'd if my Lord *Ruſſel* ſaid any thing there, and what; he anſwer'd, My Lord *Ruſſel* ſpoke about the Riſing at *Taunton*. Being aſk'd what my Lord *Ruſſel* ſaid, he anſwer'd, My Lord *Ruſſel* diſcourſed of the Riſing. Being aſk'd if my Lord gave his Conſent to the Riſing, he ſaid he did.

The next Witneſs was Mr. *Sheppard*, who ſaid, In *October* laſt, Mr. *Ferguſon* came to him in the Duke of *Monmouth*'s Name, and deſir'd the Conveniency of his Houſe for himſelf and ſome Perſons of Quality, which he granted. In the Evening the Duke of *Monmouth*, Lord *Gray*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and Mr. *Ferguſon* came, not all together, but the one after the other. Sir *Thomas Armſtrong* deſir'd, that none of his Servants might come up, and that they might be private; ſo what they wanted he went down for, a Bottle of Wine, or ſo: the Subſtance of the Diſcourſe was, to ſurpriſe the King's Guards; and in order to it, the Duke of *Monmouth*, the Lord *Gray*, and Sir *Thomas Armſtrong*, went one Night, as he remembred, to the *Mews*, or thereabouts, to ſee the Guards; and the next time they came to his Houſe, he heard Sir *Thomas Armſtrong* ſay, the Guards were very remiſs in their places, and not like Soldiers, and the thing was feaſible if they had but ſtrength to do it. He remembred but two Meetings there; they came in the Evening; he neither heard nor ſaw any Coaches at his Door: When they came in, as he remembred, the Lord *Ruſſel* was both times there; he had no Buſineſs with the Lord *Ruſſel*, nor the Lord *Ruſſel* with him at that time, but ſince he had. He did not remember Colonel *Rumſey* diſcours'd the Lord *Ruſſel* about any private Buſineſs, nor remember'd any farther Diſcourſe; he remember'd no Writings nor Papers read at that time: upon recollection, he remember'd one Paper read by Mr. *Ferguſon*, in the Nature of a Declaration, ſetting forth the Grievances of the Nation, the Particulars he could not tell; it was a pretty large Paper, it was ſhew'd for Approbation, as he ſuppos'd, when to be ſet out was not diſcours'd; 'twas ſhew'd to Sir *Thomas Armſtrong*, and, as he remember'd, the Duke of *Monmouth* was preſent, and he thought Colonel *Rumſey* was preſent. Colonel *Rumſey* ſaid, he was not preſent, it was done before he came. Mr. *Sheppard* went on and ſaid, the Deſign of the Paper was in order to a Riſing, as he ſuppoſed by the Purport of it; he would not ſay the Lord *Ruſſel* was there when that Paper was read, but he was there when the talk was about ſeizing the Guards; he could not be poſitive as to the Times of thoſe Meetings, but it was when the Lord *Shafteſbury* was abſent from his Houſe, he abſented about *Michaelmas*-Day; he could not be poſitive that my Lord *Ruſſel* was at both Meetings; he thought he was at both, he was ſure he was at one.

The laſt Witneſs was the Lord *Howard*. He ſaid he brought Captain *Walcot* acquainted with the Lord *Shafteſbury*; and upon his Account Captain *Walcot* ſoon gain'd a confidence with Lord *Shafteſbury*. *Walcot* told him, the People were ſenſible all their Intereſts were going to be loſt by the Violence offer'd to the City in the Election of Sheriffs, and that they were reſolv'd to take ſome Courſe to put a Stop to it: that there were ſeveral Meetings about it, and ſome Perſons began to prepare to act; that ſome had good Horſes, and kept them in private Stables, and he reſolv'd to be one in it: He having an Eſtate in *Ireland*, he diſpatch'd his Son thither, and order'd his Son to turn his Stock into Money; the Son went about *Auguſt*: That the 30th of *September*, *Walcot* din'd with him; told him, that the Lord *Shafteſbury* was ſecreted, and deſir'd to ſpeak with him: *Walcot* brought him to the Lord *Shafteſbury*, who complain'd of the Duke of *Monmouth* and the Lord *Ruſſel* for deſerting him; but there was ſuch preparation made in *London*, that now he was able to do it of himſelf, and intended to do it ſuddenly; he had above 10,000 briſk Boys ready to follow him when he held up his Finger, they would poſſeſs themſelves of the Gates, and in twenty-four Hours they would multiply to five times the Number, and would be able to poſſeſs *Whitehall* by beating the Guards. The Lord *Howard* went to the Duke of *Monmouth*, told him the Lord *Shafteſbury*'s Complaint, who ſaid, the Lord *Ruſſel* and he told the Lord *Shafteſbury* from the beginning, that there was nothing to be done by them in the Country at that time. The Matter of the Diſcourſe between him and the Duke of *Monmouth*, him and the Lord *Shafteſbury*, and him and *Walcot*, is too tedious to relate, and as little to the purpoſe, if the Jury had underſtood Matter of Law, which they did not; in it he takes care to ſhew what Confidence my Lord *Shafteſbury* had in him, more than in the Duke of *Monmouth* or the Lord *Ruſſel*; how very cautious he was, and how precipitate the Lord *Shafteſbury* was, and that what he told the Duke of *Monmouth*, the Duke told the Lord *Ruſſel*; and he heard the Lord *Ruſſel* had been with the Lord *Shafteſbury*, and put off the intended Riſing. At which the Lord *Ruſſel* interrupted him, and ſaid, he thought he had very hard meaſure, there was a great deal of Evidence given by hear-ſay only. Whereupon the Chief Juſtice ſaid, it was nothing againſt the Priſoner; he declar'd it to the Jury, but the Attorney-General bid the Lord *Howard* go on in the Method of Time, and that it was nothing againſt the Priſoner, but the Witneſſes were coming to it, if his Lordſhip would have patience, he aſſur'd him ſo. The Lord *Howard* went on where he left off; with a Story between him and *Walcot* of an intended Riſing, and of ſome dark Sayings let fall by *Walcot* and the Lord *Gray*, importing a Deſign upon the King's Perſon; but the Lord *Howard* was very careful to put all off, but at laſt it was reſolv'd to riſe on the 17th of *November*: But the Lord *Howard* fearing it had been diſcover'd, becauſe he ſaw a Proclamation a little before, forbidding Bonfires without the Lord Mayor's leave, that of the 17th of *November* was alſo diſappointed, and the Lord *Shafteſbury* went away and died. But conſidering they had gone ſo far that it was not ſafe to retreat, and likewiſe that ſo great an Affair as that, conſiſting of ſuch infinite Particulars, was to be manag'd with ſo much *Fineſſe*, they erected a Cabal of ſix Perſons, the Duke of *Monmouth*, Lord of *Eſſex*, Lord *Ruſſel*, Mr. *Hampden*, *Algernon Sidney*, and himſelf, about the middle of *January* laſt: and about that time they met at Mr. *Hampden*'s Houſe, where it was conſider'd whether the Inſurrection ſhould be in *London*, or in a Place diſtant; what Countries and Towns were fitteſt and moſt diſpos'd to Action; what Arms neceſſary to be provided; how to raiſe twenty-five or thirty thouſand Pounds, and how they might ſo order it as to draw *Scotland* into a Conſent with them.

About ten days after they met at the Lord *Ruſſel*'s Houſe, and reſolv'd to ſend ſome Perſons into *Scotland* to the Lord *Argyle* to invite ſome Perſons hither

hither to give an Account of that Kingdom; the Perſons to be invited were Sir *John Cockram*, Lord *Melvil*, Sir *Campbell*; that Matter was referred to Col. *Sidney*, who told him he had ſent *Aaron Smith*; they agreed not to meet again till the return of the Meſſenger. The Meſſenger was gone about a Month; it was ſix Weeks or more before he returned; and then his Lordſhip was forced to go into *Eſſex*, where he had a ſmall Concern; there he ſtaid three Weeks, and when he returned, he was informed Sir *John Cockram* was come to Town, and afterwards he was forced to go to the *Bath*, where he ſpent five Weeks; and from that time to this was five Weeks, all which time was a Parentheſis to him; and that he and the five mentioned erected themſelves by mutual Agreement into that Society.

Atterbury ſwore *Campbell* was in his Cuſtody: then Colonel *Rumſey* was aſked, whether my Lord *Ruſſel* heard him when he delivered his Meſſage to the Company, and in what place of the Room the Company were? Who anſwered, that when he came in, they were ſtanding by the Fire-ſide, but all came from thence to hear him; and when my Lord *Ruſſel* ſaid, Colonel *Rumſey* was there when he came in, *Rumſey* ſaid, No, the Duke of *Monmouth* and Lord *Ruſſel* went away together.

Then in behalf of my Lord *Ruſſel*, the Earl of *Angleſey* was examined, who ſaid, that viſiting the Earl of *Bedford*, the Lord *Howard* came in, and told the Earl of *Bedford*, that his Son could not be in ſuch a Plot, or ſuſpected of it, and that he knew nothing againſt the Lord *Ruſſel*, or any body elſe, of ſuch a barbarous Deſign? And he was going on again with what the Lady *Chaworth* had told him, but was interrupted by the King's Counſel, telling him, as the Court would not permit them to give Hear-ſay in Evidence againſt the Priſoner, ſo they muſt not permit his Lordſhip to give Hear-ſay in Evidence for the Priſoner.

Mr. *Howard* ſaid, that the Lord *Howard* took it upon his Honour, and his Faith, he knew nothing of any Perſon concerned in that Buſineſs, and not only thought my Lord *Ruſſel* unjuſtly ſuffered, but he took God and Man to witneſs, he thought my Lord *Ruſſel* the worthieſt Man in the World.

Dr. *Burnet* ſaid, the Lord *Howard* was with him, and he did then, as he had done before, with Hands and Eyes lift up to Heaven, declare, he knew nothing of any Plot, nor believed any, and treated it with great Scorn and Contempt.

The Lord *Cavendiſh* teſtified as to the Life and Converſation of the Lord *Ruſſel*, and thence concluded, it was not likely he ſhould be guilty of any ſuch Matter, and heard the Lord *Ruſſel* ſpeak of *Rumſey*, as if he had an ill Opinion of him, and therefore it was not likely he ſhould truſt him. Dr. *Tillotſon* ſpoke of his Converſation; Dr. *Burnet* and Dr. *Cox* ſpoke of his Converſation, and of his Averſeneſs to all Riſings. Dr. *Cox* teſtified, that my Lord *Ruſſel* ſaid the Lord *Howard* was a Man of luxuriant Parts, but he had the luck not to be truſted by any Party. The Duke of *Somerſet* ſpoke of the Lord *Ruſſel*'s Converſation. The Lord *Clifford*, Mr. *Leveſon Gower*, Mr. *Spencer*, and Dr. *Fitzwilliams* ſpoke of the Lord *Ruſſel*'s Converſation. The Lord *Howard* being aſked by the Jury what he ſaid to the Earl of *Angelſey*'s Evidence, owned what the Earl ſaid, but he did it to outface the Matter; and if he ſaid untrue, he ought not to be believed on his Oath, and inſinuated, that he meant what he ſaid to be meant of a Deſign of murdering the King, which he did not believe the Duke of *Monmouth* or the Lord *Ruſſel* guilty of.

This being the ſum of the Evidence given againſt, or for my Lord *Ruſſel*, let us conſider how far it will juſtify the Verdict given againſt him: firſt, conſider the Improbability of *Rumſey*'s Evidence, if my Lord *Cavendiſh* ſaid true, that he ſhould truſt *Rumſey* to hear the Debate about ſeizing the Guards, when the Lord *Ruſſel* had an ill Opinion of *Rumſey*. As for *Rumſey*'s delivering the Meſſage, there was no great Matter in that, it is impoſſible to hinder People's ſpeaking, and it is not Treaſon to conceal what's ſaid; beſides, it was well known, it was *Rumſey*'s way to talk extravagantly, in order to accuſe thoſe that heard him, if they did not diſcover it. But beſides the Improbability of the Evidence in reſpect of the Perſon, the manner of delivering the Evidence, and the Evidence itſelf was ſuch as carried no Colour of Truth with it: he ſaid he delivered his Meſſage, and had an Anſwer to it; and being aſked what the Company ſaid further, anſwered, that was all that was ſaid at that time, that he remembered, and gives a very good Reaſon for it, for he ſtaid not above a quarter of an Hour; and added, that he was not certain whether he then heard ſomething of a *Declaration* there, or whether Mr. *Ferguſon* reported it to my Lord *Shaftesbury*, that they had debated it: and yet when *Sheppard* ſaid *Rumſey* was there when the *Declaration* was read, he denied it, and ſaid it was read before he came in. Being aſked to what the *Declaration* tended, he anſwered to another matter, *viz.* that there was ſome Diſcourſe about ſeeing what poſture the Guards were in, and ſaid, that all the Company debated it; and being drawn on by Queſtions, ſaid, it was in order to ſeize the Guards, if the Riſing had gone on. Now how doth that part of the Evidence agree with what he ſaid before, that there was nothing more ſaid than the delivering his Meſſage, and the Anſwer to it? And how doth it agree with the time he ſaid he ſtaid, which was not above a quarter of an Hour? Whereas that Debate, if all the Perſons preſent (being ſix) debated it, as he ſaid they did, would certainly have taken up a larger time. How does the firſt and laſt part of his Evidence agree, when he ſaid, my Lord *Ruſſel* agreed to the Anſwer of his Meſſage? And being aſked whether and what he ſpoke to it, ſaid, he ſpoke about the Riſing at *Taunton*, but doth not ſay what; and yet in the firſt part of his Evidence, he ſaid, when aſked who ſent the Meſſage back, Mr. *Ferguſon* delivered the Anſwer, the Duke of *Monmouth* and the Lord *Ruſſel* were preſent, and he thought the Lord *Grey* ſaid ſomething to the ſame purpoſe. But what Credit could be given to any part of a Man's Evidence, whoſe Memory was ſo ſhallow, that he could not remember whether he was at two Meetings, or whether Mr. *Ferguſon* related one of them to the Lord *Shaftesbury*? Yet both were ſuppoſed to be within the Compaſs of a Year, whereas a Man of Senſe is ſuppoſed to remember all his own Acts for ſeven years paſt, which is the Reaſon why the Chancery obliges a Man to anſwer as to his own Acts poſitively for ſeven Years, without ſaying, *as he believeth*, or *as he remembereth*, or the like. What Credit is to be given to a Witneſs who teſtifieth what was ſaid in Company, and by whom, when his Memory doth not ſerve to anſwer poſitively whether he was in the Company, or whether another told him what was there ſaid? He might as well have ſaid he was there, or dreamt he was there, or that he heard the Diſcourſe, or dreamt of it, which had carried equal Credit with it.

It was plain, the Man was not of ſane Memory enough to make a Will, much leſs to be a Witneſs in the Trial of a Man's Life; and nothing can be ſaid for him, but that he was a Witneſs for the King, that is to ſay, a Madman may be a Witneſs to take away a Man's Life, which is as good Law as a great deal of other *Cant* vented as a part of the Prerogative.

It is true, one of the King's Counſel recommends *Rumſey* to the Jury, as a very credible Witneſs, under the Notion of an unwilling Witneſs: but had the ſame Perſon been a Counſel for the Priſoner, he would have called *Rumſey* a dancing Witneſs, for he ſaid backwards and forwards; and an amazed Witneſs, for being aſked one thing, he anſwered another; being aſked as to the *Declaration*, he anſwered to the ſeizing of the *Guards*; being aſked whether my Lord *Ruſſel* aſſented to the Anſwer of the Meſſage, he replied, Yes, becauſe he talked of the Riſing, *&c.* which might be as well againſt as for it.

Sheppard's Evidence was to the Deſign of ſeizing the *Guards*; and as to the *Declaration*, he remember'd but two Meetings, at both which he ſaid, as he remembered, my Lord *Ruſſel* was preſent, but he could not be poſitive in that, and the times of the *Meetings* he did not remember: he ſaid, the Subſtance of the Diſcourſe was, how to ſurprize the King's *Guards*; and that the Duke of *Monmouth*, the Lord *Grey*, and Sir *Thomas Armſtrong* went to ſee the *Guards*, as he remembered; and the next time they came to the Houſe, Sir *Thomas Armſtrong* ſaid the *Guards* were very remiſs, *&c.* Taking this *Evidence* by itſelf, without tacking *Rumſey*'s Evidence to it, it was ſo far from being *Evidence* of Treaſon, that it was no Crime; for he doth not ſay, it was intended to be put in practice, notwithſtanding all ſaid by him: both the Diſcourſes and Perſons viewing the *Guards*, (which laſt was not Evidence, nor ought to have been given in *Evidence*) might be a *Matter* to try each other's Judgments, as well as an *Evidence* of a thing deſign'd: and if it be capable of two Interpretations, the Law hath ſaid, it ſhall be taken in *mitiore ſenſu*, in favour of *Life*. That diſtinction was taken by the Chief Juſtice in *Blague*'s Caſe, the Day after his Trial, where the Evidence againſt him was a Diſcourſe about taking the Tower, as high a Crime as ſeizing the Guards; and upon that *Blague* was acquitted. It is true, *Rumſey* ſaid it was in order to be put in practice, when the Riſing ſhould be in the Country; but that he did not ſay at firſt, but was afterwards led to it by Queſtions: nor did he ſpeak it as a thing at that or any other time determined, but as his own ſurmiſe or gueſs, becauſe he knew of an intended Riſing; yet how fooliſhly did he contradict himſelf? For, ſays *Rumſey*, it was to have been put in practice if the intended Riſing had gone on; and yet at the ſame Meeting he had ſaid before, the Riſing was put off: how contradictory therefore is it to ſay they made Preparations for a thing they had laid aſide before? And it is plain *Sheppard* ſpeaks of the ſame time; for both agree *Rumſey* was at that Meeting, though they do not agree how ſoon he came: beſides, how could *Sheppard* ſpeak poſitively of the Diſcourſe, or of the Deſign of it, when he owns he did not hear all the Diſcourſe, and gives a very good Reaſon for it? For he ſaid he went ſeveral times down to fetch Wine, Sugar, and Nutmeg, and did not know what was ſaid in his Abſence: he ſaid he heard nothing about a Riſing, nor heard any further Diſcourſe; but on recollection, he heard ſomething about a Declaration of Grievances in order to a Riſing, as he ſuppoſed; the Particulars he could not tell. Now what ſort of Evidence was that? In all civil Matters, a Witneſs ſhall not be permitted to give Evidence of the Content of a Deed or Writing, without producing the Deed or Writing itſelf, or a true Copy of it, and upon very good Reaſon; for he may make an untrue Conſtruction of it. I remember a Witneſs who ſwore to the Content of a Deed of Intail; and being aſked, whether he knew a Deed of Intail, and by what he knew the Deed he ſpoke of to be a Deed of Intail? anſwered, he knew a tailed Deed very well, and he knew the Deed to be a tailed Deed, becauſe it had a Tail half as long as his Arm, meaning the Label of the Deed. And if this be the Practice, and the Reaſon of the Practice, in civil Matters, ſhew me any Authority or Reaſon any thing ſhould be permitted to be given in Evidence in Treaſon, which is not permitted to be given in Evidence in the Trial of any civil Matter.

If you ſay, as Juſtice *Levinz* ſaid in a like Caſe in *Colledge*'s Trial, that it would be the difficulteſt thing in the World to prove Treaſon againſt a Man, if the Law were not ſo, and the King would in no ſort be ſafe; on the other Hand, I ſay as *Colledge* there ſaid, if the Law ſhould be ſo, no private Perſon is ſafe: and if there be Miſchief of either Hand, the Law is and muſt be Judge, which hath taken care (though to no purpoſe, becauſe it hath not been obſerved) that there ſhould be a ſtricter Proof in Treaſon than in any civil Matter, or in any other Crime: and how the Judges came to permit that looſe Evidence in Treaſon to be given, which of late Years they have done, no juſt or honeſt Account can be given.

The laſt material Witneſs againſt my Lord *Ruſſel*, was my Lord *Howard*, (as for *Atterbury*'s Evidence, it ought not to have been permitted to be given, as ſhall be ſhewn, nor was it material) to no part of whoſe Evidence any Credit ought to be given, even by his own Confeſſion: he was ſurely in the right, when he ſaid that the Religion of an Oath is not tied to a Place; and I'll add, not to a Form, but receives its Obligation from the Appeal therein made to God: and therefore if he ſaid (though I own he was not bound to ſay it) to the Earl of *Bedford*, Mr. *Howard*, and Dr. *Burnet*, what was teſtified againſt him, he ought not to be believed in any part of his Evidence. Did he ſay true to my Lord *Bedford*, when unſent for and unaſked, (for aught appears after my Lord *Ruſſel* was clapt into the Tower) that ſure his Son could never be in any ſuch Plot as that, or ſuſpected for it, and that he knew nothing againſt him, or any body elſe, of ſuch a barbarous Deſign? And yet he knew, if he ſwore true, that my Lord *Ruſſel* was guilty of ſuch a barbarous Deſign; that nothing but the Lord *Howard*'s Duty to God, the King, and the Country, could prevail with him to give it in Evidence againſt a Perſon for whom he had ſo great an Affection as he had for my Lord *Ruſſel*. How was it conſiſtent with the truth of his Evidence what he ſaid to Mr. *Howard*, that he knew nothing of any Man's being concerned in that buſineſs, and particularly of my Lord *Ruſſel*, whom

whom he highly commended, and said, he thought the Lord *Russel* unjustly suffered; or with what he said to Dr. *Burnet* with Hands and Eyes lift up to Heaven, which is as much an Appeal to God as may be, that he knew nothing of any Plot, nor believed any? It was an idle Evasion to say, when he spoke of my Lord *Russel*, he meant my Lord *Russel* was not guilty of the Design of murdering the King, (for which that Man, as he said, was committed, meaning *Walcot*, the Lord *Russel*, or any other Person) for he is still at liberty to explain himself, and I am apt to think they were all committed by Warrants of the same Form. I know not how dextrous he is at paring an Apple, but he must be an excellent *Logician* that can reconcile the Truth of his Evidence and Sayings. The Truth is, a Man that has those Niceties in his Head ought to have no Credit; for no Man knows whether he understands what he says aright, and I am apt to think his Lordship could shew, that he did not intend what he said at my Lord *Russel*'s Trial in the Sense it was understood by the Court or Jury. To say, that he was to out-face the thing for himself and his Party, was as vain; (for besides that I think he was of no Party, because, as my Lord *Russel* said, he had the Luck to be trusted by none) where was the Sense of making those Protestations to Persons who could do him no good, and would do him no harm, both which my Lord *Pemberton* could; and therefore 'twas not alike? It is true, the Attorney-General commends the Lord *Howard* as a Person of great Credit amongst the Party, and insinuates the Lord *Grey* was left out of the Cabal for his Immorality, and the Lord *Howard* was taken in his Place. But to pass from the General of his Evidence to the Particulars of it, for about two Leaves in the Print of it; it is a Discourse between my Lord *Shaftesbury* and *him*, wherein he makes my Lord *Shaftesbury* have a wonderful Confidence in him, and discovers all the Design to him, and what number of Men he had at command; but who they were or what they were, was never yet discovered, and yet the Lord *Howard* had not at that time been concerned in the Matter, nor did then assent: he very prudently was resolved to see whether it was likely to take effect or not, before he would enter on it. It was indeed a Matter of great wonder to those who knew my Lord *Shaftesbury*, and knew what Opinion he had of the Lord *Howard* from the time he discovered that the Lord *Howard* frequented the Duchess of *Portsmouth*, which was before *Fitzharris*'s Trial, (though after that Trial the Matter was publickly owned, which was before suspected by most known to the Lord *Shaftesbury*) that he should so readily trust the Lord *Howard* with the Secret, who was unconcern'd in the Management before, as he says himself, and yet secreted himself from the Duke of *Monmouth* and my Lord *Russel*, who were equally guilty, if what was sworn was true. I cannot but observe, that in all the time of the Lord *Shaftesbury*, the Lord *Howard* was no otherwise concerned in the pretended Design, but in raising Difficulties, and being in great fear lest there should be a Rising or an Attempt upon the King's Person: and if he said true, he was the Man that put off the intended Risings, and likewise the intended Design on the King's Person: insomuch, that I think he was so far from standing in need of a Pardon for Treason, that he deserved a considerable Reward, if it were for nothing else than for his fearing the Design was discovered by the *Proclamation* against Bonfires, which, as he said, put off the Rising intended to be the 17th of *November*; and yet he and others being afraid, the middle of *January* they erected themselves into a Cabal of six Persons, of which there is but one Person in all his Narrative he pretends to have spoken to about that Matter before, which is the Duke of *Monmouth*, and but one more he pretends even by hear-say to be concerned in it before, which is my Lord *Russel*. How improbable therefore was it, that those six Persons should, as it were in sight, put themselves upon such a dangerous Design, especially considering the Reason he gives for it, which was their Fears, that what had been transacted was, or might be discover'd? This likewise is observable, that from the 30th of *September*, the time the Sheriffs entered upon their Office, to the 17th of *November* following, he is very exact as to the time of each Matter, when there was no Person could contradict him; for my Lord *Shaftesbury* was dead, *Walcot* was convicted, and the Duke of *Monmouth* was gone, who are all the Persons mentioned to be concerned in that time: yet when he comes to speak of the Matter in which my Lord *Russel* was concerned, then he says it was about the middle of *January*, about ten Days after, about six Weeks after, about three Weeks, and five Weeks; for had he been precise in the times, he might have been disproved in the Meetings he gave Evidence of: and it was much his Memory was so very good as to the former times, to be so very precise in them as he was, and so very defective in the latter times; and yet those times do not make up the space between the middle of *January* and the time of the Trial, by many Weeks, unless you will give large allowances to the Word *about*; an Exception which was taken to *Mowbray*'s Evidence, though he rectify'd it by his Account in his *Almanack*; but it would not be admitted, though *Colledge* very sensibly desired of the Court, for Justice sake, to look on the *Almanack*, to see whether it was newly writ, as if done for that purpose.

Besides, the Improbability if such a thing was in hand, as the Lord *Howard* pretended, for him to run into the Country, and then to the *Bath*, when the Matter was just come to a *Crisis*, as it were, shews him, if he swore true, rather a Madman than a Traitor.

But the Usage of the King's Counsel and the Court towards the Prisoner, was very unjust and unfair; they permitted my Lord *Howard* to go on with a long Story of him and my Lord *Shaftesbury*, at which, when my Lord *Russel* took Exceptions, the *Chief Justice*, it is true, said it was no Evidence; yet the *Attorney-General* bidding him go on in the Method of time, he went on where he left off, intermixing Stories of Designs, and of Attempts by other Persons upon the King's Person, to exasperate the Jury, as my Lord *Russel* said rightly, against him; a thing which no Counsel durst have done, and no Court would have suffered in any other Case, nor even in that would the Court or Counsel suffer it for the Prisoner. How was my Lord *Anglesey* check'd when he began to tell what my Lady *Chaworth* said, and Mr. *Edward Howard* when he did not speak of his own Knowledge! How unjust was it for the King's Counsel to repeat all the Evidence the Lord *Howard* gave, when they summ'd it up, even that which the Court told them before was not *Evidence!* How unjust was the insinuating of the Death of my Lord of *Essex*, as Evidence against my Lord *Russel!* And why did not the Court in summing up the Evidence take notice of the Liberty the *Witnesses* and *Counsel* had taken, and have told them what was not *Evidence?* No other Reason can be given than what *Colledge* said at his Trial, upon his Observation of *Fitzharris*'s business and his own, that the Matter was not to stop at him.

Remarks on Colonel Sidney's *Trial.*

THE Lord *Russel* being executed, and the same Day what was called his Speech being published, than which, nothing in Print was so eagerly accepted or sought after, which shewed the Inclination of the People, there was some Respite for quieting the Minds of the People; but it was not to stop there, as *Colledge* said; and therefore Colonel *Sidney* (who was talk'd to death under the Notion of a Commonwealth's-man) was the 7th of *November* 1683, brought to *Westminster* to be arraigned on an Indictment of High-Treason. The Indictment at the Time he came to the Hall, was so far from being found by the Grand Jury, that it was not so much as presented to them; but the King's Counsel, who had pack'd the Jury, knew well enough that it would be accepted, that is, found upon sight by the Jury, without any Consideration; which was accordingly done, and Colonel *Sidney* thereupon arraigned. The Indictment was for designing to depose the King, and to persuade the King's Subjects to rebel; and that he did write a certain Libel, wherein it was contain'd, that he (meaning King *Charles* the Second) is subject to the Law of God, as he is a Man; to the People who made him such, as a King, *&c.* To which Indictment he would have put in some Exceptions, exprest in a Parchment in his Hand, but was told by the Court he must either plead or demur, and upon no other terms Exceptions could or ought to be admitted; after which he pleaded Not Guilty.

The 21st of *November* he was try'd, at which time he insisted to have a Copy of his Indictment, as he had done when he was arraigned; but was both times denied. The first Witness against the Prisoner was Mr. *West*, against whom Colonel *Sidney* objected, because he was not pardoned; but it was answered by the Court, that he was a good Witness in my Lord *Russel*'s Trial, and therefore should be in that. Then Colonel *Sidney* desired Mr. *West* might speak nothing but what he knew of Colonel *Sidney*; but was answered by the Court, he might give Evidence of a Plot in general, tho' Colonel *Sidney* was not concerned in it; and it was call'd Sir *William Jones*'s Law. Then Mr. *West* went on, and gave Evidence of what Colonel *Rumsey*, Mr. *Nelthorp*, and Mr. *Ferguson* told him of Colonel *Sidney*; but of his own Knowledge he could not say any thing of the Prisoner. *Rumsey* gave a like Evidence he had done in my Lord *Russel*'s Trial, with an addition of what Mr. *West* and Mr. *Goodenough* told him; *Keeling* gave Evidence of what *Goodenough* told him; all which the Court agreed was no Evidence against the Prisoner. Then the Lord *Howard* gave the like Evidence, from the middle of *January* to that time, as he had done in the Lord *Russel*'s Trial, saving that he said the Earl of *Shaftesbury* was brought into the Cabal, who was not mentioned before; and save that he said the Meeting at my Lord *Russel*'s was about a Fortnight or three Weeks after the Meeting at Mr. *Hampden*'s; whereas in my Lord *Russel*'s Trial, he says it was about ten Days after the Meeting at Mr. *Hampden*'s House: and here he makes two notable Speeches for Mr. *Hampden* at the opening of the Consult, both which he had forgotten at my Lord *Russel*'s Trial, nor could remember at Mr. *Hampden*'s Trial, tho' in the last he was led by a great many Questions to put him in mind of them. After his Evidence given, Colonel *Sidney* was ask'd, whether he would ask the Witness any Questions? Who answered, he had no Questions to ask him; whereupon the Attorney-General said, *Silence*——You know the Proverb.

The Record of the Lord *Russel*'s Conviction and Attainder was given in Evidence. Sir *Andrew Foster* swore Sir *John Cockram* and the two *Campbells* came to *London*. Sir *Philip Floyd* proved the seizing of some Papers in the Prisoner's House, and he did believe the Papers shewn in Court to be some of them. *Sheppard*, *Cary*, and *Cook* swore the Writing produced was like the Prisoner's Hand-writing. The Attorney-General desired some part of the Writing should be read; the Prisoner desired all of it might be read, but was answered by the Court, that the Attorney must have what part of it he would to be read, and afterwards the Prisoner should have what Part of it he would to be read; but he persisted to desire all of it should be read. Then the Writing was read (which was plainly an Answer to a Book, but what Book, was not mentioned) in which the Right of the People was asserted. The Earl of *Anglesey* gave the same Evidence for the Prisoner, of the Lord *Howard*'s speaking of my Lord *Russel*, and the Plot, as he had done in my Lord *Russel*'s Trial. The Earl of *Clare* said that the Lord *Howard*, after Colonel *Sidney*'s Imprisonment, said, if he was questioned again, he would never plead; the quickest dispatch was the best, he was sure they would have his Life; and speaking of the Primate of *Armagh*'s Prophecy, he said, the Persecution was begun, and he believed it would be very sharp, but hoped it would be short; and said, he thought Colonel *Sidney* as innocent as any Man breathing, gave him great Encomiums, and bemoaned his Misfortunes; and as for Col. *Sidney*'s Papers, he said, he was sure they could make nothing of them. Mr. *Philip Howard* said, the Lord *Howard* said it was a Sham-plot; Dr. *Burnet* gave the same Evidence as he did in my Lord *Russel*'s Trial. Mr. *Lucas* gave Evidence, that the Lord *Howard* said he knew nothing of Col. *Sidney*'s being in any Plot. The Lord *Paget* gave Evidence to the same purpose. Mr. *Edward Howard* gave Evidence to the same purpose. *Tracy* and *Penwick* gave Evidence to the same purpose. Mr. *Blake* testified, that the Lord *Howard* said he had not his Pardon, and could not ascribe it to any other Reason, than that he must not have it till the Drudgery of swearing was over. Now to review what hath been said, it is strange to see what a Progress was made in the Resolutions

Reſolutions of Points of Law, to take away a Man's Life; ſo ſay it in Col. *Sidney*'s Words, as if the Court and Counſel thought it their Duty to take away a Man's Life any-how. Mr. *Weſt*, and ſeveral others, are admitted to give Evidence by hear-ſay againſt the Priſoner, and their Evidence ſummed up, and urged as Evidence to the Jury; and the Reaſon given for it was, that he was admitted a good Witneſs of a like matter, in the Lord *Ruſſel*'s Trial; which, beſides that it was not true, for it was rejected in that Trial, as it appears it was in the print; yet if he had been admitted, of no Authority, as Col. *Sidney* ſaid, becauſe, perhaps, he was not excepted to. Of a like ſtamp is the Evidence of the Conviction of the Lord *Ruſſel*; though I agree the Lord *Ruſſel*'s Conviction was as good Evidence againſt Col. *Sidney*, as the Earl of *Eſſex*'s Murder was againſt my Lord *Ruſſel*, and no better. The ſame may be ſaid of *Rumſey*, *Keeling*, *Forſter*, and *Atterbury*'s Evidence. Againſt the Lord *Howard*'s Evidence there were the ſame Objections as in the Lord *Ruſſel*'s Trial, with the addition of ſeveral other Perſons teſtifying he ſaid he knew not, nor believed any thing of the Matter; and that he could not have his Pardon, till he ſwore others out of their Lives; which in truth was the Senſe of his Expreſſions.

The King's Counſel indeed had thought of ſomething ſince the Trial of my Lord *Ruſſel*, to palliate the matter of the Lord *Howard*'s Sayings, (for they lean'd hard upon his Reputation, and look'd as if he would perjure himſelf at the Expence of ſome Perſons Lives, as his Words are in the Lord *Ruſſel*'s Trial). Would you, ſay they, have had him confeſs'd the matter to thoſe Perſons to whom he had deny'd it?

I think there is a difference between confeſſing and denying: Who aſk'd him the Queſtion? What did it avail him to deny it to the Perſons teſtifying againſt him? and therefore when he voluntarily ſaid a thing untrue, unaſked, not provoked or compelled to do it, and which could do him no good, it was good Evidence of his untruth, and that no credit ought to be given to what he ſwore.

As for the laſt part of the Evidence, which was about the Writing, both the Indictment and the Evidence was defective.

As for the Evidence, if the Subject-Matter of the Writing had been Evidence of Treaſon, the Indictment ought to have expreſs'd that he publiſh'd it, which the Indictment in this caſe did not; and upon good Reaſon, which was, that the Jury might be put in mind, that the publiſhing of it was neceſſary to make it known; whereas they very well knew that the Evidence would not, nor did come up to it. This was the firſt Indictment of High Treaſon, upon which any Man loſt his Life, for writing any thing without publiſhing it; * for in *Fitzharris*'s Indictment, he was charged with publiſhing his Libel; and ſo in all other Indictments for Writing, and upon good reaſon: for this being made an Overt-Act of Treaſon, it muſt be an Evidence of a Deſign to kill or depoſe the King, or the like; and as the Conſequence of what the Writing contain'd, which was, that the Power was in the People, *&c.* being in its nature no other, nor urged by the King's Counſel to any other Intent than to corrupt the Subjects Minds, could not be Evidence of ſuch matter, unleſs proved he had writ and publiſhed it, whereof the laſt was not pretended to be proved.

That it was neceſſary to be expreſs'd in the Indictment, and proved at the Trial, appears by the Reſolution of all the Judges of *England* in *Hugh Pine*'s Caſe, reported in *Cro. Car.* fol. 117. at a time when Prerogative run pretty high; wherein, beſides the Reſolution that no Words charging the King with any perſonal Vice was Treaſon, there is the Caſe of one *Peacham*, in the 33d of *Henry* the Eighth, cited, who was indicted for Treaſon, for treaſonable Paſſages in a Sermon never preached, nor intended to be preached, but found in Writing in his Study; he was found guilty, but never executed; for many Judges at that time were of Opinion it was not Treaſon, as the Book ſays: which I think, according to the Evidence here given, was the expreſs Caſe of Col. *Sidney*, admitting he writ the Book produced, and that the Paſſages in it were treaſonable.

And as this Indictment was an Original in the particular before-mentioned, ſo it was a ſecond of an *Innuendo* Indictment of Treaſon; *Fitzharris* was the firſt. The Proſecution againſt *Car*, as I remember, was an Information, and Judgment arreſted after a Verdict, becauſe it was by *Innuendo*, of which no Precedent could be produc'd; and although in Actions for Words it was permitted, yet in Criminal Matters, being penal, it was reſolv'd it ought not to be permitted, and certainly much leſs in Treaſon: and as this Indictment was an Original in one part, and a ſecond in another, the Evidence on it was an Original in another part, which was proving the Book produc'd to be Col. *Sidney*'s Writing, becauſe the Hand was like what ſome of the Witneſſes had ſeen him write; an Evidence never permitted in a criminal Matter before. The Caſe of the Lady *Carre* was well cited by Col. *Sidney*, againſt whom there was an Indictment or Information of Perjury; in which it was reſolv'd, that compariſon of Hands was no Evidence in any criminal Proſecution: And it muſt be own'd, that at that time, beſides *Keeling* and *Twiſden*, there then ſat in that Court Sir *Wadham Windham*, whom all will own to have been the ſecond beſt Judge which ſat in *Weſtminſter-Hall* ſince the King's Reſtoration: and if it be not Evidence in a Proſecution of Miſdemeanor, much leſs in Treaſon, as Col. *Sidney* ſaid; which Inference, beſides the Reaſon of the thing, is back'd by the Authority of my Lord *Coke*.

But admitting Col. *Sidney* wrote that Book, and publiſhed it; yet if it were not done with a Deſign to ſtir the Subjects up into a Rebellion, but was writ and publiſhed only *diſputandi gratia*, as the Import of the Books ſhews plainly it was, it was no more Treaſon, than the Diſcourſe between *Blague* and Mate *Lee* about taking the *Tower* was. And ſuppoſe it was wrote with that Deſign, yet it not appearing when it was writ, how could a Jury, upon their Oaths, ſay it was done with a Deſign to raiſe Rebellion againſt King *Charles* the Second, when, for aught appeared, it was writ before he was King, or thought of? It might, for aught appeared, be writ in King *Charles* the Firſt's time, or *Cromwell*'s time, and deſign'd againſt either of them, or any foreign Prince, and therefore could not be Treaſon againſt King *Charles* the Second.

The Evidence was an Original in this particular alſo; it was the firſt time that ever a particular Expreſſion in a Writing was given in Evidence againſt a Man in Treaſon, without reading the whole Writing, and for a very good Reaſon given by the Jury in *Fitzharris*'s Caſe, which was, That there might be ſomething in the Writing not expreſſed in the Indictment, which may explain the Clauſes in the Indictment, ſo that they may bear another conſtruction: and in that Trial it was agreed the whole Writing ought to be read, and was read accordingly; and it was the Duty of the Court to have ordered it, whether the Priſoner or Jury had deſired it or not, as they are upon their Oaths to do right: but in Col. *Sidney*'s Caſe, when preſſed by him, it was denied; only ſome particular Paſſages he might have read if he would, which he did not accept, upon a very good Reaſon which he gave, which was, that he knew not the Paſſages of the Book, or at leaſt he did not remember them, and therefore could not call for them. 'Tis true, that Practice in civil Matters is allowed to ſave time, where the Miſchief is not very great; becauſe of a Paſſage in a Deed or Writing, material for either Party, omitted in reading, the Matter may be brought about again; but in Criminal, much leſs in Capital Proſecutions, they cannot be, unleſs a way can be found to bring a Man to Life again.

Almoſt all the Circumſtances of this Trial are Originals; the ſumming up of the Evidence againſt him was barbarous, being Invectives, and no Conſequences. It was ſaid he was not only guilty of the Practices he was accuſed of, but that he could not have been otherwiſe, becauſe his Principles led him to it; and it might with as good Reaſon have been urged, that he not only was become, but was born a Traitor. The laſt matter remarkable in the Trial, was that of an Overt-Act, of which the Court ſaid it was reſolved by all the Judges of *England*, that if I buy a Knife of *J. S.* to kill the King, and one Witneſs prove I bought a Knife, and another prove I bought it for that Purpoſe, it is two Witneſſes of an Overt-Act within the Statute of *Edward* the Sixth.

It were fit to know who the Judges were who gave that Reſolution, if it were but for the Authority of the Caſe; for I doubt the Reaſon of it will convince no Man: They might as well have reſolved, that eating or drinking, or the moſt ordinary Acts of a Man's Life, is an Overt-Act of High-Treaſon.

The Law hath taken that Care for the Evidence of High Treaſon, which it hath not done in any other Caſe, that it muſt be proved by an Overt-Act, proved by two Witneſſes. One would think at the firſt Sight of the Statute, that there ſhould be two Witneſſes to the ſame Fact; but that hath been adjudged otherwiſe, yet ſtill it was reſolved there muſt be two Witneſſes: but if this Reſolution be Law, it is plain there needs but one. 'Tis true, if a Man does an Act for which he can give no Reaſon, as placing a Mine of Powder in a Place the King uſually paſſeth over, or planting a Piece of Cannon to ſhoot at a place the King uſually paſſeth by, if he cannot give a credible Reaſon why he did it, and another ſwears the Purpoſe of the thing, it is two good Witneſſes within the Act.

It hath been ſaid, if a Man be bound to his good Behaviour, and wears a Sword, it is a Breach of the good Behaviour; and perhaps, heretofore, when Swords were not uſually worn but by Soldiers, it might be ſo, becauſe it ſtruck a Terror in other People as much as a Blunderbuſs, or the like unuſual Weapon; or the going armed in a Coat of Mail, for any Perſon but a Soldier, doth at this Day. Yet no Man will ſay that, now Swords are uſually worn by all Sorts of People, it is a Breach of the good Behaviour; and ſo that which heretofore was a Crime, by Cuſtom now is become none. It is therefore the unuſualneſs and the unaccountableneſs of the Circumſtance make it an Evidence, which cannot be aſſigned as a Reaſon in the Overt-Act mentioned.

The laſt thing I take notice of, is, that Col. *Sidney* refuſed to aſk the Lord *Howard* any Queſtions; from whence was inferred, that he aſſented to the Truth of the Matter ſworn: but it is well known, 'tis no prudence to aſk a thorough-pac'd Witneſs a Queſtion; in Mr. *Hampden*'s Trial, his Counſel refuſed ſo to do for that Reaſon.

The next who fell a Sacrifice, according to *Colledge*'s Prophecy, was *James Holloway*; he was outlawed, and taken beyond Sea; and being induced with Promiſes of Life, to accuſe himſelf of things (whether guilty or not) enough to make good an Indictment of High Treaſon againſt him, it was indeed generouſly offered him that his Outlawry ſhould be ſet aſide, and he have the liberty to be tried, and defend himſelf as well as he could: but knowing that what he had ſaid ſince he was taken would be brought in Evidence againſt him, he refuſed his Trial; and becauſe he would not purchaſe his Pardon at the Expence of innocent Men's Blood, by accuſing others of what he did not know they were guilty (if his dying Speech is to be believed) he was executed.

I ſhould not have mention'd this, but for the ſake of the next Perſon's Caſe, which was Sir *Thomas Armſtrong*'s, who was outlawed for High Treaſon, when he was beyond Sea; he was taken and brought to the *King's Bench* Bar.

Remarks upon the AWARD *of Execution againſt Sir* Thomas Armſtrong.

AT Common Law, if a Perſon was beyond Sea when an Outlawry was pronounc'd againſt him, it was an Error in Fact, for which the Outlawry was to be revers'd; and it is an Error in all Outlawries but for High Treaſon to this Day. By the 6th of *Edward* VI. that Error is taken away in High Treaſon, but there is a *Proviſo* in that Statute, that if the Perſon outlaw'd ſhall within a Year after the Outlawry pronounc'd, yield himſelf to the Chief Juſtice of the *King's Bench*, and offer to traverſe his Indictment, and on his Trial ſhall be acquitted, he ſhall be diſcharg'd of the Outlawry. Upon the Conſtruction of this Statute, no Judgment was ever given that I know of; and the reaſon is, no Man outlaw'd was ever deny'd a Trial till this time, if he was taken within a competent Time. The reaſon of making that Statute was this; Men would commit Treaſon,

* 1 Sid. 419.

and

and preſently fly beyond Sea, and ſtay there till the Witneſſes who ſhould prove the Treaſon were dead; then return, and reverſe the Outlawry for the Error of their being beyond Sea; and the Witneſſes being dead, they were ſafe: and therefore this Statute takes away that Error in part, tho' not in the whole, and doth in effect ſay, that the Perſon outlaw'd ſhall not have advantage of that Error, unleſs he comes and takes his Trial within a competent time, which that Statute limits to a year after the Outlawry pronounc'd.

This being plainly the Senſe of the Statute, it was injuſtice to deny the Favour or Right of a Trial to Sir *Thomas Armſtrong*, which was never deny'd any Perſon before nor ſince, where it was agreed that all the Witneſſes againſt the Perſon accus'd were alive, as in Sir *Thomas Armſtrong*'s Caſe they were, barely upon the Quibble of the Word *render*, which in no Caſe that ever I read was differenc'd from *taken*, but in one Caſe, which is *Smith* and *Aſhe*'s Caſe, in *Cro. Car.* 58. in an Outlawry for Debt againſt Huſband and Wife, which will not extend to, or warrant the Judgment in this Caſe: and if there were but a Doubt in the Caſe, as it cannot be deny'd there was, the Outlawry ought to have been wav'd, or at leaſt Counſel for the Priſoner heard as to the Point.

It was a vain and unjuſt Reaſon (and only tending to incenſe the thing) aſſign'd by the Attorney, that the Priſoner was one who actually engag'd to go, upon the King's haſty coming to Town, to deſtroy him by the way; whereas the Priſoner offer'd to prove his Innocence in that and other Matters of which he was accus'd: and even that Objection againſt him was an Invention of the Attorney's, for any thing appears; but then it was reſolv'd to ſtop at nothing, and Succeſs had made them fearleſs. *Fitzharris* and *Colledge* 'twas own'd had hard meaſure, and that their Caſes might be forgotten, their Quarters were buried; but Sir *Thomas Armſtrong*'s were expos'd, tho' the Proceedings againſt him were equally as unjuſtifiable as in the other two Caſes.

Remarks on the Trial of Count Conningſmark.

I Think fit to remember in the ſame Reign, though before this time, one Caſe, to ſhew how the Courts of Juſtice were remiſs or violent, according to the ſubject Matter.

All will agree that the Murder of Mr. *Thynne* was one of the moſt barbarous and impudent Murders that ever was committed; and of that Murder Count *Conningſmark*, tho' he eſcap'd Puniſhment, was the moſt Guilty.

I do not complain that in that Trial the Chief Juſtice directed the Priſoner the way to make the King's Counſel ſhew the Cauſe of Challenge againſt the Perſons call'd on the Jury, and challeng'd for the King, without any Reaſon: It was his Duty ſo to do; and he ought to have directed *Fitzharris* the ſame Method, which he did not: but he was blameable that he did not aſk the *Lieutenant* and *Polander* what they had to ſay for themſelves, which was always done before and ſince that time, and ought to be, which was an Injuſtice; and therefore two of the Priſoners at the time of their Sentences ſaid, they were never try'd, tho' I believe no great Injury to them, becauſe they had little or nothing to have ſaid for themſelves.

But if they had been aſk'd, they would have ſaid, as they did before their Trials to the Juſtice of Peace who committed them, and as they did after their Condemnations, that Count *Conningſmark* put them upon doing what they did, which might have influenc'd the Jury to have found the Count guilty, which was contrary to the Deſign of the Court; and it was for the ſame Reaſon the Chief Juſtice would not permit the Juſtice of Peace to read the Examination of *Stern* and *Boroſky*.

I do agree, that what they ſaid before the Juſtice of Peace was not Evidence againſt the Count; I agree that the Count being indicted and try'd as Acceſſory, at the ſame time the Principals were indicted and try'd, the Principals could not be good Witneſſes againſt the Count, becauſe properly a Principal ought to be convicted before the Acceſſory be try'd; and therefore, tho' for Expedition both are try'd together, yet the Verdict always is, and ought to be, given againſt the Principal, before that of the Acceſſory.

But I deny what was in that Trial laid down for Law, that the Acceſſory being in the ſame Indictment with the Principal muſt be try'd at the ſame time. It is true, the Count deſir'd his Trial might be put off for two or three Days, which the Court knowing what was beſt for the Count deny'd, and not for the above pretended Reaſons; for an Indictment againſt many may be joint, and yet the Trials may be ſeveral: the Truth is, in ſuch Caſes the Indictment is joint and ſeveral.

Suppoſe the Acceſſory, at the Trials of the Principals, had not been in cuſtody; will any Perſon ſay, that if afterwards he was taken, he can't be try'd upon that Indictment in which he was join'd with the Principals?

But beſides a hundred Precedents not printed, there is the Caſe of *George Saliſbury & al.* in *Plowden, Fol.* 100. where it was reſolv'd, that tho' an Indictment againſt many is joint, yet the *Venire* may be ſeveral againſt each Perſon, and conſequently the Trials may be ſeveral; and if ſo, then the times of the Trials may be ſeveral: but that which is to be complain'd of is, that the Count, in the Opinion of all Mankind, at that time and ſince, was the moſt guilty Man; yet the care taken to puniſh the leſs guilty, as *Stern* and *Boroſky*, was in order to let the moſt guilty eſcape; for I think both *Stern* and *Boroſky* might, and would have been good Witneſſes againſt the Count, if the Court would have permitted it. The Count might have been indicted as Acceſſory to *Uratz* only; for the Acceſſory to all the Principals is Acceſſory to every of them ſeverally: and when the Court in their private Conſciences were ſatisfy'd the Count was moſt guilty, they ought to have been cunning, *aſtuti*, as my Lord *Hobart* calls it, to have brought him to Puniſhment. But 'twas ſaid, *Stern* and *Boroſky* being indicted of the ſame Crime with the Count, they could not be good Witneſſes againſt him, which I think is no more Law than Truth: Truth it was not, for the Count was indicted as Acceſſory, the reſt as Principals. But taking it that all were indicted and try'd as Principals for the ſame Fact at the ſame time, why is not the Evidence of the one good againſt the other? Firſt, I think there is no expreſs Reſolution for that Point of Law, but a late Rule given at *Kingſton* Aſſizes upon the Trial of a Maid and one *Saterwaite* for burning of an Houſe; and therefore there is a Liberty to examine by Reaſon how the Law is. I agree if a Man is indicted and try'd for killing another, he ſhall not be admitted to ſay, *B.* did it by himſelf; but I think he may be a good Witneſs to prove that he and *B.* did it; that is to ſay, he ſhall not give any Evidence againſt another, which tends to acquit himſelf as well as accuſe another; and I think he may give Evidence which accuſes another of the ſame Crime whereof he is indicted, if it doth not tend to acquit himſelf.

For it is agreed on all hands, that being guilty of the ſame Crime, doth not diſable a Witneſs: for then *Rumſey* and ſeveral Perſons in the Lord *Ruſſel*'s *Plot*, as it was call'd, had not been good Witneſſes. In the next place, the Circumſtances of an Indictment againſt the Witneſſes for the ſame thing he teſtifies againſt another, do not diſable him; *Widdrington* was indicted for the ſame things, of which he gave Evidence againſt ſeveral others as his Complices in Robberies. Nay, the Law hath given ſomewhat more Credit to the Evidence of a Perſon indicted, as a Witneſs of the ſame things againſt others, than it does to a Perſon not indicted; as in the Caſe of an Approver, which, as *Stamford* * ſays, was a Perſon in Priſon (not at large) for the Fact for which he was indicted, arraign'd upon an Indictment, or an Appeal of Felony, who before a Coroner aſſign'd by the Court, confeſſes himſelf guilty of the Felony of which he is indicted, and not of any other, and confeſſes other Perſons, naming them as Coadjutors with him in committing the Crime of which he is indicted, and not of any other Crime; ſo much Credit ſhall be given to that Confeſſion, that Proceſs ſhall be made out againſt the Perſon impeach'd, who, if taken, ſhall be arraign'd on that Approvement, as if an Indictment by a Grand Jury had been found againſt him: and if the Law gives ſo much Credit to an Approver, I think no Perſon can ſhew me a Reaſon why a Perſon indicted is not a good Witneſs againſt another for the ſame Crime.

* S. P. C. *Lib.* 2. *c.* 53.

It is true, *Stamford* † ſays, if the King gives an Approver a Pardon, he is a good Witneſs; which implies, that otherwiſe he is not: But it muſt be conſider'd, that the reaſon of that is, that an Approver being indicted, as he always is, and confeſſing the Indictment, is convicted; and a Perſon convicted of Felony cannot be a Witneſs till pardon'd. But it will be no Argument why *Stern* and *Boroſky* had not been good Witneſſes againſt the Count before they were convicted; and it was a like piece of Juſtice, that whereas the Count was the moſt guilty, he was acquitted.

† S. P. C. *Lib.* 2. *c.* 58.

Uratz being the next greateſt Offender, was honourably interr'd, and *Stern* and the *Polander*, who were the leaſt Offenders in that matter, were hang'd in Chains.

It was ſomewhat like the *New England* Law, remember'd by *Hudibras*, ‡ of hanging an uſeleſs innocent *Weaver* for an uſeful guilty *Cobler*.

‡ *Part* 2. *Canto* 2.

Remarks upon Mr. Corniſh's *Trial.*

THERE yet remain two Perſons Proſecutions to ſpeak of; the one is Mr. *Corniſh*, who was taken the —of *October*, 1685, and was arraign'd on an Indictment of High-Treaſon the *Monday* after, for conſpiring to kill the late King *Charles* the Second; and knowing *James* Duke of *Monmouth*, *William Ruſſel*, Eſq. and Sir *Thomas Armſtrong*, to be Rebels and Traitors, promis'd to be aſſiſting to them in their Treaſons: To which he pleaded Not Guilty. He deſir'd to put off his Trial, becauſe he had no notice till the *Saturday* before at twelve a-clock, and he could get no Friend to come to him till eight a-clock at Night; and then he was permitted to ſpeak with no body but in the Preſence of the Gaoler: he had been allow'd no Pen, Ink, or Paper. He was told by the Court he ought not to have it, without leave given on a Petition preferr'd by him, and that he was taken *Tueſday* before, which to that time was almoſt a Week. He ſaid, his Children had petition'd the King the Night before to put off his Trial, and it was referr'd to the Judges: he did not know whether he was committed for High-Treaſon againſt the preſent, or the former King, and he had a material Witneſs an hundred and forty Miles off; but was told by the Court, they had no power to put off his Trial. It is true, they ſaid the Lord *Ruſſel*'s Trial was put off till the Afternoon, (which was not true) but that was a Favour which could not be challeng'd by another as a Right. He complain'd he had not a Copy of the Pannel, but was anſwer'd, it was not his Right to have it. Then the Attorney ſaid, he had not deſerv'd ſo well of the Government as to have his Trial delay'd, and therefore he was preſently try'd.

Rumſey ſwore, that about the latter end of *October*, or beginning of *November*, the Earl of *Shafteſbury* deſir'd him to go to Mr. *Sheppard*'s Houſe, where was a Meeting of the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, Sir *Thomas Armſtrong*, Mr. *Ferguſon*, and Mr. *Sheppard*; he came late, and they were juſt on going away; he deliver'd his Meſſage, and they told him that Mr. *Trenchard* had diſappointed them. He had not been there above a Quarter of an Hour, but Mr. *Sheppard* was call'd down, and brought up Mr. *Corniſh*, and told them Mr. *Corniſh* was come; who came into the Room, and excus'd his not coming ſooner, and that he could not ſtay, for he was to meet about the Charter; whereupon Mr. *Ferguſon* opened his Boſom,

Boſom, and under his Stomacher pulled out a Paper: they told Mr. *Corniſh* they had had it read, and deſired to read it to him: Mr. *Ferguſon* read it, Mr. *Sheppard* held the Candle while it was reading, and afterwards they aſked Mr. *Corniſh* how he liked it: who ſaid, he liked it very well. He remembered two Points in it very well, the one was for Liberty of Conſcience, the other was, that all who would aſſiſt in that Inſurrection, who had Church or King's-Lands in the late War, ſhould have them reſtor'd to them. He did not hear all the Paper, and obſerved only theſe two Points; it was a Declaration on a Riſing, and when the Riſing was to have been, it was to have been diſperſed abroad: there was a Riſing intended at that time, and Mr. *Corniſh* ſaid, he liked the Declaration, and what poor Intereſt he had he would join with it. He had great dealings with Mr. *Corniſh*, and Mr. *Corniſh* was a very honeſt Man, it was out of Compaſſion he had not accuſed Mr. *Corniſh* before.

Mr. *Goodenough* ſaid, there was a Deſign to riſe, in *London*, and for that purpoſe to divide the City into twenty Parts, and to raiſe five hundred Men out of each Part, to take the *Tower*, and to drive the *Guards* out of Town. Before that was agreed on, he being by chance at Mr. *Corniſh*'s Houſe, ſaid, the Law will not defend us; ſome other way was to be thought on. Mr. *Corniſh* ſaid, he wondered the City was ſo unready, and the Country ſo ready. Mr. *Goodenough* reply'd, there is ſomething thought of to be done here; but in the firſt place the *Tower* muſt be ſeized, where the Magazine is. Mr. *Corniſh* pauſed a little, and ſaid, I will do what good I can, or what I can, or to that purpoſe, he ſaid.

He afterwards met Mr. *Corniſh* on the *Exchange*, who aſked him how Affairs went; and this was in *Eaſter-Term* 1683. He had ſome matters with Mr. *Corniſh* about managing the Riot, which was brought againſt him, Mr. *Corniſh*, and others: He came to Mr. *Corniſh*'s Houſe about the Buſineſs of the Riot, and no Perſon was by at the Diſcourſe. Mr. *Goſfright* teſtified for Mr. *Corniſh*, that he oppoſed Mr. *Goodenough*'s being Under-Sheriff, and ſaid, he would not truſt an Hair of his Head with him, he was an ill *Man*, obnoxious to the Government, and had done ill things, and he would not truſt his Eſtate and Reputation in the Hands of ſuch an Under-Sheriff; and he believed Mr. *Goodenough* and Mr. *Corniſh* were never reconciled. Mr. *Love*, Mr. *Jekyl*, and Sir *William Turner*, teſtified to the ſame purpoſe: Mr. *Lane* ſpoke out of the printed Trial of my Lord *Ruſſel*, and ſaid, *Rumſey* in that Trial ſaid he did not hear the Declaration read, for it was read before he came. Dr. *Calamy* ſaid, Mr. *Corniſh* did often come to Church, and receive the Sacrament. Mr. *Sheppard* ſaid, he was *ſubpœna'd* by the King, and by Mr. *Corniſh* the Night before; and that Mr. *Corniſh*'s Son was with him the Afternoon of the Day before, who preſt him to be at the Trial the next Day; that there were Accounts depending between him and Mr. *Corniſh*, whereon there was about one or two hundred Pounds due to Mr. *Corniſh*, and Mr. *Corniſh*'s *Subpœna* was ſerved firſt upon him. At one of thoſe Meetings at his Houſe, Mr. *Corniſh* came to ſpeak a few Words with the Duke of *Monmouth*, or ſome other, he could not be poſitive in that, it was many Years ago; he did not ſtay above half a quarter of an Hour in the Houſe, *Sheppard* came up Stairs, and went out with Mr. *Corniſh*, and there was not one Word read, nor no Paper ſeen while Mr. *Corniſh* was there: he remembred there was a Declaration read, *Ferguſon* pulled it out of his Shoe: he could not tell whether Mr. *Corniſh* was at his Houſe the Night the Declaration was read, but he was poſitive no Paper was read while Mr. *Corniſh* was there, for Mr. *Corniſh* was not looked on to be one of the Company: he did not know who Mr. *Corniſh* came to ſpeak with, when he came to his Houſe; Mr. *Corniſh* was but once at his Houſe when the Duke of *Monmouth* was there: he did not remember that Mr. *Corniſh* was in the Company when Mr. *Rumſey* was there; he ſaid, he had attended the Court from eleven a-Clock till half an Hour paſt three.

This being the Sum of the Evidence given in the Trial for and againſt the Priſoner, let us ſee whether thoſe Inferences could be made from it as were made by the Court and Counſel? and whether, on the whole, an honeſt Jury, tho' but of little underſtanding, could have found him guilty of the Treaſon in the Indictment?

It is agreed on all Hands, that a Petty Jury may and muſt conſider the Credibility of a Witneſs, (tho' in the Lord *Shaftesbury*'s Caſe it was ſaid a *Grand Jury* ought not ſo to do) and if ſo, ſurely *Rumſey* was not a credible, tho' he was not a diſabled Witneſs; no more than a Man who owns himſelf to be a Man of Falſhood, a profligate Wretch, and perjured by his own Confeſſion, tho' not convicted of it; he had notoriouſly confeſſed himſelf guilty of High-Treaſon, and of being in the Deſign of an intended barbarous Murder; he had ſworn in the Lord *Ruſſel*'s Trial, he had named all the Perſons at the Meeting he ſpoke of, of which Mr. *Corniſh* was none; and being taxed in this Trial with it, he excuſes his Perjury with Compaſſion to the Priſoner, which was mean, fooliſh, and contradictory: he perjured himſelf to ſave the Priſoner, and then ſwore Truth to hang him. He had not Preſence of Mind enough to excuſe himſelf in the manner a Witneſs in the Lord *Ruſſel*'s Trial did, that his God, his King, and his Country, put him unwillingly to act that part. Beſides that, in the Lord *Ruſſel*'s Trial, *Rumſey* ſwore he was not at the reading the Declaration, and contradicted *Sheppard*, who ſwore he thought he was there.

But that paſſage was proved only by a Witneſs who had read it in the Trial, which, I confeſs, in ſtrictneſs of Law is not Evidence; nor if the Witneſs had ſaid, he heard *Rumſey* ſwear ſo at the Lord *Ruſſel*'s Trial, it had not been Evidence, unleſs a Record of that Trial had been produced in Court, which was not done. But all thoſe things being but mere Circumſtances, ſhew the Injuſtice of ſpeeding his Trial, and denying him Counſel: Would not any Counſel have told him, that in ſtrictneſs of Law a Paſſage in a printed Trial was not Evidence, and was it not eaſy for him to have got a Witneſs to have ſaid that he had heard *Rumſey* ſwear ſo at that Trial? Were not all the Judges who ſat upon him, and all the King's Counſel who were againſt him, preſent at the Lord *Ruſſel*'s Trial, and perfectly remembred what *Rumſey* then ſwore as to the pretended Declaration, and might he not have *ſubpœna'd* them to have teſtified that matter? Nay, was it not their Duty to have done it even without a *Subpœna?*

To ſay it was againſt the King, and therefore they could not do it; or they were in the Commiſſion to try him, and therefore they could not do it; is neither Law nor Reaſon. Every Man knows that a Judge in a civil Matter tried before him, and a Counſel, even againſt his Client, has been enforced to give Evidence, (provided it be not of a Secret communicated to him by his Client) for in that particular a Judge ceaſes to be a Judge, and is a Witneſs; of whoſe Evidence the Jury are the Judges, tho' he after re-aſſume his Authority, and is afterwards a Judge of the Jury's Verdict.

A Judge may ſue, and muſt be ſued in his Court, but in that Caſe he ceaſes to be a Judge and is a Suitor, tho' he re-aſſumes his Authority in all other Matters: and if it be ſo in civil Matters, let any Man ſhew me a Reaſon why the Law is not ſo in criminal Matters; there is no expreſs Law againſt it, and it will be abſurd in Reaſon to ſay the Law is not ſo; for at that rate the King may put any Witneſs, he knows the Priſoner intends to produce for himſelf, into the Commiſſion for trying him, and ſo deprive the Priſoner of the Benefit of his Evidence; as in this Caſe *Sheppard*, whoſe Evidence ought to have been of great uſe (as ſhall be ſhewn) tho' it was not of any avail to the Priſoner, might have been put into the Commiſſion to have tried Mr. *Corniſh*, for he was as much qualified for it, as Sir *James Smith* then Lord *Mayor*, or any Judge upon the *Bench*. And if they might have been Witneſſes for the Priſoner, if *ſubpœna'd*, they might have been Witneſſes for him even without aſking; and it was a Duty incumbent on them, tho' not as Judges, yet as Chriſtian Men, ſo to be.

Humanity commands the Diſcovery of Truths, which prevent the ſhedding innocent Blood; and Chriſtianity commands a Man to do as he would be done by. I think the Queſtion need not be aſked, what they would have had done, if it had been their Caſe?

The Reaſon that all matters of Law are, or ought to be, tranſacted publickly, is, That any Perſon, unconcerned as well as concerned, may, as *amicus Curiæ*, inform the Court better, if he thinks they are in an Error, that Juſtice may be done: and the reaſon that all Trials are publick, is, that any Perſon may inform in point of Fact, tho' not *ſubpœna'd*, that Truth may be diſcovered in civil as well as criminal Matters.

There is an Invitation to all Perſons, who can inform the Court concerning the matter to be tried, to come into the Court, and they ſhall be heard. It is true, if the Judges or any Perſon had teſtified what *Rumſey* ſaid at my Lord *Ruſſel*'s Trial, it had not been Evidence without the Record of the Trial; and it is as true, that neither the Record, nor a true Copy of it could have been procured between Mr. *Corniſh*'s Commitment, if it were on *Friday* (as I have heard it was) tho' the Court ſaid it was on *Tueſday*, much leſs between the notice of his Trial, which was *Saturday-noon*, and the time of his Trial, which was *Monday-morning*.

But then what Juſtice was there in ſpeeding his Trial, ſo as to deprive him of the Circumſtances of his Defence? For that was but a Circumſtance, and not an eſſential Matter. And what Account can be given why the Court, when they were well ſatisfied that it was in the Priſoner's power to procure ſuch a Witneſs, and ſuch a Record, did not ſtay till he did it? Or if it would be too long in doing, why ſhould they not have put off the Trial for that time, and given the Priſoner a convenient time to do it?

The firſt, in civil Matters, hath been frequently done, when a Deed or Witneſs hath been wanting, if it could be done in a convenient time, and a Trial has been put off before it came on, tho' after it came on they have not done it, becauſe there is no great Miſchief in that, for either Party hath power to bring it about again; but not ſo in capital Matters, and therefore Juries in capital Matters have been frequently diſcharged after ſworn, where the Evidence hath been defective.

It is true, my Lord *Coke* ſaith, that a Jury once charged with a Priſoner, cannot be diſcharged, but muſt give their Verdict; but it is as true that he ſays ſo in favour of the Priſoner, that when the Evidence againſt him appears defective, he ſhall not be continued a Priſoner till more Evidence can be found, or procured againſt him, though the Practice of late Days hath been quite contrary, *viz.* to diſcharge the Jury where the Evidence againſt the Priſoner hath been defective, but enforce them to give a Verdict where the Priſoner's Defence hath been defective; tho' to their knowledge if he had longer time to do it, he had been able to produce the Witneſſes who could clear him; but by what Law or Reaſon I am to ſeek. Yet I confeſs, if *Rumſey*'s owning his Perjury in the Lord *Ruſſel*'s Trial, in the very point ſworn againſt the Priſoner, and ſo frivolouſly excuſing it, would not diſcredit him, I know not that any Record, Witneſs, or Evidence would have availed Mr. *Corniſh*.

And add to *Rumſey*'s contradicting himſelf, that *Sheppard*, who never contradicted himſelf, and had been a Witneſs in both Trials, agrees, that what *Rumſey* had ſworn in my Lord *Ruſſel*'s Trial, as to Mr. *Corniſh*'s not being there, was true.

But admitting *Rumſey* had never perjured himſelf, but was of equal Credit with *Sheppard*; yet when they contradicted each other in a Point which carried no probability or improbability with it, in a capital Matter, the Jury ought to believe *in favorem vitæ*; for it makes the matter at leaſt doubtful: and therefore the Jury ought to have acquitted the Priſoner, for a Reaſon in Law, and which was given in Colonel *Sidney*'s Trial (tho' ſhewiſhly) by the Court, *viz.* that it is better that twenty Nocents ſhould eſcape, than one Innocent ſuffer.

But to paſs from the Credibility of the Witneſſes to the Matter of his Evidence, this was the ſecond time that this ſort of Evidence in any Caſe criminal or civil was permitted to be given in Evidence; and there are the ſame Exceptions to it, as are above aſſigned to the Evidence of *Sheppard*. As to the Declaration in my Lord *Ruſſel*'s Trial, if a true Copy of part of a Deed or Writing was never yet permitted to be given in Evidence, much leſs hath or ought the Purport of Part of a Writing be given in Evidence, eſpecially when ſuch a Reaſon is given why the Witneſs remembred but part of it, as is given by *Sheppard* in my Lord *Ruſſel*'s Trial, and by *Rumſey* in this Trial, *viz.* that he did not hear all the Paper read.

And ſurely *Goodenough* could no way fortify *Rumſey*'s Evidence, being clearly of another matter, and that ſo very uncertain, that no heed ought

to have been given to it. When *Goodenough* told Mr. *Corniſh* ſomething ought to be done in the City, but in the firſt place the *Tower* ought to be ſeized; to which he anſwered, he would do what he could; or what good he could; theſe words may as well relate to *Goodenough*'s preſent Diſcourſe, where he complains that the Law would not defend them tho' innocent, as well as to the ſeizing the *Tower*; and if they ſhould refer to the laſt, yet they may be well enough interpreted, that he would do what he could, or what good he could, to prevent the ſeizing the *Tower*. And if they are capable of two Senſes, they ought to be interpreted in the beſt for the Priſoner.

Beſides, the Words are ſpoken not as a thing deſigned, but as a Matter, without which all other Matters were in vain, and might be meer matter of Diſcourſe, as was that between *Blague* and Mate *Lee* about taking the *Tower:* and if there was ſuch a Deſign on foot, it doth not appear that Mr. *Corniſh* was ever acquainted with it. The ſame may be ſaid as to what he aſked *Goodenough*, when he aſked how Matters went: may not thoſe Words well enough be applied to the Buſineſs of the Riot, *Goodenough* managed for Mr. *Corniſh* and others? And if what *Goodenough* ſaid was Evidence of a Deſign of ſeizing the *Tower*, that, as well as the Treaſon againſt the Guards, was Treaſon by the Act of the late King, and not by the 25th of *Edward* the Third, if it be true Doctrine which was laid down in the Charge to the Earl of *Shafteſbury*'s Grand Jury: and if ſo, he ought to have been proſecuted for it within ſix Months, and indicted within three Months, if the Doctrine in *Colledge*'s Trial be true: and yet this Deſign, if true, was in *Eaſter*-Term, 1683, and the Proſecution not till *October* 1685.

There was yet one piece of Evidence urged againſt him, *viz.* of his own Witneſs *Sheppard*, who poſitively teſtified for him as to the main, yet in a Circumſtance ſeemed to teſtify againſt him, which was Mr. *Corniſh*'s being at his Houſe when the Duke of *Monmouth* and the reſt were there, when the Declaration was read; and upon that piece of Evidence, as if it had contradicted what Mr. *Corniſh* ſaid before, there was a mighty Triumph: whereas, the moſt that could have been made of it was, that Mr. *Corniſh* in part of his Defence was guilty of an untruth. And even that was not ſo in Fact; for being charged to have been at *Sheppard*'s the Night the Declaration was read, he anſwered he was never at a Conſult in his Life, he never was at *Sheppard*'s in any Conſult, he never was there with my Lord *Ruſſel*, as he remembered; he had been at *Sheppard*'s ſeveral times, but never liked *Ferguſon* for his Morals, and therefore never liked to be in his Company, and he did not know but that he might enquire for the Duke of *Monmouth* in other Places, and this is all Mr. *Corniſh* ſays to that matter.

Sheppard ſays, Mr. *Corniſh* came into his Houſe at one of the Meetings to ſpeak with the Duke of *Monmouth* or ſome other, he could not be poſitive in that, it was ſo many Years ago, and did not ſtay half a quarter of an Hour: he could not ſay it was the Night the Declaration was read; he did not know whether Mr. *Corniſh* came to ſpeak with the Duke of *Monmouth* or not; he could not remember whether Mr. *Corniſh* was there in Company when *Rumſey* was there; there were not above three Perſons there when Mr. *Corniſh* came, which was the Duke of *Monmouth*, Mr. *Ferguſon*, and he could not tell whether the other was the Lord *Ruſſel*, or the Lord *Grey*.

Now it would be hard to find out the Contradiction between Mr. *Corniſh*'s Sayings and *Sheppard*'s Evidence; both agree that Mr. *Corniſh* hath been often at *Sheppard*'s Houſe, and neither denies or affirms that he was or was not there the Night the Declaration was read, for a good reaſon; which was, that Mr. *Corniſh* knew nothing of it, and *Sheppard* knew not which of the Nights he was there Mr. *Corniſh* ſaid he was not there with my Lord *Ruſſel*, as he remembered, and *Sheppard* doth not affirm he was there with the Lord *Ruſſel*. *Sheppard* ſays, that he was there when the Duke of *Monmouth* was there, and Mr. *Corniſh* doth not ſay that he was not there with the Duke of *Monmouth*. *Sheppard* ſaid, he ſpoke to the Duke of *Monmouth*, or ſome other Perſon, but he thought it was the Duke of *Monmouth*, which is no direct Affirmation that he ſpoke to the Duke; and Mr. *Corniſh* doth not ſay, he did not ſpeak to the Duke of *Monmouth*. So that if the Account of the Trial, ſet out by the Authority of, and ſigned by, *Thomas Jones*, be true, I cannot ſee any manner of Contradiction between Mr. *Corniſh* and *Sheppard:* and therefore, as the Court and King's Counſel did infer, that *Sheppard*'s Evidence, who poſitively denies the Truth of *Rumſey*'s Evidence, was ſo far from invalidating, that it corroborated *Rumſey*'s Evidence, and cleared the thing which was before ſomewhat dark, beyond all manner of Contradiction, is a piece of effrontery. So admitting *Sheppard* had ſaid Mr. *Corniſh* was at his Houſe the Night the Declaration was read, and had contradicted Mr. *Corniſh*, is it a neceſſary Conſequence, that he heard the Declaration read, and promiſed his Aſſiſtance to it? Which muſt be the Inference, if it muſt ſupport *Rumſey*'s Evidence.

If it be not a neceſſary Conſequence, but a probable one, that ought not to weigh with a Jury, to convict a perſon of a capital Crime, eſpecially not of Treaſon. The Statute of *Edward* the Third ſays, probably Convict; that is, ſays my Lord *Coke*, convicted upon direct and manifeſt Proof, not upon probable conjectural Preſumptions, or Inferences, or Strains of Wit: And to ſay truth, when Verdicts have been given on ſuch Evidence, they have been often faulty.

To give ſome Inſtances of many, it is remembered in our time * where Perſons were convicted of the Murder of a Perſon abſent, but not dead, barely by Inferences upon the Evidence of fooliſh Words and Actions: but the Judge before whom it was tried, was ſo unſatisfied in the Matter, becauſe the Body of the Perſon ſuppoſed to be murdered was not to be found, that he reprieved the Perſons condemned; yet in a Circuit afterwards, a certain unwary Judge, without enquiring into the Reaſons of the Reprieve, ordered Execution, and the Perſons to be hanged in Chains, which was done accordingly; and afterwards, to his reproach, the Perſon ſuppoſed to be murdered appeared alive.

My Lord *Coke* relates a Story † in his Time, of an Uncle who beat his Niece, that had an Eſtate, which on her Death would deſcend to him; the Girl was heard to cry, *Good Uncle, do not kill me*; after which ſhe run away, and concealed herſelf ſome few Miles from *London*. The Girl being miſſing, and the Neighbours remembring the Cry of the Girl, and tacking it to the Probability that the Uncle might be induced, for his Advantage, to murder his Niece, apprehended him, and he was indicted for it at the Seſſions; and the Judges being unſatisfied in the Evidence, by reaſon of the Body of the ſuppoſed murdered Girl did not appear, the Uncle ſaying that ſhe was run away, they gave him time to the next Seſſions to find her out, which he being not able to do, thought to defend himſelf by producing another Girl very like his own Niece, which he did accordingly; and being detected, it increaſed the Suſpicion, and by Inferences from all thoſe Circumſtances, he was convicted, and afterwards executed.

Some Years after which, the Girl appeared, and claimed her Eſtate: and therefore it is a moſt dangerous and unwarrantable thing for a Jury, in capital Matters, eſpecially in Treaſon, to convict a Perſon upon the Evidence of Probabilities.

As the Evidence in this Caſe againſt the Priſoner was weaker than in any of the precedent Caſes, ſo the Uſage of the Priſoner was more rigorous than in any of them: in all the other Caſes, the Priſoners had more Weeks allowed them to prepare for their Trials, than this Perſon had Days; all the other Perſons, after notice of their Trial, were permitted to have Friends, nay, Counſel, freely to come to them, and confer with them in private, without the Preſence of a Goaler, which was denied this Perſon: All the others, except Colonel *Sidney*, had ſoft Words given them on their Trials; but this Perſon was rudely handled.

How often was he ſnubbed and bid hold his tongue? How often did he beg the Patience of the Court, to hear him and his Witneſſes? And when he was heard, how was all he ſaid ridiculed? And if he ſaid he was innocent, he was bid remember my Lord *Ruſſel* ſaid ſo to his Death: when he ſaid he was as innocent as any Perſon in the Court, he was told, for all his Confidence, few believed him. If he ſaid the Matter ſworn againſt him was improbable (which hath been taken for a pretty good Topick for the diſbelief of a Matter teſtified), how is it ridiculed by *Improbability, Improbability, Improbability?* If he go to prove he is an honeſt Man, he is told that is all Appearance. If he ſays he employed *Goodenough* about the Riot, he is told that is a Branch of the Plot. If he call Mr. *Goſfright* as a Witneſs for him, the Witneſs is reproached with having helped the Priſoner in packing Juries; if he call one to prove he received the Sacrament, he is told, that was in order to qualify himſelf to be a Sheriff; and ſuch was his Uſage before, and at the Trial, ſuch was it afterwards: to order him to be tied when he was ſentenced, was an Indignity not uſed to Perſons of his Quality; a thing indeed permitted, not commanded to be uſed, on boiſterous Criminals, who may be ſuſpected to do a ſudden Miſchief, if their Arms were at liberty.

Of like kind was the Reproaching him with the Chearfulneſs of his Countenance at his Condemnation, and that it might be all of a ſtrain, his Quarters were expoſed, a Severity uſed to none above-mentioned, but Sir *Thomas Armſtrong*; and in all theſe Trials, *Colledge* made the beſt Defence, and perhaps, Circumſtances conſidered, the beſt Defence ever made upon an Indictment of a Capital Matter, and Mr. *Corniſh*'s was the weakeſt, tho' it ſignified nothing: for I believe that none who reads his Trial, but will plainly ſee he was ſo beſet, that the Defence he, or any for him could make, would have availed him nothing, and no account can be given for the Proceedings againſt Mr. *Corniſh*, in the above manner, but that ſome of the Judges, whereof three who were on the Bench, had newly come out of the *Weſt*, where they had been ſo fluſhed and hardned, that nothing ſeemed to them rigorous or cruel, and the reſt ſeemed to vie with them in the Practice.

Remarks on the Trial of Mr. Charles Bateman.

THE laſt Perſon which concluded the Tragedy, was one *Charles Bateman*, a Chirurgeon; his Demerits were, that he had been, or at leaſt was reputed to have been, Chirurgeon to the Earl of *Shafteſbury*, and one whom his Lordſhip had a Kindneſs for, and therefore, according to the Cant of the Time, he was called a factious Fellow; and he had revived the Memory of his Demerits, by attending when *Oates* came from his Whipping, and letting him Blood. Whether either of thoſe Circumſtances were true or not, I know not, but they were believed: And therefore the 9th of *December* 1685, he was indicted and tried for High-Treaſon. On his Trial he ſeemed to be diſtracted, and therefore, out of abundance of Charity, the Court appointed his Son to make his Defence for him.

The Witneſſes againſt him were *Keeling*, who only ſpoke of a Deſign in general, without mentioning *Bateman* to be concerned in it. *Thomas Lee* and *Richard Goodenough* ſwore, at ſeveral times and places, his Diſcourſe to them ſeverally, of ſeizing the *Tower*, *City*, and *Savoy*. *Baker* for the Priſoner ſaid, *Lee* in the Year 1683, would have had him inſinuated himſelf in the Priſoner's Company, and diſcourſe about State-Affairs, and by that he would find a way to make *Baker* a great Man: upon the Evidence the Priſoner was found guilty. Againſt *Goodenough*'s Evidence, there is only this to be ſaid, that he was pardoned, but ſo far only, as to qualify him to be a Witneſs, though not a very credible one, not only the Guilt ſticking to him, but even the Puniſhment of what he had then lately done, hanging over his Head; and what was ſaid for ſome time, of all the Witneſſes for the King, at that time, and for ſome time before, was true, they hunted like Cormorants, with Halters about their Necks, though even that matter by one of the King's Counſel was boaſted to the Jury, as a Circumſtance of more Credibility; for he aſſured them there was not a Witneſs which he produced had a Pardon, as the Witneſſes in the Popiſh

* *He ſeems to mean to the Caſe of* Joan Perry *and her two Sons,* John *and* Richard Perry, *who were Executed at* Glouceſter *Lent-Aſſizes,* 1661, *for the ſuppoſed Murder of* William Harriſon, *who had been conveyed into* Turkey, *and made a Slave for two Years, and afterwards eſcaped, and came back to* England.

† *This was at* Warwick *Aſſizes,* 8 Jac. I. 3 Co. Inſt. 232. *By the Civil Law, unleſs there was direct and poſitive Proof that the Perſon was killed, no Circumſtances were admitted againſt the Perſon accuſed of the Murder.* Digeſt. lib. 39. tit. 5. §. 24.

Plot

Plot had. 'Tis true, in the Popiſh Plot, upon very good reaſon the Witneſſes having confeſſed what they pretended to know, of matters in which they had an hand, it was not thought proper to uſe them as Witneſſes, though they had uſed them as Informers, till they were pardon'd, leſt it might happen to be, or at leaſt it would have been, ſuſpected, that the terror of the Puniſhment of the Crimes confeſs'd might influence them to ſwear falſely, to the jeopardy of other Men's Lives, to ſave their own; which, as the Lord *Howard* truly ſaid, was the Drudgery of ſwearing. But to *Lee*'s Evidence, beſides the Evidence of *Baker* againſt him, that he would have procured *Baker* to have been a Witneſs againſt the Priſoner, and enticed him with the Promiſe of making him a great Man; and beſides that, it appears in *Rouſe*'s Trial, that *Rouſe* and he were upon the Repan with each other, to bring each other into the Pretence of a Plot, in order to make ſome advantageous Diſcovery of it, of which *Lee* got the ſtart of *Rouſe*; the Objection which was made to his Evidence, why *Lee* had not accuſed the Priſoner ſooner, there being near three Years between the pretended Deſign, and the Diſcovery of it, was never ſatisfactorily anſwered. It was a fooliſh Story, to ſay *Goodenough* could not be had before, and a ſingle Teſtimony in High-Treaſon was not ſufficient; every one knows, that though a ſingle Witneſs is not ſufficient to convict a Man of High-Treaſon, yet a ſingle Perſon's Teſtimony is enough to commit a Perſon accuſed, and upon Conviction on the Teſtimony of a ſingle Witneſs, to make him a Priſoner for his Life, witneſs Mr. *Hampden* and others; beſides the ſubjecting him to other corporal Puniſhments, inflicted at Diſcretion, witneſs Mr. *Johnſon* and *Oates*. And in 1683, when the Words were pretended to be ſpoken, *Bateman* had not been ſpared, if accuſed; and though it be a good Reaſon for the Court to have given, why they did not proceed againſt the Priſoner till that time, becauſe there were not two Witneſſes againſt him; yet it was no reaſon for *Lee*, why he did not accuſe the Priſoner before that time, eſpecially he having been ſeveral times before that time examined, not only of what he knew, but of what Perſons he knew concerned: but, to ſay truth, *Lee*, in the Trial, did not pretend to anſwer the Objection, but the Court, in the manner before, endeavoured to anſwer it for him.

The laſt Matter obſervable in this Trial, was the permiting *Bateman*'s Son to make his Father's Defence, which was an extraordinary unparallel'd Favour; it was the firſt and laſt time that, or any thing like it, had been done: The Lord *Ruſſel*'s Lady indeed was permitted to take Notes at the Trial for her Lord, but he only was permitted to make uſe of them. *Fitzharris*'s Wife, when ſhe but whiſper'd her Huſband, or but told him what Jurors he ſhould challenge, and what not, was ſeverely corrected, and threatened to be thruſt out of Court, for doing it in prejudice of the King. In *Colledge*'s Trial, he was told, that Perſons that adviſ'd a Priſoner in Treaſon, even before a Trial, were guilty of a high Miſdemeanour; nay, a Sollicitor had been indicted of High-Treaſon for it: and therefore nothing can excuſe the allowing the Priſoner Counſel in matter of Fact, as was done in this Caſe (it is not material, whether the Son was a Barriſter at Law or not) but the Weakneſs of the Priſoner, who to all appearance was moped mad.

But the Court by excuſing their Favour upon that account, incurred a worſe Cenſure; for nothing is more certain Law, than that a Perſon who falls mad after a Crime ſuppos'd to be committed, ſhall not be try'd for it; and if he falls mad after Judgment, he ſhall not be executed: * though I do not think the reaſon given for the Law in that Point will maintain it, which is, that the End of Puniſhment is the ſtriking a Terror into others, but the Execution of a Madman hath not that effect; which is not true, for the Terror to the Living is equal, whether the Perſon be mad or in his Senſes: and that is the reaſon of breaking the Perſon executed for Treaſon, and expoſing his Quarters, which is done rather to deter the Living, than for puniſhing the Dead. But the true reaſon of the Law I think to be this, a Perſon of *non ſana Memoria*, and a Lunatick during his Lunacy, is by an Act of God (for ſo it is call'd, though the means may be human, be it violent, as hard Impriſonment, terror of Death, or natural, as Sickneſs) diſabled to make his juſt Defence. There may be Circumſtances lying in his private Knowledge, which would prove his Innocency, of which he can have no Advantage, becauſe not known to the Perſons who ſhall take upon them his Defence; and that is the Reaſon many civil Actions die with the Perſons againſt whom they lay in their Life-times; and that is the Reaſon why in criminal Matters, Perſons by ordinary courſe of Law cannot be convicted after their Deaths.

3 Cok. *Inſtit.* p. 4.

For in all civil Actions there is as much reaſon for the Perſon injured, to have Satisfaction out of the Eſtate of the Perſon who injured him, in the Hands of his Heir or Executor after his Death, as there was to have it out of the Eſtate of the Injurer, in his own Hands in his Life-time: and there is as much reaſon that the Heir or Executor of a Perſon who hath committed a Crime, which by Law would have forfeited his Eſtate, if in his Life-time he had been attainted of the ſame, ſhould forfeit the Eſtates they claim from him, as if he had been attainted in his Life-time, which had prevented the ſaid Eſtates veſting in them. And it hath been ſometimes practis'd, where the Crimes of the Perſons deceas'd have been notorious, and without any Doubt; as was the Caſe of ſeveral Perſons mention'd in the Act of Pains and Penalties: which Act had Example from many other Acts of Parliament in other Reigns, where the Perſons were dead before Puniſhment overtook them.

And though of late Years it hath been pretended, that the King's Safety depends upon the ſpeedy Trial and Execution of a Perſon guilty of High-Treaſon; yet this was never thought ſo heretofore, nor in truth in itſelf is ſo: for it is plain, in Reaſon as well as Experience, that what is ſaid of Witches, is true of all Malefactors when once they are in Cuſtody, their power of doing Miſchief ceaſes.

The King is therefore no otherwiſe benefited by the Deſtruction of his Subjects, than that the Example deters others from committing the like Crimes; and there being ſo many to be made Examples of, beſides thoſe on whom the Misfortunes of Madneſs fall, it is inconſiſtent with Humanity to make Examples of them; it is inconſiſtent with Religion, as being againſt Chriſtian Charity to ſend a great offender quick, as it is ſtil'd, into another World, when he is not of a Capacity to fit himſelf for it: But whatever the Reaſon of the Law is, it is plain the Law is ſo; and for remedying it in High-Treaſon, was the 33d of *Henry* the Eighth made †, whereby it is enacted, That if a Man fall mad after he hath committed High-Treaſon, he ſhall notwithſtanding be try'd in his Abſence; and if a Man fall mad after he is attainted of High-Treaſon, he ſhall notwithſtanding be executed. Which Statute extending only to High-Treaſon, the Law continu'd, and yet it is as it was at common Law in all other capital Matters; and even that * Statute was call'd a cruel and inhumane Law, and therefore liv'd not long, for it was afterwards repeal'd ‡: ſo that the Law, as to this matter, when this Man was tried and executed, was as it was at common Law; and therefore if he was of *non ſanæ Memoriæ*, he ought not to have been try'd, much leſs executed.

* 3 Cok. *Inſtit.* p. 6.

I know it will be objected, that if this Matter of *non ſana Memoria* ſhould be permitted to put off a Trial or ſtay Execution, all Malefactors will pretend to be ſo: But I ſay there is a great difference between Pretences and Realities, and *ſana* and *non ſana Memoria* hath been often try'd in § capital Matters, and the Priſoners have reap'd ſo little benefit by their Pretences, it being always diſcover'd, that we rarely hear of it. In this Caſe the Priſoner might have been try'd as well abſent as preſent, according to that repeal'd Statute, for any advantage he did or could reap by being preſent: and it ſeems very probable the Court thought him diſtemper'd; for if he was of *ſane* Memory, his Son ought not to have been permitted to make his Father's Defence; if he was diſtemper'd, he ought not to have been try'd, much leſs executed. And this Perſon being the laſt Man, as far as I can remember, or can find by the printed Trials, who ſuffer'd for the Plot of High-Treaſon firſt ſet on foot by *Fitzharris*, and carry'd on againſt *Colledge*, and the other Perſons herein mention'd; and the Deſign ſtopping here, I think fit to end my *Remarks* on the Proceedings of all Capital Matters with him. But I think it is fit for me to make ſome Apology for the thing, and for myſelf, for taking on me to cenſure the Opinions and Actions of Perſons whoſe Characters carry'd Authority with them. I confeſs I never thought that either the Great Seal or a Garment added to a Man's Senſe, Learning, or Honeſty; but he remain'd juſt ſuch, as to thoſe Qualities, after his Preferment, as he was before: and as to many of the Perſons reflected on in theſe Remarks, the Cenſure of Colonel *Sidney* was true; and for the beſt of them, it is plain they not only vary'd from one another in their Opinions, but even from themſelves in the Judgment of the ſame Caſe, but always tending to the Deſtruction of the Perſon try'd for his Life; witneſs the Opinion of the Court in the Challenge of Jurors not having a Freehold, and the deſigning to levy War, not Treaſon within the Statute of *Edw.* III. and forty other matters. And that not only gives a Liberty to enquire, but naturally puts one upon the Enquiry, which of the two Opinions is right? Tho' it is impoſſible for one not to think meanly of the Perſon, who, in ſo great a Concern as a Man's Life, ſhould be ſo raſh as to give his Opinion without Conſideration, or ſo unſteady as to give different Opinions in the ſame Caſe: for if a Man who tells Hiſtory backward and forward, is juſtly ſuſpected in point of Truth, the Knowledge and Sincerity of a Man, who gives different Opinions in the ſame Caſe, is juſtly ſuſpected in point of Law; which, together with the fulſome, but injurious, Stuff vented for Crown-Law, was the firſt Matter which put me on conſidering and writing what I have done.

As for myſelf, if *Tully* thought it a Reproach to his Son if he did not abound with Philoſophy, having heard *Cratippus* for the ſpace of a whole Year, and that at *Athens*; ſurely one who hath had his Education at one of the three great Schools for ſome Years, and afterwards at the Univerſity, and laſtly, twenty-five years conſtant Reſidence in an *Inn of Court*, and twenty years attendance at *Weſtminſter-Hall*, and not diverted by the uſual Employs of a *Sollicitor* or *Attorney*, may be allow'd without the Imputation of Confidence to give his *Cenſure*, upon conſideration, on the *extempore* Judgments or Opinions of *Perſons*, tho' of greater Standing and Character than himſelf.

* 4 Co. Rep. 124. b. *Hale*'s H. P. C. Vol. I. p. 35. † Cap. 20. ‡ 1 & 2 *Phil.* and *Mar.* cap. 10. § 1 And. 107.

The

CXXXVIII. *The Trial of* John Hampden, † *Esq. at the* Old Bailey, *for* High-Treason, Decemb. 30, 1685. 1 Jac. II.

THIS Day being appointed for the Trial of Mr. *Hampden*, after the Judges came to the Court, and the Court was called, the Officer was commanded to proceed to call over the *Jury* whilst Mr. *Hampden* was bringing down.

Cryer. * O-Yes, you good Men of the County of *Middlesex*, summon'd to appear here this Day, to try the Issue which shall be between our Sovereign Lord the King, and the Prisoner that shall be called to the Bar, answer to your Names as they shall be call'd, every one at the first Call, upon pain and peril that shall fall thereon.

Clerk. Sir *Hugh Middleton* of *Twittenham*, Bart.
Sir *Richard Dunton* of *Thistleworth*, Knt.
Sir *John Berry* of *Stepney*, Knt.
Sir *Robert Clark* of *Holborn*, Knt.
Sir *Thomas Roe* of the *Strand*, Knt.
Sir *John Friend* of *Hackney*, Knt.
Sir *Henry Johnson* of *Blackwall*, Knt.
Richard Morley of *Chelsea*, Esq.
John Shales of the Parish of St. *Martin*'s in the *Fields*, Esq.
Robert Fosset of *Marybone*, Esq.
Josias Clark of *Chiswick*, Esq.
John Forster of *Kensington*, Esq.
Jeffery Nightingale of *Cripplegate*, Esq.
William Cleave of the same, Esq.
Charles Hinton of *Covent-Garden*, Esq.
John Stokes of *Hatton-Garden*, Esq.
Henry Hawly of *Brentford*, Esq.
Thomas Cash of *Bow*, Esq.
Andrew Lawrence of the Parish of St. *Martin*'s in the *Fields*, Esq.
Nehemiah Arnold of *Westminster*, Esq.
Simon Smith of the same, Esq.
William Pressgrave of the same, Esq.
Nicholas Barter of the Parish of St. *Martin*'s in the *Fields*, Esq.
Humphry Bradshaw of the *Savoy*, Esq.
Gilbert Herring of the Parish of St. *Martin*'s in the *Fields*, Esq.
Walter Bridall of the same, Esq.
Thomas Elton of *Stepney*, Esq.
Matthew Bateman of *White-chapel*, Esq.
Thomas Curtis of the Parish of St. *Clement Danes*, Esq.
Peter Lugg of the Parish of St. *Giles* in the *Fields*, Esq.
John Meridale of St. *Giles* in the *Fields*, Gent.
James Supple of the Parish of St. *Martin*'s in the *Fields*, Gent.
Thomas Whitfield of the same, Gent.
Richard Cook of the same, Gent.
George Clisby of the same, Gent.
John Hains of the same.
John Leeson of the same.
Richard Bromfield of *Holborn*, Gent.
Michael Dod of *Clerkenwell*, Gent.
James Fern of the Parish of St. *Martin*'s in the *Fields*, Gent.
Robert Brook of the same, Gent.
John Vigures of *Westminster*, Gent.
Edmund Aubrey of the Parish of St. *Martin*'s in the *Fields*, Gent.
John Cannon of the Parish of St. *Giles* in the *Fields*, Gent.
John Baily of the same.
Thomas Barnes of the same.
Francis Edmunds of the same.
Robert Longland of the same.
Edward Hamstead of the same.
Thomas Hinton of the same, Gent.
Joseph Blisset of *White-chapel*, Gent.
Zechariah Grant of the same.
Richard Fitzgerald of the Parish of St. *Martin*'s in the *Fields*.
Benjamin Boltby of St. *Giles* in the *Fields*.
Richard Dorrel of the *Savoy*, Gent.
Anthony Hall of the same.
Stephen Phillips of the Parish of St. *Martin*'s in the *Fields*.
William Stephens of the same
John Davis of the same.
Richard Hutchinson of the same.
Anthony Nurse of *Fulham*, Gent.
Robert Moon of the Parish of St. *Clement Danes*, Gent.
Samuel Peacock of *Westminster*, Gent.
Richard Boise of the same.
Samuel Birch of the same.
Peter Reeve of the same.
Thomas Hutchins of the same, Gent.
John Hewlet of *Westminster*, Gent.
John Towers of *Covent-Garden*, Gent.
Richard Aubrey of *White-chapel*, Gent.
John Wells of *Marybone*, Gent.
William German of St. *Clement Danes*, Gent.
Thomas Harris of *Holborn*, Gent.
Bar. Parr of *East-Smithfield*, Gent.
John Cassels of the Parish of St. *Martin*'s in the *Fields*, Gent.
Samuel Bishop of St. *Clement*'s *Danes*, Gent.
William Wheatly of the Parish of St. *Giles* in the *Fields*, Gent.
Christopher Chambers of the same.
Samuel Brown of the same.
Benjamin Dun of the *Savoy*.
Samuel Jewel of the same.
Hugh Hammersley of the same.
Abraham Harrison of the *Strand*, Gent.
Thomas Nichols of *Pancras*, Gent.
William Dean of the Parish of St. *Martin*'s in the *Fields*, Gent.
Thomas Parnel of the same.
Matthias Cooper of the same, Gent.
William Merchant of the same, Gent.
Richard Campion of the same, Gent.
Simon Smith of *Woodstreet*, *Westminster*, Gent.
Thomas Green of *Westminster*, Gent.

Clerk. Set *John Hampden* to the Bar. [*Which was done.*

John Hampden, hold up thy Hand. [*Which he did.*

Middlesex. THE *Jurors* for our Sovereign Lord the King, upon their Oaths present, that *John Hampden*, late of the Parish of St. *Giles* in the *Fields*, in the County of *Middlesex*, Gent. as a false Traitor against the most illustrious and excellent Prince, our Lord *Charles* the Second, late King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, thy natural Lord, the Fear of God in thy Heart not having, nor the Duty of thy Allegiance any ways weighing; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which a true and faithful Subject of our said late Lord the King, towards him our said late Lord the King, of right ought to bear, wholly withdrawing; and imagining, practising, and with thy whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb, and War and Rebellion against our said late Lord the King, within this his Kingdom of *England*, to stir up, move, and procure; and the Government of our said late Lord the King, of this his Kingdom of *England* to subvert, change, and alter; and our said late Lord the King, of the Title, Honour, and Royal Name, of the Imperial Crown of this his Kingdom of *England* to depose and deprive: And him our said late Lord the King, to death, and final destruction to bring and put; the 20th Day of *July*, in the Year of the Reign of our said late Lord the King, *Charles* the Second, of *England*, &c. the 35th, and divers other Days and Times, as well before as after, at the Parish of St. *Giles* in the *Fields*, in the County of *Middlesex*, falsely, maliciously, devilishly, and traitorously, with divers other false Rebels and Traitors unknown, didst conspire, compass, imagine, and intend our said late Lord the King, then thy supreme and natural Lord, not only of his Royal State, Title, Power, and Government of this his Kingdom of *England*, to deprive and cast down, but also our said late Lord the King to kill, and to death to bring and put, and the ancient Government of this Kingdom of *England* to change, alter, and wholly to subvert; and a miserable Slaughter amongst the Subjects of our late Lord the King, through his whole Kingdom of *England*, to cause and procure, and Insurrection and Rebellion against our said late Lord the King, within his Kingdom of *England* to procure: And these thy wicked, abominable, and devilish Treasons and traitorous Conspiracies, Compassings, Imaginations, and Purposes aforesaid, to fulfil, perfect, and bring to pass, thou the said *John Hampden*, as a false Traitor, then and there, (to wit) the said 20th Day of *July*, in the Year of the Reign of our said late Lord the King, 35th aforesaid, and divers other days and times, as well before as after, at the Parish of St. *Giles* in the *Fields*, aforesaid, in the said County of *Middlesex*, falsely, unlawfully, wickedly, devilishly, and traitorously, with *James* late Duke of *Monmouth*, and divers other false Traitors unknown, did assemble yourself, meet together, and consult, and consent to move and procure divers great Sums of Money, and a great number of Men armed, and War and Rebellion against our said late Lord the King, within this Kingdom of *England*, traitorously to levy and make, against the Duty of thy Allegiance, and against the Peace of our said late Lord the King, and against our Lord the King that now is, their Crown and Dignity, and against the Form of the Statutes in that case made and provided, &c.

Mr. *Hampden.* My Lord, I perceive that I am here indicted for a Fact, for which I was indicted above two years ago, and I was convicted of it, and did suffer Imprisonment, in Execution, upon the Judgment that was given against me, and am still under Execution for the Fine that was set upon me by way of punishment for that Fact. I think, my Lord, I have as much to say in point of Law for myself, as any Prisoner that ever came before your Lordship upon such an account, twice tried, twice convicted, and twice punished for the same Fact, must be very extraordinary; but, my Lord, I do pass by all Pleas whatsoever, and cast myself wholly upon the King's Mercy; that is my Resolution, my Lord.

* *L. C. J.* Then you must plead Guilty or not Guilty. But you say you have been tried twice for the same Fact; Were you ever tried for High-Treason before? The very Punishment that you alledge to be inflicted upon you for it, is a plain Proof that you were not tried for High-Treason, for that is not usually punished by Fine and Imprisonment.

* *Sir* George Jefferies.

Mr. *Hampden.* My Lord, I only insinuate that the Fact is the same.

L. C. J. You must plead Guilty or not Guilty.

Clerk. Are you Guilty or not Guilty of the High-Treason, whereof you stand indicted, *John Hampden?*

L. C. J. You must plead directly; say you are Guilty, or you are not Guilty.

Mr. *Hampden.* My Lord, I do plead Guilty to the *Indictment*.

Will your Lordship be pleased to hear me? My Lord, I do confess my Offence against the King is very great, I am very sorrowful for it. My Lord, I know the King is the Fountain of Mercy as well as Justice, an inexhaustible Fountain of Mercy; and if I may be so happy to obtain your Lordship's Intercession to his Majesty on my behalf, I doubt not but that Grace and Goodness which hath been extended to others, may be bestowed upon me.

L. C. J. Mr. *Hampden*, as the King is the Fountain of Mercy, so it comes freely from him; I confess, as the Circumstances of your Case are, you have pleaded the best Plea to find Mercy; but how far the pleading guilty, when there is full Evidence to prove you so, may move the King to have mercy upon you, I don't know; you must apply yourself to the King.

Mr. *Hampden.* I humbly beg your Lordship's Intercession. I know none can do it better than your Lordship.

L. C. J. You must record the Plea.

Mr. *Hampden.* My Lord, I humbly beg your Lordship, that you would be pleased to represent to his Majesty what my past Sufferings have been, and how sorrowful I am for having offended his Majesty, and that your Lordship would be pleased to beg his Majesty's gracious Pardon in my behalf;

* Burn. *Hist. Own Times*, Vol. I. p. 646.

behalf; I humbly beſeech your Lordſhip to do it, and it ſhall be the endeavour of all my Life to behave myſelf as dutiful and loyal a Subject as any the King hath.

L. C. J. The King ſhall have an account of what you ſay.

Mr. *Hampden.* My Lord, there is one thing I would humbly beg the Liberty for; there are Words in the Indictment concerning the Death of the King: my Lord, what conſtruction the Law may put upon ſuch an Action, I am ignorant of; but for any direct Intention of taking away the Life of the King, no Man does abominate and abhor more than I have done.

L. C. J. Mr. *Hampden*, it is but a neceſſary conſtruction that the Law puts upon it, it is a conſtruction confirmed by woful Experience. We ſee that Rebellion, let the beginning be what it will, never ſtops, unleſs by God's great Mercy and the Juſtice of the King's Cauſe, but it will end in the Death of the King, it hath a natural Tendency that way: but however you are underſtood that you had not any thoughts of killing the King, but only to raiſe Rebellion within the Kingdom, which muſt neceſſarily end in the Death of the King.

Mr. *Hampden.* My Lord, no Man doth abhor that more than I do.

L. C. J. You may aſk Mr. *Hampden* if he hath any thing to ſay why Sentence of Death ſhould not paſs upon him.

Clerk. John Hampden, hold up thy Hand. Thou ſtandeſt convicted of High Treaſon by your own Confeſſion, what can you ſay for yourſelf why Sentence ſhould not paſs upon you?

Mr. *Hampden.* My Lord, I humbly caſt myſelf upon the King's Mercy. My Lord, I would humbly move your Lordſhip in one thing, that I may have the Liberty of my Friends and Relations to come to me in Priſon as they did before.

L. C. J. You muſt apply yourſelf to the King.

Mr. *Hampden.* Will your Lordſhip be pleaſed to order it, my Lord? I had two or three of my own Relations the King was pleaſed to grant to come to me.

L. C. J. It is eaſy for you, Mr. *Hampden*, to make your Application to the King, it will be better for you: I direct it as the better way to apply yourſelf to the King.

Mr. *Hampden.* I only beg it, my Lord.

L. C. J. In the preſence of a Keeper I don't know why his Relations ſhould not come to him; but I think it had been better to apply yourſelf to the King.

Mr. *Hampden.* My Lord, I have two or three near Relations allowed to be without the Preſence of a Keeper.

L. C. J. Mr. *Hampden*, that we cannot do, that was an extraordinary Favour, and as that came from the King, ſo you muſt apply yourſelf to the King again; but in the Preſence of a Keeper we grant it; we cannot grant it without a Keeper, if you will apply yourſelf to the King for that, you may.

Cryer. Gentlemen of *Middleſex*, that have been ſummon'd upon the King's Service this Day, the Court diſcharges you.

Then after the Judges did withdraw, the Clerk was commanded to proceed.

Cl. John Hampden, hold up thy Hand. You ſtand convicted of High Treaſon by your own Confeſſion, what can you ſay for yourſelf, why the Court ſhould not pronounce Sentence upon you?—Mr. *Hampden.* I only plead the King's Mercy. I rely upon no other thing.

Cryer. O-Yes, all manner of Perſons are commanded to keep ſilence whilſt Judgment is giving, upon pain of Impriſonment.

*Mr. Recorder**. Mr. *Hampden*, you have been indicted for High Treaſon, and the Indictment hath been read to you, and whereupon, according as the Law doth require, it hath been demanded of you, that you ſhould plead to it, and thereupon you have pleaded Guilty to this Indictment, which is recorded accordingly; and therefore I need not ſay any thing for to let you know the heinouſneſs of this Crime, for I perceive you are ſenſible enough of it yourſelf, and I do verily believe you have taken a very wiſe and diſcreet Courſe to confeſs the Truth, for you were brought hither to be tried for this Crime, in caſe you had pleaded not Guilty to this Indictment, which now you have prevented by this your candid Confeſſion. However, it is the Duty of my place to pronounce the Judgment that the Law hath provided for ſuch Crimes as theſe are, and that is this;

* *Sir* Thomas Jenner.

You muſt be had to the Place from whence you came, and from thence you muſt be drawn to the Place of Execution, and there you are to be hang'd by the Neck, and whilſt you are alive you muſt be cut down, and your Entrails be taken out, and burnt before you; and your Head muſt be cut off, and your Body quartered, and your Head and your Quarters to be diſpoſed of at the King's Pleaſure, and the Lord have mercy upon your Soul.

Mr. *Hampden.* My Lord, I hope I ſhall have your Lordſhip's Interceſſion with his Majeſty.

Mr. Recorder. I don't doubt, Mr. *Hampden*, but you have us'd the beſt means to obtain ſo great a Favour; and as it is the Duty of my place to give an account of this to his Majeſty, ſo I ſhall truly and faithfully repreſent it with the advantages your Demeanour this day hath deſerv'd.

Mr. *Hampden.* My Lord, I humbly beg the Favour that my Wife may come to me without the Preſence of a Keeper.

Mr. Recorder. Mr. *Hampden*, 'tis too late for us to give any directions in this Matter, becauſe you aſk'd this while the Judges were here; but I don't doubt upon your Application to his Majeſty, but you will have all things that you can reaſonably deſire, if you pleaſe to apply yourſelf to him for this, and what elſe you ſhall be adviſed may be fitting and convenient for you to beg.

His abject Submiſſion did indeed procure him a Pardon; but the Shame of ſuch a mean Behaviour ſo ſunk and diſordered his Spirits, that he was never quite right after it, and about ten Years after he cut his own Throat.

CXXXIX. *The Trial of* Henry *Lord* Delamere*, *before the Lords at* Weſtminſter, *for* High Treaſon, Jan. 14. 1685. 1 Jac. II.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. at Arms. O-Yes, O-Yes, O-Yes! My Lord High Steward of *England* his Grace doth ſtraitly charge and command all manner of Perſons to keep ſilence, and to give ear to the King's Majeſty's Commiſſion to his Grace my Lord High Steward of *England*, upon pain of Impriſonment.

Then the Commiſſion was read, his Grace, and all the Peers ſtanding up bare-headed.

Then the Staff being carried between Garter King at Arms, and the Gentleman-Uſher of the Black Rod, *was with three Reverences deliver'd upon the knee to his Grace, and by him re-delivered to the* Gentleman-Uſher of the Black Rod, *to hold during the Service.*

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. at Arms. O-Yes! His Grace my Lord High Steward of *England* doth ſtraitly charge and command all manner of perſons here preſent, except Peers, Privy Counſellors, and the Reverend Judges now aſſiſtant, to be uncovered.

Cl. of Cr. Make Proclamation.

Serj. at Arms. O-Yes! My Lord High Steward of *England* his Grace ſtraitly chargeth and commandeth all Juſtices, Commiſſioners, and all and every other perſon and perſons to whom any Writ or Precept has been directed, for the certifying of any Indictment or Record before his Grace my Lord High Steward of *England*, that they do certify and bring in the ſame forthwith, according to the Tenor of the ſame Writ and Precept, to them or any of them directed, upon Pain and Peril ſhall fall thereon.

Then Sir Edward Lutwyche, *one of his Majeſty's Serjeants at Law, and Chief Juſtice of* Cheſter, *delivered in his Writ and Return at the Clerks Table.*

The Writ of Certiorari *and the Return thereof was read* in hæc verba.

* George *Lord* Jefferies.

* *L. H. Steward.* Call the Lieutenant of the Tower to return his Precept, and bring his Priſoner to the Bar.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Lieutenant of the Tower of *London*, return thy Writ and Precept to thee directed, together with the Body of *Henry* Baron of *Delamere*, thy Priſoner, forthwith, upon Pain and Peril ſhall fall thereon.

The Priſoner was brought to the Bar by the Lieutenant of the Tower: the Writ and Return thereof, together with his Grace's Precept, and the Return thereof, were read in hæc verba.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Sir *Roger Harſnet* Knight, Serjeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, together with the Names of all the Lords and Noblemen of this Realm of *England*, Peers of *Henry* Baron of *Delamere*, by thee ſummoned, forthwith, upon Pain and Peril ſhall fall thereon.

The Serjeant at Arms delivered in his Precept and Return at the Clerks Table.

L. H. Steward. Read the Precept and the Return.

They were read in hæc verba.

Cl. of Cr. Make an O-Yes.

Serj. at Arms. O-Yes! All Dukes, Earls, Viſcounts, and Barons of this Realm of *England*, Peers of *Henry* Baron of *Delamere*, who, by Commandment of my Lord High Steward of *England* his Grace, were ſummoned to appear here this Day, and are now preſent in Court, anſwer to your names, upon Pain and Peril will fall thereon.

The Peers ſummoned were called over, and thoſe that appeared, ſtanding up uncovered, anſwered to their Names, each making a Reverence to the Lord High Steward.

Cl. of Cr. Laurence Earl of *Rocheſter*, Lord High Treaſurer of *England*.

L. H. Treaſ. Here.

Cl. of Cr. Robert Earl of *Sunderland*, Lord Preſident of his Majeſty's Privy Council.

Lord Preſid. Here.

Cl. of Cr. Henry Duke of *Norfolk*, Earl Marſhal of *England*.

D. of Norf. Here.

Cl. of Cr. James D. of *Ormond*, Lord Steward of his Majeſty's Houſehold.

He did not appear.

Cl. of Cr. Charles Duke of *Somerſet*.

D. of Som. Here.

Cl. of Cr. Chriſtopher Duke of *Albemarle*. *He did not appear.*

Cl. of Cr. Henry Duke of *Grafton*.

D. of Graft. Here.

Cl. of Cr. Henry Duke of *Beaufort*, Lord Preſident of *Wales*.

D. of Beauf. Here.

Cl. of Cr. John Earl of *Mulgrave*, Lord Chamberlain of his Majeſty's Houſehold.—*E. of Mulg.* Here.

Cl. of Cr. Aubery Earl of *Oxford*.—*E. of Oxf.* Here.

Cl. of Cr. Charles Earl of *Shrewſbury*.—*E. of Shrewſ.* Here.

Cl. of Cr. Theophilus Earl of *Huntingdon*.—*E. of Hunt.* Here.

Cl. of Cr. Thomas Earl of *Pembroke*.—*E. of Pemb.* Here.

Cl. of Cr. John Earl of *Bridgwater*.—*E. of Bridg.* Here.

Cl. of Cr. Henry Earl of *Peterborow*.—*E. of Peterb.* Here.

Cl. of Cr. Robert Earl of *Scarſdale*.—*E. of Scarſd.* Here.

Cl. of Cr. William Earl of *Craven*.—*E. of Craven.* Here.

* Burnet's *Hiſt. Own Times*, Vol. I. p. 668.

Cl. of Cr. Richard Earl of *Burlington.*
He did not appear.
Cl. of Cr. Louis Earl of *Feversham.*
E. *of Fevers.* Here.
Cl. of Cr. George Earl of *Berkeley.*
E. *of Berk.* Here.
Cl. of Cr. Daniel Earl of *Nottingham.*
E. *of Notting.* Here.
Cl. of Cr. Thomas Earl of *Plymouth.*-----E. *of Plym.* Here.
Cl. of Cr. Thomas Viscount *Falconberg.*
L. *Falconberg.* Here.
Cl. of Cr. Francis Viscount *Newport*, Treasurer of his Majesty's Household.——L. *Newport.* Here.
Cl. of Cr. Robert Lord *Ferrers.*-----L. *Ferrers.* Here.
Cl. of Cr. Vere Essex Lord *Cromwell.*
L. *Cromwell.* Here.
Cl. of Cr. William Lord *Maynard*, Comptroller of his Majesty's Household.-----L. *Maynard.* Here.
Cl. of Cr. George Lord *Dartmouth*, Master-General of his Majesty's Ordnance.----- L. *Dartmouth.* Here.
Cl. of Cr. Sidney Lord *Godolphin.*
L. *Godolphin.* Here.
Cl. of Cr. John Lord *Churchill.*—L. *Churchill.* Here.

Then his Grace the Lord High Steward addressed himself to the Lord Delamere, *the Prisoner at the Bar, in this manner.*

L. H. Steward. My Lord *Delamere*, the King being acquainted that you stand accused of High-Treason, not by common Report or Hear-say, but by a Bill of Indictment found against you by Gentlemen of great Quality, and known Integrity within the County Palatine of *Chester*, the Place of your Residence, has thought it necessary in Tenderness to you, as well as Justice to himself, to order you a speedy Trial.

My Lord, if you know yourself innocent, in the name of God do not despond, for you may be assured of a fair and patient Hearing, and in your proper time a free Liberty to make your full Defence: and I am sure you cannot but be well convinced, that my Noble Lords that are here your Peers to try you, will be as desirous and ready to acquit you, if you appear to be innocent, as they will to convict you if you be guilty.

But, my Lord, if you are conscious to yourself that you are guilty of this heinous Crime, give Glory to God, make amends to his Vicegerent the King, by a plain and full discovery of your Guilt, and do not, by an obstinate persisting in the Denial of it, provoke the just Indignation of your Prince, who has made it appear to the World, that his Inclinations are rather to shew Mercy than inflict Punishments. My Lord, attend with patience, and hear the Bill of Indictment that hath been found against you, read. Read the Bill of Indictment to my Lord.

Cl. of Cr. Henry Baron of *Delamere*, hold up thy Hand.

L. *Delamere.* My Lord, I humbly beg your Grace would please to answer me one Question, Whether a Peer of *England* be obliged by the Laws of this Land to hold up his Hand at the Bar, as a Commoner must do? And I ask your Grace this question the rather, because in my Lord *Stafford*'s Case it was allowed to be the Privilege of the Peers not to hold up their Hands.

L. H. Steward. My Lords, this being a matter of the Privilege of the Peerage, it is not fit for me to determine it one way or the other; but I think I may acquaint your Lordships, that in point of Law, if you are satisfied this is the Person indicted, the holding, or not holding, up of the Hand is but a Formality, which does not signify much either way.

L. *Delamere.* I humbly pray your Grace's direction in one thing farther, whether I must address myself to your Grace when I would speak, or to your Grace with the rest of these noble Lords my Peers?

L. H. Steward. You must direct what you have to say to me, my Lord.

L. *Delamere.* I beg your Grace would please to satisfy me, whether your Grace be one of my Judges in concurrence with the rest of the Lords?

L. H. Steward. No, my Lord, I am Judge of the Court, but I am none of your Triers. Go on.

Cl. of Cr. HEnry Baron of *Delamere*, thou standest indicted in the County Palatine of *Chester* by the Name of *Henry* Baron of *Delamere* of *Mere*, in the said County of *Chester*, for that thou as a false Traitor against the most illustrious and most excellent Prince *James* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King, thy natural Lord, not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience which a true and faithful Subject of our said late Lord the King, towards him our said Lord the King, should and of right ought to bear, wholly withdrawing; and contriving, practising, and with all thy might intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb; and War and Rebellion against our said Lord the King, within this Kingdom of *England*, to stir up, move, and procure, and the Government of our said Lord the King of this Kingdom of *England* to subvert, change and alter, and our said Lord the King from the Title, Honour, and Kingly Name of the Imperial Crown of his Kingdom of *England* to depose and deprive, and our said Lord the King to Death and final Destruction to bring and put; the fourteenth day of *April* in the first Year of the Reign of our said Lord *James* the Second, now King of *England*, &c. and divers other Days and Times as well as after, at *Mere* in the County of *Chester* aforesaid, falsely, maliciously, devilishly, and traitorously, with divers other false Traitors and Rebels, to the Jurors unknown, didst conspire, compass, imagine, and intend our said Lord the King, thy supreme, true and natural Lord, not only from the Kingly State, Title, Power, and Government of his Kingdom of *England* to deprive and cast down, but also the same our Lord the King to kill, and to death to bring and put, and the antient Government of this Kingdom of *England* to change, alter, and wholly to subvert, and a miserable Slaughter among the Subjects of our said Lord the King throughout his whole Kingdom of *England* to cause and procure, and Insurrection and Rebellion against our said Lord the King within this Kingdom of *England* to procure and assist; and the same thy most wicked, most impious and devilish Treasons and traitorous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to effect, thou the said *Henry* Baron of *Delamere*, as a false Traitor, then and there, to wit, the said fourteenth day of *April* in the first Year abovesaid, and divers other days and times as well before as after, at *Mere* aforesaid, in the County aforesaid, falsely, unlawfully, wickedly, and traitorously with *Charles Gerrard*, Esq; and other false Traitors to the Jurors unknown, didst assemble thy self, gather together, consult and agree to raise and procure divers great sums of Money, and a great number of armed Men, War and Rebellion within this Kingdom of *England* to levy and make, and the City of *Chester*, in the County of the same City, as also the Castle of our said Lord the King of *Chester*, at *Chester* in the County of *Chester* aforesaid, and all the Magazines in the same Castle then being to enter, take, seize, and surprize, and into thy Possession and Power to obtain: And that thou the said *Henry* Baron of *Delamere* afterwards, to wit, the 27*th* day of *May*, in the first Year abovesaid, falsely, unlawfully, wickedly, and traitorously didst take a Journey from the City of *London* unto *Mere* aforesaid, in the County of *Chester* aforesaid, thy traitorous Purposes aforesaid to fulfil and perfect: And that thou the said *Henry* Baron of *Delamere* afterwards, to wit, the fourth day of *June*, in the first Year abovesaid, at *Mere* aforesaid, in the County of *Chester* aforesaid, in further Prosecution of thy unlawful, most wicked and traitorous Purposes aforesaid, divers Liege People and Subjects of our said Lord the King, to the Jurors unknown, with thee the said *Henry* Baron of *Delamere*, and the aforesaid other false Traitors to the Jurors unknown, falsely, unlawfully, and traitorously, in the War and Rebellion aforesaid, and in thy traitorous purposes aforesaid, to join and adhere, didst excite, animate, and persuade, against the Duty of thy Allegiance, against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that case made and provided. How say'st thou, *Henry* Baron of *Delamere*, art thou Guilty of this High-Treason whereof thou standest indicted, and hast been now arraign'd, or not Guilty?

L. *Delamere.* My Lord, I humbly beg the Indictment may be read again.

L. H. Steward. Let it be read again. [*Which was done.*

L. *Delamere.* May it please your Grace, I humbly beg the favour to be heard a few Words before I plead to this Indictment.

L. H. Steward. My Lord *Delamere*, I am very unwilling to give your Lordship any Interruption; but according to the Methods of Law, which must be observed in your Case, as well as all others, you must plead to the Indictment before you be heard to any thing else.

L. *Delamere.* May it please your Grace, I have something to offer to your Grace's and their Lordships Consideration which is a matter of Law.

L. H. Steward. I know not what matter of Law you have to offer: If you have a mind to demur to the Indictment, you may.

L. *Delamere.* Will your Grace please to hear what I have to say? and then I shall submit it to your Grace's Judgment.

L. H. Steward. I would hear what you have to say, my Lord, with all my heart, if I could: But I must then pass by all the Forms and usual Methods of Proceeding, and that without any advantage to you too, and that I suppose your Lordship will not desire of me. Ask my Lord, whether he be guilty, or not guilty?

Cl. of Cr. How say'st thou, *Henry* Baron of *Delamere*, art thou guilty of this High-Treason whereof thou hast been indicted, or not guilty?

L. *Delamere.* I beseech your Grace to hear me what I have to say; I shall not detain your Grace very long, but I beg your Grace to hear me.

L. H. Steward. My Lord *Delamere*, I must keep you to the known Rules and Methods of Law: This is not your time to speak, but to plead; in your proper time you shall be fully heard whatsoever you have o say.

L. *Delamere.* If your Grace please, I have something to say which concerns all the Peers of *England* in point of Right.

L. H. Steward. My Lord, you must either plead, or demur to this Indictment, that is the usual Practice, before any thing else can be done.

L. *Delamere.* My Lord, I have a Plea to offer to your Grace and my Lords; and it is with reference to the Privilege and Right of the Peers of *England.*

L. H. Steward. If you have any Plea to offer, it must be received, my Lord.

L. *Delamere.* My Lord, amidst the Hardships I have lain under by my frequent Imprisonments and close Confinement-----

L. H. Steward. My Lord *Delamere*, you must keep up to the Legal Method of Proceedings: In Cases of this nature I would, as far as is possible for me to do, indulge a Person of your Quality, and in your Condition; but withal I must do right to the Court, and not permit any Breach to be made upon the legal Course of Proceedings. You must plead, or demur to the Indictment, before you are heard to say any thing.

L. *Delamere.* Will your Grace be pleased to hear me tell you my Reasons why I offer you a Plea of this nature to the Indictment?

L. H. Steward. My Lord, if you have any Plea put it in.

L. *Delamere.* Will your Grace be pleas'd to accept it as I have done it? It may be it is not so formal, because I have had no Counsel allowed me to peruse and sign it. But as it is, I here offer it your Grace's Consideration.

L. H. Steward. Ay, put it in. [*Then it was delivered to the Clerk.*

L. H. Steward. Read it.

Cl. of Cr. *The humble Plea of* Henry *Lord* Delamere, *to the Indictment of High-Treason against him, now to be tried by the Lord High Steward and Peers here assembled.*

THE said Lord *Delamere*, saving to himself all benefit of Advantage of any further or other matter of Exception to the Generality, Incertainty, or Insufficience of the said Indictment, and all matters and things which do or may concern the same, for Plea hereunto saith,

That he was by His Majesty's Writ summoned to this present Parliament, which began the Nineteenth Day of *May* last, and attended his Duty there as a Peer of this Realm.

That for High-Treason supposed to be committed by him, during the Sitting of the same Parliament, he was the Twenty-sixth Day of *July* last committed, by Warrant of the Earl of *Sunderland*, one of his Majesty's Principal Secretaries of State, to the *Tower* of *London.*

That the Peers in Parliament assembled, taking notice by his Petition of the Ninth of *November* last, of his being absent from his Attendance in Parlia-

Parliament, ſent a Meſſage to his Majeſty to know the Reaſon why he the ſaid *Henry* Lord *Delamere*, a Peer of that Houſe, was abſent from his Attendance there.

Upon the Tenth Day of *November* laſt, the Lord Treaſurer reported his Majeſty's Anſwer to the ſaid Meſſage, *viz.* That the ſaid Lord *Delamere* was abſent from his Attendance in Parliament, becauſe he ſtood committed for High-Treaſon, for levying War againſt the King this laſt Summer, teſtified upon Oath, and that his Majeſty had given Directions that he ſhould be proceeded againſt with all ſpeed according to Law.

The Houſe of Peers not being ſatisfied with this Anſwer, the Debate thereof was adjourn'd till the *Monday* Morning following.

On which Day the Lords reſuming the Debate concerning the Lord *Delamere* and the King's Meſſage; after ſome Debate, the Lord Chancellor, by his Majeſty's Command, gave the Houſe an Account what Proceedings had been againſt the Lord *Delamere*, ſince his Majeſty's Anſwer to their Addreſs concerning his abſence from the Houſe; which was to this Effect:

That the King had given Order for a ſpeedy Proſecution of him: That the Treaſon whereof he was accuſed was committed in *Cheſhire*; and That being a County Palatine, the Proſecution ought to be there, and not in the *King*'s-*Bench*; as it might be if the Treaſon had been committed in another County: and that therefore his Majeſty had given Order for a Commiſſion of *Oyer* and *Terminer* into *Cheſhire*, in order to the finding of an Indictment againſt him for the ſaid Treaſon. And that accordingly a Commiſſion of *Oyer* and *Terminer* was already ſealed; and if the Indictment be not found before the End of the Term, the ſaid Lord *Delamere*'s Prayer being entered in the *King*'s-*Bench*, he ſhould be bailed.

All which Proceedings do more fully appear in the Journals of the ſaid Houſe of Peers; to which the ſaid *Henry* Lord *Delamere* doth refer himſelf.

Afterwards, that is to ſay, upon the Day of the ſaid Parliament was prorogued by his Majeſty unto the Tenth Day of *February* next, as by the ſaid Journals it doth appear.

Upon all which Matters the ſaid *Henry* Lord *Delamere* doth humbly tender this his Plea to the Juriſdiction of your Lordſhips in this Cauſe, and doth humbly conceive your Lordſhips ought not to proceed in the Trial of him upon the Indictment of High-Treaſon now before you: And that for theſe following Reaſons.

Firſt, Inaſmuch as it appears by the ſaid Petition of the ſaid *Henry* Lord *Delamere*, and the ſeveral Orders of the Lords, and the King's Anſwer to the Meſſage of the Lords thereupon; That the ſaid Houſe are already poſſeſſed of his ſaid Cauſe, which is the ſame ſuppoſed Treaſon for which he was at firſt committed, and which is the ſame Treaſon for which he now ſtands indicted before your Lordſhips. And for this Reaſon, your Lordſhips, as he humbly conceives, by the Law and Cuſtom of Parliament, which is part of the Law and Cuſtom of the Land, ought not to proceed againſt him upon the ſaid Indictment; but his ſaid Cauſe ought wholly to be determined and adjudged in the ſaid Houſe of Peers, and not elſewhere, as in like Caſes has been formerly done.

Secondly, Whereas it is the Right and Privilege of the Peerage of this Realm, that no Peer thereof ought to be tried or proceeded againſt for High-Treaſon during the Continuance of the Parliament, except in the ſaid Houſe of Peers, and before the whole Body of the Peers there: And whereas the aforeſaid Parliament is now continuing in Prorogation, until the Tenth Day of *February* next aboveſaid, the ſaid *Henry* Lord *Delamere* humbly conceives that by the Law and Cuſtom of Parliament hitherto uſed, which is Part of the Law and Cuſtom of the Realm, he ought not, nor can be tried before your Lordſhips for the ſaid Treaſons, becauſe the ſaid Parliament is ſtill continuing, and not diſſolved.

And laſtly, The ſaid *Henry* Lord *Delamere* doth further ſay, That he is the ſame *Henry* Lord *Delamere* mentioned in the Commitment, Petitions, Meſſages, Anſwers, and Indictment now read unto him, and the ſaid Treaſon for which he was committed, it is the ſame Treaſon mentioned in the Commitment, Petition, Meſſages, Anſwers, and Indictment, as aforeſaid.

To which ſaid Indictment he humbly conceives he is not bound by Law to make any further or other Anſwer.

L. *Delamere*. May it pleaſe your Grace, and you, my Noble Lords, I do not offer this Plea out of any Diffidence or Diſtruſt in my Cauſe, nor out of any Diſlike I have to any of your Lordſhips that are here ſummoned to be my Triers; I cannot hope to ſtand before any more juſt and noble, nor can I wiſh to ſtand before any others: but your Grace and my Lords will pardon me if I inſiſt upon it, becauſe I apprehend it a Right and Privilege due to all the Peerage of *England*; which, as it is againſt the Duty of every Peer to betray or forego, ſo it is not in the power of any one, or more, to wave it, or give it up without the Conſent of the whole Body of the Peers, every one of them being equally intereſted.

This, my Lord, I humbly demand as my Right and Privilege as a Peer of *England*, and ſubmit to the Direction of your Grace and my Noble Lords.

L. H. Steward. What do you ſay to it, Mr. *Attorney*?

Mr. *Attorney**. May it pleaſe your Grace, This Plea that is here offered by this Noble Lord, is a Plea to the Juriſdiction; but, with Submiſſion, it needs very little Anſwer, for it has very little in it: The Force of the Plea is, That he ought to be tried by the whole Body of the Houſe of Peers in Parliament, becauſe the Parliament is ſtill continuing, being under a Prorogation, and not diſſolved; and becauſe there was ſome Agitation of the Matter concerning this Proſecution, upon his Petition, in the Houſe of Lords; and therefore it concludes, That he ought not to be tried by your Grace and theſe Noble Lords upon this Commiſſion, but by all the Lords in Parliament. With ſubmiſſion, my Lord, this is contrary to all the antient Precedents, and againſt the known Rules of Law; for the Law is, if the King pleaſes to try a Peer in Parliament, then the Record may be brought into the Houſe, and there they proceed as in other Caſes, and all the Peers are Judges. Thus it is in the Time of a Seſſion of Parliament; but if the Parliament be prorogued, there are many Inſtances (and indeed none to the contrary) that after a Prorogation, the Proceedings are before the High-Steward by Commiſſion. And as to the other part of the Caſe, I have this to ſay to it, that there is nothing at all depending in the Houſe of Lords that can ouſt this Court of the Juriſdiction; for there was not ſo much as any Indictment return'd there, no, nor ſo much as found during the Seſſion of Parliament. All the Agitation was only upon my Lord's Petition, and the King's Anſwer; that he intended as ſpeedy a Proſecution as could be: Beſides, my Lord, your Grace ſees it is a Plea in Paper and in *Engliſh*, without any Counſel's Hand, and therefore I hope your Grace does not expect that I ſhould formally demur to a Plea in this Form, and that contains no more of Subſtance in it. But I muſt deſire your Grace to over-rule it, and that the Priſoner may plead in chief.

* Sir *Robert Sawyer*.

L. *Delamere*. My Lord, I humbly pray that I may have Counſel aſſign'd me, to put my Plea into Form, and to argue the matter of it.

L. H. Steward. My Lord *Delamere*, I am ſure I ought, and ever ſhall be as tender of the Privileges of the Peers of *England*, as any other Perſon whatſoever: For I am concerned, as well in Intereſt as Inclination, ſo to be, having the Honour to be one myſelf: But I know your Lordſhip will not think the Privilege of the Peer is concern'd in this matter; nor will your Lordſhip, I dare ſay, inſiſt upon matters that are purely dilatory, if your Lordſhip be ſatisfied that they are ſo: And therefore give me leave, my Lord, to mind you of a few things, whereby your Lordſhip will eaſily ſee, that the chief things on which you inſiſt, are grounded upon Miſtakes. Firſt, you ſay, the Houſe of Peers was poſſeſs'd of the Cauſe; which could not be, and I will tell you why; becauſe there was no Indictment ever removed thither or lodg'd there; which plainly proves that the Lords were never poſſeſs'd of the Cauſe. Nor indeed was the Bill found, upon which you are now arraigned, till after the Prorogation of the Parliament. So that they could never come to be poſſeſs'd of this matter. Theſe are Miſtakes in point of Fact, and your Lordſhip cannot but well know them to be ſo.

And there is a great Miſtake in the Law, that during the Continuance of a Parliament (tho' it were prorogued, yet if not diſſolved) a Peer cannot be tried but by the Houſe of Lords. This certainly is a very ſtrange Doctrine, and is not only againſt the Reaſon and Methods of Law, but contrary even to your Lordſhip's own Experience: For your Lordſhip cannot but very well remember, that during the Continuance of the Parliament, after a Prorogation, the Lord *Cornwallis* *, was tried before the High-Steward, and ſuch a number of Peers as were then ſummoned, upon ſuch a Commiſſion as I now ſit here by. But indeed during the Sitting of the Parliament then all the Peers are both Triers and Judges, as was in the Caſes of my Lord *Stafford* ‡, and my Lord of *Pembroke* §; they being a Court of Judicature, then actually ſitting: and therefore this Plea is grounded as upon miſtake in Fact, ſo upon a miſtake in point of Law. So that though, as I ſaid at firſt, it is both my Duty and Intereſt to preſerve the Privileges of the Peers, yet I muſt take care that no Injury be done to the Law, and truly I take this Plea to be altogether dilatory, and I ſuppoſe your Lordſhip is ſatisfied of it, and will not inſiſt upon it.

† *Trial* 77.

‡ *Trial* 101.

§ *Trial* 73.

L. *Delamere*. If your Grace pleaſe, it was alledg'd and agreed in the Caſe of my Lord of *Briſtol*, that the Cauſe of a Peer in time of Parliament properly belong'd only to the Houſe of Lords; and that which poſſeſs'd the Houſe of Lords of his Caſe, was, as I apprehend, no more than is in my Caſe, a Petition upon the account of being abſent; and there the Lords claim the Cognizance of the whole Cauſe, and nothing was done but in the Houſe of Lords. And as to the Inſtances your Grace has mention'd of my Lord *Cornwallis* (and there was another of them, my Lord *Morley* ‖), this Queſtion was never under Debate in thoſe Caſes; therefore I ſuppoſe they cannot be admitted as Precedents.

L. H. Steward. But, my Lord, it would have been an Error in the whole Proceedings, if this Court had not Juriſdiction: And ſure the Judges, who are always call'd to aſſiſt in ſuch Caſes; and who, in Matters of Life, even in the Caſes of common Perſons, are ſo tender and careful that there be no Irregularity in the Proceedings, would not have let things paſs in that manner, had they been erroneous.

L. *Delamere*. My Lord, I think no other Precedents are produced but thoſe two, and there the Queſtion was never debated.

L. H. Steward. I only put you in mind of thoſe that were lately within Memory; but no queſtion of it, there are a great many more Inſtances to be given.

Mr. Att. Gen. I pray your Grace's Judgment to over-rule the Plea, and that my Lord may plead in chief.

L. *Delamere*. I hope your Grace will be pleas'd to aſſign me Counſel to put my Plea in Form; and that I may have time for it, that they may be heard to make a ſolemn Argument in Law.

L. H. Steward. My Lord, if you inſiſt upon it, and think it worth the while to have Counſel heard, we will hear them.

L. *Delamere*. I ſubmit it to your Grace, I only offer it that I may not be wanting to the Support of the Peers Privileges; I aſſure your Grace, I ſpeak not to put off the Cauſe, for I am willing to come to my Trial, and I have reaſon ſo to be, for I queſtion not but to make my Innocence appear.

L. H. Steward. My Lord, I tell you what my opinion of the Plea is, but if you inſiſt upon it to have your Counſel heard, I will hear them.

L. *Delamere*. I have no Counſel here, if your Grace pleaſe to give me time to ſend for them, and that they may prepare to argue it.

Mr. Att. Gen. No, my Lord, if your Grace will hear Counſel, I for the King muſt pray that it may be done preſently; for a Plea to the Juriſdiction is never favoured, nor is the Party to be allow'd time to maintain it, but he muſt be ready at the time it is offer'd.

L. *Delamere*. Pray, my Lord, how was it done in the Caſe of *Fitzharris* †? His Plea was a Plea to the Juriſdiction, and he had four days allow'd him to put his Plea in form, and to inſtruct his Counſel.

† *Trial* 102.

L. H. Steward. I am not able at preſent to remember what was done in ſuch or ſuch a particular Caſe: But according to the general Method and Courſe of Law, the Plea to the Juriſdiction is not favoured, nor time allowed to it, but the Party muſt be ready to maintain it preſently.

Mr. Att. Gen. But, with ſubmiſſion, my Lord, that Caſe of *Fitzharris* is nothing to this noble Lord's Caſe neither: There was a formal Plea put in Writing, and drawn up in *Latin*, and a formal Demurrer joined; and thereupon I did take time to ſpeak to it. But, with your Grace's favour, by the Law, the Priſoner muſt be always ready to make good his Plea, if he will ouſt the Court of their Juriſdiction.

L. H. Steward, Mr. *Attorney*, if my Lord *Delamere* does inſiſt upon having his Counſel heard, it is not fit for me to refuſe hearing what they can ſay.

Mr.

‖ *He was tried by his Peers for* Murder, April 30, 1666. Keeling's *Reports*, 53.

Mr. Att. Gen. But that muſt be preſently then, my Lord.

L. *Delamere.* It is my Duty, my Lord, to ſubmit to what your Grace and my noble Lords ſhall determine: I would inſiſt upon nothing that ſhould offend your Grace or them.

Mr. Att. Gen. If your Grace pleaſes, you are the only Judge in this Caſe in Matters of Law: For theſe noble Lords, the Peers, are only Triers of the Fact. Therefore I appeal to your Grace's Judgment, and pray for the King, that this Plea may be over-ruled; it being vitious and naught, both in Form and Subſtance.

L. H. Steward. My Lord *Delamere*, I muſt acquaint you, that according to the Conſtitution of this Court, Matters of Law are determined by me, as the ſole Judge, while I have the Honour to act under this Commiſſion: But if your Lordſhip inſiſt upon it, to have your Counſel heard, God forbid that I ſhould deny it you. I will hear what your Counſel will ſay; and afterwards I will, according to the beſt of my Underſtanding, deliver my Judgment.

L. *Delamere.* My Lord, I have never had any Counſel aſſigned me.

L. H. Steward. My Lord, if you have any Counſel ready, we will hear them.

L. *Delamere.* If your Grace pleaſe to aſſign me Counſel, and give me time to ſend for them, and them time to prepare, I will obey your Grace's Directions; but I could have none here ready, becauſe none were aſſigned me.

L. H. Steward. My Lord, you cannot, by the Courſe of Law, have Counſel allowed you in the Caſe of a Capital Crime, till ſuch time as the Court, where you are called to anſwer, is apprized that there is ſome matter of Law in your Caſe, that may need Counſel to be heard to inform their Judgment, and which they may think convenient to hear Counſel to: For if in caſe any Priſoner at the Bar ſhall before-hand be allowed to have Counſel to ſtart frivolous Objections, ſuch as this (and we all know that there are ſome, who will be eaſily prevailed with to endeavour to pick holes where there are none) and to offer Matters foreign from the things whereof the Party ſtands accuſed and upon the Priſoner's bare Requeſt, Counſel muſt be heard to every trivial Point, the Courts of Law would never be at an end in any Trial, but ſome dilatory Matter or other would be found to retard the Proceedings: But it does not conſiſt with the Grandeur of the Court, nor your Lordſhip's Intereſt, to let ſuch a frivolous Plea interrupt your Lordſhip's Trial. However, if your Lordſhip has Counſel ready, I will not refuſe to hear them.

L. *Delamere.* My Lord, I hope the Privilege of the Peers of *England* is not frivolous. I aſſure your Grace, I do not offer this matter, as if I thought it more conducing to my Intereſt, than my Trial now. No, my Lord, it is not for myſelf, but for the whole Body of Peers, of which I have the Honour to be a Member: And if my Lords here are ſatisfied it is not the Right and Privilege of the Peers, I acquieſce.

L. H. Steward. Pray, good my Lord, do not think that I ſhould ſay any ſuch thing, that the Privilege of the Peers is frivolous; for you do not hear me ſay, that this is one of their Privileges. As I would not willingly miſtake you, ſo I deſire your Lordſhip would not miſapprehend or miſrepreſent me. I ſpoke not at all of the Peers Privilege, but of your Plea: I tell your Lordſhip, I think your Plea is not a good Plea, to ouſt this Court of the Juriſdiction of your Cauſe. But if your Lordſhip have a mind to have your Counſel heard to it, in God's Name let them come; they ſhall be heard: And when that is done, to ſatisfy you the more, I will adviſe with my Lords the Judges, that are there to aſſiſt, what they take to be the Law in the Caſe; and, upon the whole, I will deliver my Judgment as well as I can.

L. *Delamere.* I hope your Grace will be pleas'd to adviſe with my Lords the Peers here preſent; it being upon a Point of Privilege.

L. H. Steward. Good my Lord, I hope you that are a Priſoner at the Bar, are not to give me Direction, who I ſhould adviſe with, or how I ſhould demean myſelf here.

L. *Delamere.* I beg your Grace's Pardon; I did not intend to give your Grace any Direction.

L. H. Steward. My Lord, I ſhall take care to perform that Duty that is incumbent upon me, and that with all Tenderneſs to your Lordſhip: And I aſſure your Lordſhip, I will have as much care that I do not injure you, as I will that I do not wrong my own Conſcience; and I will endeavour to diſcharge my Duty to both with the utmoſt Fidelity.

L. *Delamere.* I humbly thank your Grace; I queſtion it not: But if your Grace pleaſe-----

L. H. Steward. My Lord, you muſt pardon me; I can enter into no further Interlocutions with your Lordſhip. If your Lordſhip have any mind to have Counſel heard, and your Counſel be ready, we will hear them.

L. *Delamere.* If your Grace require of me to produce Counſel preſently, and they to argue it immediately, I muſt acquaint your Grace, I cannot do it: For I have none here.

L. H. Steward. My Lord, I cannot tell how to help it: the Plea muſt then be over-ruled and rejected.

Clerk of the Crown. *Henry* Baron of *Delamere*, art thou Guilty of the High-Treaſon whereof thou ſtandeſt indicted, and haſt been now arraign'd, or not Guilty?-----L. *Delamere.* Not Guilty.

Clerk of the Crown. *Culprit*, how wilt thou be tried?

L. *Delamere.* By God, and my Peers.

Clerk of the Crown. God ſend thee a good Deliverance. *Serjeant at Arms*, make Proclamation.

Serjeant at Arms. O-Yes! If any one will give Evidence on behalf of our Sovereign Lord the King, againſt *Henry* Baron of *Delamere*, the Priſoner at the Bar, concerning the High-Treaſon whereof he ſtands indicted, let them come forth, and they ſhall be heard: for now he ſtands at the Bar upon his Deliverance.

Then his Grace gave the Charge to the Peers Triers in this manner:

L. H. Steward. My Lords, I know you cannot but well remember, what unjuſt and inſolent Attempts were made upon the rightful and unalterable Succeſſion to the Imperial Crown of theſe Realms, under the pretence of that which has been ſo often found to be the Occaſion of Rebellion, I mean, the ſpecious Pretence of Religion, by the fierce, froward, and phanatical Zeal of ſome Members of the *Houſe of Commons*, in the laſt *Parliaments* under the late King *Charles* the Second, of ever-bleſſed Memory. Which, by the wonderful Providence of Almighty God, not pevailing, the chief Contrivers of that horrid Villainy conſulted together how to gain that Advantage upon the *Monarchy* by open Force, which they could not obtain by a pretended Courſe of Law.

And in order thereto, it is too well known, how they had ſeveral treaſonable Meetings, made bold and riotous Progreſſes into ſeveral Parts of the King's Dominions; thereby endeavouring to debauch the Minds of the well-meaning, though unwary and ignorant, Part of the King's Subjects.

But theſe their evil Purpoſes it pleaſed *God* alſo to fruſtrate, by bringing to light that curſed Conſpiracy againſt the Life of his ſacred Majeſty, King *Charles* the Second; as alſo, againſt that of our dread Sovereign that now is, whom *God* long preſerve.

Theſe helliſh and damnable Plots, one would have thought, could not have ſurvived the juſt Condemnation and Execution of ſome of the chief Contrivers of them; eſpecially conſidering, that after it had pleaſed Almighty *God* to take to himſelf our late merciful and dread Sovereign, no ſooner was his ſacred Majeſty that now is, ſeated in the Royal Throne of his Anceſtors, but he made it his utmoſt Endeavours, not only to convince the World that he had quite forgot thoſe impudent and abominable Indignities that had been put upon him, only for being the beſt of Subjects, and the beſt of Brothers; but did alſo give forth the moſt Benign Aſſurances imaginable to all his loving People, that he would approve himſelf to be the beſt of Kings.

And further to evince the Reality of theſe his Gracious and Heroick Reſolutions, he immediately called a Parliament; and therein repeated, and ſolemnly confirmed his former Royal Declarations of having a particular Care of maintaining our eſtabliſhed Laws and Religion: With which that Wiſe, Great, and Loyal Aſſembly were ſo fully and perfectly ſatisfied, that they thought they could not make ſufficient Returns of Gratitude for ſuch Gracious and Princely Condeſcenſions.

And yet, my Lords, while the King and the Parliament were thus, as I may ſay, endeavouring to out-do each other in Expreſſions of Kindneſs, that wicked and unnatural Rebellion broke out; and thereupon the Arch-Traitor *Monmouth* was, by a Bill brought into the Lower Houſe, and paſs'd by the general Conſent of both Houſes, (and I could wiſh, my Lords, for the ſake of that Noble Lord at the Bar, that I could ſay, it had paſs'd the Conſent of every particular Member of each *Houſe*) juſtly attainted of *High-Treaſon*.

My Lords, what ſhare my Lord at the Bar had in thoſe other matters, I muſt acquaint you, is not within the compaſs of this Indictment, for which you are to try him, as his Peers; for that is for a Treaſon alledged to have been committed by him, in his Majeſty's Reign that now is.

Give me leave, my Lords, to detain you but with a Word or two more on this occaſion; and that is, to let you know, that as my Lord at the Bar may, with great ſafety and ſecurity to himſelf, rely upon your Lordſhips Candour and Integrity, that you will be tenderly careful, and ready to acquit him of the Treaſon whereof he is accuſed, if, upon the Evidence that ſhall be given you, you ſhall find him innocent: So I muſt tell you, the King has an entire confidence in your Reſolution, Fidelity, and good Affections to him, that you will not, by reaſon of the Priſoner's quality, and nearneſs to you, as being a Peer of this Realm, acquit him if he ſhall appear to be guilty.

My Lords, I have one thing further to mind your Lordſhips of, that, according to the uſual Forms of Proceedings in theſe Caſes, if your Lordſhips have any Queſtions to propound, wherein you would be ſatisfied as to any Matter, either of Fact or Law, your Lordſhips will be pleaſed to put thoſe Queſtions to me, and I ſhall take care to give your Lordſhips the beſt Satisfaction I can.

L. *Delamere.* My *Lord High Steward*, I beg the favour of your Grace, I may have one to write for me.----*L. H. Steward.* Ay, by all means. Let my *Lord* have whom he pleaſes to write for him.

Mr. * *Recorder.* May it pleaſe your Grace, my *Lord* * *Sir* Thomas *High Steward* of *England*, and you my noble Lords, the Jenner.
Peers of the Priſoner at the Bar: *Henry* Baron of *Delamere*, the Priſoner at the Bar, ſtands indicted, for that he, as a falſe Traitor againſt the moſt illuſtrious and moſt excellent Prince, our Sovereign Lord the King that now is, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, the 14th Day of *April* laſt, at *Mere*, in the County of *Cheſter*, did maliciouſly conſpire, with other falſe Traitors, to the Jurors unknown, the death and depoſing of the King: And for the better and more effectual fulfilling of thoſe his Treaſons, the ſaid 14th day of *April*, at *Mere* aforeſaid, did maliciouſly and traitorouſly aſſemble, conſult, and agree with *Charles Gerrard*, Eſq; and other falſe Traitors, to raiſe great Sums of Money, and procure Numbers of armed Men, to make a Rebellion againſt the King, and the City and Caſtle of *Cheſter* to ſeize, with the Magazines there; and that afterwards, the 27th day of *May* laſt, he took a Journey from *London* to *Mere* aforeſaid, to accompliſh his treaſonable Intentions. And further, that upon the 4th day of *June*, in further proſecution of his traitorous Purpoſes, at *Mere* aforeſaid, he did incite divers Subjects of our Lord the King, to join with him, and other falſe Traitors, in his Treaſon. And this is laid to be againſt the Duty of his Allegiance, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute in that caſe made and provided. To this Indictment, may it pleaſe your Grace, and the reſt of theſe noble Lords, my Lord *Delamere*, the Priſoner at the Bar, has pleaded *Not Guilty*; and for his Trial, has put himſelf upon his Peers. We ſhall therefore call our Witneſſes for the King; and if we prove him guilty, we do not queſtion but your Lordſhips will find him ſo.

Mr. Att. Gen. May it pleaſe your Grace, my *Lord High Steward* of *England*, and you my noble Lords the Peers: My Lord *Delamere*, the Priſoner at the Bar, ſtands indicted for conſpiring the Death of his Majeſty, and in order thereunto to raiſe a Rebellion in the Kingdom.

My Lords, in proving this Charge upon him, we crave leave to give your Grace and your Lordſhips ſome ſhort Account, by Witneſſes that we have here, of a former Deſign that was previous to this matter, for which this noble Lord ſtands here accuſed: And we ſhall not trouble your Grace, and your Lordſhips, with any long Evidence, becauſe it has received many ſolemn and repeated Trials; and, as to the Proof of it, has been confirmed by as many Verdicts. But we do it, rather to give ſome account, as an Introduction to a material Evidence, by ſhewing, that *Cheſhire*, which was the

the Province of this noble Lord, was one of the Stages where that Rebellion was principally to be acted; and that, preparatory to it, great riotous Aſſemblies, and tumultuous Gatherings of the People, were ſet on foot by the Conſpirators.

We ſhall then ſhew, my Lords, that after the late Duke of *Monmouth*, (the Head of the Conſpiracy) went beyond Sea, (eſpecially after the death of the late King) frequent Meſſages, and Intercourſe of Correſpondency, were ſent and held between him, and the reſt of his Accomplices abroad, and their Fellow-Conſpirators here at home.

And particularly, we ſhall prove, that a little before the Rebels came over laſt Summer into the *Weſt*, the Duke of *Monmouth* did diſpatch one *Jones*, (who was one of the moſt conſiderable Agents in this Contrivance) to come from *Holland* into *England*, to let his Friends know, that tho' he had intended to go into *Scotland*, and begin his Work there, yet now his Reſolutions were for *England*; where, he hoped, his Friends would be prepared for him. And with this Meſſage and Reſolution of his, *Jones* was to acquaint ſome Lords, (who they were, the Witneſs will tell your Lordſhips, but) among others, this noble Lord, the Priſoner, was one: And to acquaint them, beſides, that he would immediately ſet ſail for *England*, whither he would come ſo ſoon as he could get. That he had a Deſign to have landed in *Cheſhire*, where he expected to be moſt readily received; but finding that inconvenient, they ſhould have notice four or five Days before-hand, of the Place of his landing, which he intended ſhould be in the *Weſt*. And, among the Directions that *Jones* had to give to thoſe Lords, one was, that they ſhould immediately repair into *Cheſhire*, there to wait for the News.

Theſe Inſtructions *Jones* had given him in Writing, but ſealed up, with an injunction not to open them till he came to Sea; and then he was to peruſe that Writing, and deliver his Meſſage according to his Inſtructions: And in that Writing was the name of this noble Lord, as one that was principally relied on to carry on the Rebellion in *Cheſhire*. And we ſhall give you an account, that the late Duke of *Monmouth* did look upon *Cheſhire* as one of his main Supports, and upon my Lord *Delamere* as a principal Aſſiſtant there.

My Lord, this Meſſage was *Jones* to communicate to Captain *Matthews*, and Captain *Matthews* was to tranſmit it to this noble Lord, and the other Perſons that were concerned with him. *Jones* arrived with this Meſſage here in *England* upon the 27th of *May*: [And I muſt beg your Lordſhips to obſerve the Time particularly.] But Captain *Matthews*, to whom he was directed, was not to be found; nor Major *Wildman*, to whom, in the abſence of Captain *Matthews*, he was to apply himſelf, as you will hear more fully from the Witneſs's own Mouth: Thereupon he ſends for one *Diſney*, (a Name which your Lordſhips cannot but know, he being ſince executed for Treaſon) and one *Brand*, whom your Lordſhips will likewiſe hear of; and they meet with the ſame *Jones*, who communicates his Meſſage to them, and they undertake to deliver it to the Perſons concerned; Captain *Matthews* being out of Town, and Major *Wildman* not to be found.

That very Night, my Lords, this ſame *Brand* and *Diſney* they meet this Noble Lord, my Lord *Delamere*, at the Coffee-Houſe, and give him an Account of the Meſſages: And as ſoon as ever he had received the Meſſage, upon that Twenty-Seventh of *May*, at ten of the clock at Night, does my Lord *Delamere* diſpatch out of Town, with only one Servant to attend him, and two other Friends that he had picked up, or appointed to meet him, and go with him.

With all theſe Badges of Plot and Deſign, does my Lord *Delamere* ſet out that Night. It was the ſame Night that *Jones* came to Town: It was late at Night. He changed his Name, and went by the Name of *Brown*. He choſe to go all the Bye-Roads, and would not keep the high common Road; and went with great ſpeed, as we cannot but preſume according to the Meſſage delivered by *Jones*, on purpoſe to repair into *Cheſhire*.

And if your Lordſhips pleaſe to obſerve, you will find ſeveral remarkable Inſtances of Plot and Contrivance in the matter: Firſt, That a Nobleman, and one of ſo conſiderable a Character in his Country, as my Lord *Delamere*, ſhould make ſuch haſte out of Town with ſo ſmall an Equipage as but one Servant. Then, that he ſhould go ſo late at Night: Again, that he ſhould change his Name; and that ſhould prove to be a Name not caſually taken up, as the firſt Name he could think of next his own; but a Name of diſtinction, that he was known by among all his own Party: For all the Communications between the Confederates and him, were managed, as to him, under the Name of *Brown*. By that Name, ſeveral of the late Duke of *Monmouth*'s Traitorous Declarations were ſent for; which were to be ſent to him, or by him into *Cheſhire*: And that alone, with Submiſſion, my Lords, would be a ſhrewd Circumſtance of Suſpicion, that a Noble Lord, ſuch an one as my Lord *Delamere*, ſhould aſſume the Name of a Commoner, and poſt out of Town ſo ill accompanied, in a Diſguiſe, at that time of Night; eſpecially the Parliament being then ſitting, as really it was.

But beſides all this Circumſtantial Evidence, we ſhall prove, by Poſitive Teſtimony, what the haſty Buſineſs was, that made my Lord undertake this Journey in this manner: For, having notice of the Duke of *Monmouth*'s Intention to land ſpeedily in *England*; when he comes into *Cheſhire*, he actually ſets about the Work to put that County in a forwardneſs to aſſiſt in the Rebellion; endeavours to ſtir up the People to join with him; and acquaints one that he employed in that Affair with the whole Deſign, that he was engaged to raiſe ſo many Thouſand Men, and ſo much Money, to be ready by ſuch a Day.

Nor does my Lord reſt here: But after the Duke of *Monmouth* was landed in the Weſt, to corrupt the Minds of the People, we ſhall prove what Diſcourſes he had, (and theſe will teſtify his Inclinations to the Cauſe) concerning the great Victories he had obtained over the King's Forces, and how he applauded his Conqueſts.

My Lords, we ſhall plainly ſhew you all this that I have opened in plain Proof: And then, we ſhall ſubmit it to your Lordſhips Judgments, whether this noble Peer be Not Guilty, as he has pleaded to his Indictment?

L. H. Steward. Call your Witneſſes, Mr. *Attorney*: Who do you begin with?

Mr. Att. Gen. My Lord *Howard* of *Eſcrick*: We deſire he may be firſt ſworn. [*Which was done.*

L. H. Steward. Well, what do you aſk my Lord *Howard?*

Mr. Att. Gen. My Lord, I call you to give an Account what you know of a Deſign of an Inſurrection that was to have been; and in what Parts; and what ſhare *Cheſhire* was to have had in it, in the late King's Time?

L. H. Steward. You hear the Queſtion; what ſay you to it, my Lord?

L. *Howard.* My Lord, I am to direct myſelf to ſpeak to what was done in the late King's Time: For as to that Noble Lord at the Bar, I have nothing to ſay againſt him.

L. H. Steward. My Lord *Howard*, if I apprehend Mr. *Attorney* aright, you are not called as a particular Witneſs againſt my Lord *Delamere*; but only to give an Account, what was agreed upon in any Conſultations, where you were preſent, in the late King's Time, about a Conſpiracy for an Inſurrection?

L. *Howard.* If ſo, my Lord, then I am called not to be an Evidence againſt my Lord *Delamere*, but againſt myſelf; that is, to repeat what I have often delivered at ſeveral Trials, in the Courts of Juſtice; and which I muſt always repeat, with Shame and Confuſion for my Guilt, as I cannot but always reflect upon it with Sorrow and Horror. But if it be for the Service of his Majeſty, and this Honourable Court, for me ſo to do, I ſhall endeavour to comply with it, and repeat it as well as I can, by the Aſſiſtance of a broken Memory; it being an Account of things done ſeveral Years paſt, and from a Memory interrupted by ſuch Accidents as are very well known, and as have diſabled me to make a more diſtinct and particular Relation before ſo great an Auditory.

My Lords, I ſuppoſe, it will be expected, I ſhould begin my Account with the Occaſion and Ground, and the Time when thoſe Things happened.

L. H. Steward. Take your own Method, my Lord.

L. *Howard.* Truly, my Lord, I am not able to fix the particular time, unleſs you will give me leave to reckon the Years by the Sheriffs of *London*, as the *Romans* uſed to do their's by their Conſuls; for I have no other means of computing the exact Time.

L. H. Steward. Pray, my Lord, tell the Times as near as you can, and uſe what helps for your Memory you think beſt.

L. *Howard.* My Lords, it was in that Year, when Mr. *Shute* and Mr. *Pilkington* were Sheriffs for the City of *London*: And, at that time, it is well known how great Heats did ariſe upon the Conteſts that were in the City, about Election of Officers for the Year enſuing——

Mr. Att. Gen. May it pleaſe your Grace, my Lord *Delamere* ſeems to be faint with ſtanding. If your Grace pleaſe, a Chair may be provided for my Lord to ſit in.

L. H. Steward. Ay, by all means: Let a Chair be provided for my Lord to ſit down. Go on, my Lord.

L. *Howard.* My Lord, I was ſaying, that the Conteſt about the diſputed Election of Sheriffs, had occaſioned ſuch Heats in the City of *London*, and other Places, that it was even beyond the common expreſſions of Diſcontent. I knew nothing of any particular Deſign there was in hand till about ſix Weeks after, when Captain *Walcot* came to me, a Perſon I had known ſome time before, and upon diſcourſe, acquainted me, that he had found out that there were ſome Perſons engaged in a conſiderable Action that was near its Execution; and that in order to it, he had had notice given him to make preparation, and thereupon he had thought fit, for that reaſon, to withdraw from the place where he did at that time lodge, (which was in *Red-Lion* Court, in *Fleet-ſtreet*, as I remember) and betake himſelf to a private Lodging, that he might be the readier for Action; and to put himſelf into a better Equipage for joining in the Enterprize, he had bought himſelf a Horſe, and ſent his Son into *Ireland* to turn all he could into ready Money, and return it, that he might be the better able to go through with the Undertaking. My Lords, this was a great ſurpriſe to me; for though I knew, as all the reſt of the World did, that there were great diſcontents, yet, till then, I never had any intimation of any particular deſign. I told him I was going into the Country, but ſhould be glad to know how things went, and deſired him to write to me, and gave him a little *Cabala* or *Cypher* to diſguiſe the matter he was to write about. And when I was in the Country, I did receive ſeveral Letters which intimated ſomething of a Deſign that was going on, and at laſt he writ with ſome warmth to me, of a neceſſity we were under to enter into Action, and of the readineſs of my Correſpondents; (for the Style of the Letters was that of Merchants, for ſo was the Cant that I had given him:) But truly I was not over-haſty in my return to *London*, becauſe I rather choſe to ſee what would be the Iſſue of what was then projected, before I did intermeddle in ſuch an Affair, and ſo made uſe of all the delays I could to retard my return, and came not to Town till that Week which determined the long continued Controverſy in *London*; nay, and then alſo avoided meeting with any body in any ſet-way, till I could better ſee how things were managed, and what event they would probably come to. Thereupon I would not go to my own Houſe, but took up my Lodging at *Mile-end*, and lay three or four Days, till the Day came for confirming the new-elected Sheriffs, and the Election of a new Lord Mayor, which, as I take it, is on the day before *Michaelmas*-day, and *Michaelmas*-day. When that day was over, I could not find there was any Intention of entering into any ſort of Action; I found indeed there were great Murmurings in the mouths of all ſorts of People, and very angry warm Speeches, and nothing elſe: So I thought the buſineſs was over for that time, and thereupon away I went to my own Houſe. This, my Lords, was upon the *Saturday*, as I remember: Upon the *Monday* Morning Captain *Walcot* came to me, and deſired that he might have ſome private diſcourſe with me in my Garden; and there he told me, my Lord *Shafteſbury* had withdrawn himſelf, and that he did believe things were in a great Preparation for Action. I deſired him to tell me what it was; he anſwered me, That he deſired to be excuſed in that, for I muſt go to my Lord *Shafteſbury*, who would give me an account of the whole: and withal he told me, my Lord *Shafteſbury* had been much deſerted and ill uſed by thoſe Lords upon whoſe concurrence he had rely'd,

and that was the reaſon why he had withdrawn himſelf, and kept himſelf ſo private. I told him, I did not know my Lord *Shaftesbury* had any deſire to ſpeak with me. Yes, he ſaid he had, for he had ſent him to me on purpoſe, and he was to bring back my anſwer, whether I would join or no. I told him, if my Lord deſired to ſpeak with me, I would wait upon him; and thereupon I went with him, and he carried me to a place where my Lord *Shaftesbury* was retired into the City, ſomewhere about *Foſter-Lane* or *Wood-Street*, at the Houſe of one *Watſon*. When I came there, after Salutation, my Lord *Shaftesbury* began to make great reflections upon the Miſery and Badneſs of the Times, particularly upon the iſſue of that great Affair, the Election of the Sheriffs, which had ended ſo unfortunately, to the Terror of all good men: For whereas before, the great and ſure reſort of innocency was to the Integrity of our Juries, when returned by fair and equal Sheriffs, they looked upon the eagerneſs of getting thoſe Perſons ſworn that were then in Office to be a deſign to intrap the innocent, the elected Sheriffs being eſteemed perſons that would accommodate themſelves to the humour of the Court; and now every man muſt be run down for Crimes that he was no way guilty of, if the finger of the Court did but point him out to deſtruction. The apprehenſion of this, he ſaid, had made him withdraw himſelf, not knowing how ſoon he might be ſeiz'd, ſhould he have remain'd in publick; and he thought the danger was as imminent upon, and likely to reach to others, as well as to him; and particularly to myſelf; and therefore, he ſaid, the ſenſe of this danger ought to put every *Engliſhman*, that had a value for his Country, and any thing that was dear to him in it, upon uſing his utmoſt endeavours to give ſome prevention to thoſe calamities which were impendent over us, and which threatned the deſtruction of all men that ſtood up for the Rights of the People: and this, he ſaid, was his reſolution.

My Lord, in order to this, he declared to me, what Preparations had been made for the Raiſing of Force for this purpoſe; he ſaid, there were eight or ten thouſand Men (I cannot fix the particular number) that he was well aſſured to have ready in the City; That there had been divers Horſe (I think about Fourſcore or an Hundred he named) that about a Fortnight before, had been, by parcels, drawn into the Town, without being obſerved; and theſe were in daily expectation to go into Action; but through the unhandſome Diſappointment of the Duke of *Monmouth*, and the other Lords that adhered to him, who were to have joined in the Action, and have ſet the Wheels at work in other Parts, he was left alone to do the whole in his Province of *London*, they being not ready to concur according to their Engagement: But as he ſhould have the greater danger, ſo he ſhould have the greater Glory; and he reſolved to go through with the Attempt, or periſh in the Execution. To all this Diſcourſe I gave ſuch an Anſwer as the nature of the thing required: I told my Lord *Shaftesbury*, I could not deny all thoſe things to be true, as he had repreſented them in his Diſcourſe; and that I would not diſtruſt his judgment ſo much, as to ſuppoſe he would enter upon ſuch an Affair, without due deliberation of all the Circumſtances requiſite to it; and ſo I would not queſtion, but there was ſuch Preparations, and that he had Aſſurance of ſuch a Force, as he had ſpoke of, whenever they ſhould begin any Action. But I told him ſomething ſtuck with me, and troubled me very much; That, in a time of ſuch difficulty, when the convenient Help of the Nation was all little enough to join in the Work, he ſhould ſtand by himſelf, and engage in ſuch an Enterprize, in ſeparation from thoſe other Lords, of whoſe Help there would be ſo much need. He ſaid, he could not help it, they had appointed this time, and that, but now, when it came to the puſh, they were not ready to do their Parts; but the People were now in ſuch expectation of ſomething to be done, eſpecially in *London*, that it was impoſſible to reſtrain them, and as impoſſible to get thoſe Lords ready to join with them. I told him, I was altogether unacquainted with the Proceedings in this Affair, and that all of it was wholly new to me: But pray, my Lord, ſaid I, give me leave to act that part in this buſineſs, that, I think, will moſt conduce to the ſucceſsful Iſſue of it, which is to be a Mediator between you; and let me deſire you to let things reſt as they are, till I have endeavoured to create a better underſtanding between your Lordſhip and thoſe Lords, of whoſe Tergiverſation you ſeem to complain. Upon this my Lord was in a great heat, and expreſs'd himſelf with great warmth; but at laſt, with much ado, he gave me permiſſion to go to the Duke of *Monmouth*, and aſſure him, and the reſt of the Lords that were concern'd, and tell them from him, that if they would be ready to take the Poſts that were aſſign'd them, according to their own former Agreement, and immediately enter upon Action, he would join with them; but if not, he was reſolved to go on alone. This was, as I remember, upon *Tueſday*, the Second of *October*: upon the *Wedneſday* Morning I went to find out the Duke of *Monmouth*, but coming to his Lodgings, he was gone to *Moor-Park*, where, when I came, I found ſeveral Perſons with him; but after a little time, I ſeparated him from the Company, and whiſpering to him, I gave him to underſtand, how great a Diſorder I found my Lord *Shaftesbury* in, and how great a Complaint he made of his being deſerted by him, and the other Lords engaged with him, and what Reſolution he had taken to ſet upon the Work alone. " My Lord, ſays he, I think the Man is mad, " his Fear makes him loſe his Underſtanding; I do not know why he " hides himſelf from his Friends, that no body can tell where he is: but " as to that which he ſpeaks of, of our forſaking him, and Breach of " Faith, he is miſtaken. For, 'tis true indeed, we are about doing the " Thing, that he is ſo eager for, but we are not for doing it ſo haſtily, " as his Fears precipitate him to do; and he muſt excuſe us, if we " comply not with his Humour, to hazard the whole Undertaking by a " raſh beginning." Upon that, I ſaid to him, My Lord, I ſhall not diſcourſe the Particularities of the buſineſs with your Grace; but this is all that I at preſent addreſs to your Grace for, to be a means, if I can, with your Grace, as I have been with him, to procure a Meeting between you, that you may ſettle it with one another. " With all my " heart, ſays the Duke, pray let it be ſo; for though my Lord *Shafteſ-* " *bury* is angry without a cauſe, yet I would not have him loſe himſelf " in a temerarious Undertaking." My Lord, ſaid I, I will tell him what you ſay, and will ſee if I can work him to a Compliance with the Propoſal. The next day, being *Thurſday*, my Lord, I went to my Lord *Shaftesbury* again, and reported to him the Diſcourſe I had with the Duke of *Monmouth*, and what anſwer he had given to his Complaint of their deſerting him. He reply'd, " It was falſe, they had poſitively " engaged to be ready by ſuch a time, and had appointed the very Day; " but now they were off, and would not tell when they would be " ready:" and withal, he told me, he greatly ſuſpected the Duke of *Monmouth* to have a ſecret Correſpondence with the King. I then deſired him, That he would pleaſe to conſent to the Treaty that was propoſed, and give the Duke of *Monmouth* and the Lords a Meeting. He, in great heat, replyed, No, he would come no more at them. It is ſtrange, my Lord, ſaid I, that you ſhould have ſuch an Opinion of theſe Men, that they would go about to betray you; they are not Men of that ſize: but he perſiſted in it, that they had dealt perfidiouſly with him: For after a poſitive Agreement, when the thing was brought juſt to the Birth, they withdrew their helping hand: but he was ſure, in *London*, he could raiſe a ſufficient Force to do the Work, and if he were but once ſet on horſe-back, he would head them himſelf: But yet he was willing to put it off for a Fortnight, or three Weeks longer, if they would be ſure to keep pace with him. With this Propoſal I went the next day, which was *Friday*, to the Duke of *Monmouth*, and had the ſame Anſwer from him, that I had before; but withal, he bid me tell my Lord *Shafteſbury*, That he did make it his earneſt Requeſt to him, to give him and his other Friends a Meeting before he engaged in this buſineſs: For he found by his precipitation, he was about to deſtroy himſelf, and all that adhered to him. Thereupon, I came to my Lord *Shaftesbury* again, upon the *Saturday*: and when I came there, after a long and importunate urging all the Arguments I could think of, I ſo far prevailed with him, that he agreed to give them a Meeting, upon condition that it ſhould be the next day: and becauſe it ſhould be ſo private, that no notice might be taken of it, he choſe to have the Meeting at his own Houſe, where no body would ſuſpect him to be, and whither he would be conveyed under the Diſguiſe of a Parſon. I went back with this Meſſage to the Duke of *Monmouth*, who did undertake, that the other Lords ſhould be there.

L. H. Steward. My Lord *Howard*, not to interrupt you, Did he name thoſe other Lords? If he did, pray acquaint my Lords, who they were.

L. *Howard.* My Lord *Shaftesbury* named my Lord *Ruſſel* and my Lord *Grey*, and a great many more that ſhould bear their parts. I went to the Duke of *Monmouth*, and told him of it, I ſay, and he engaged, that they ſhould certainly be there: But, upon the *Sunday* Morning, when I came to the *Temple*, there I found a Meſſage left for me, that my Lord *Shaftesbury* had receiv'd an Alarm, That there was ſome great Tories living near his Houſe in *Alderſgate-ſtreet*, who were continually ſpying about; and ſo great a Company might make their more than ordinary Obſervation: That this gave him ſuch a Jealouſy, as would not permit him to meet according to his Appointment. Afterwards, I came to a better underſtanding of the Reaſon of this, and found there was ſome Fineſſe in it, which I could not comprehend before: But after this time, I never ſaw my Lord *Shaftesbury*, for he removed then to other Lodgings. So that what I now ſpeak of him, is only what I had, by hear-ſay, from others: For I had no knowledge of what paſs'd, as to him, but what I had from Capt. *Walcot*; who told me, That after that, there were ſeveral days of Meeting appointed, but ſtill, from time to time, put off; but upon what reaſon, I cannot particularly remember.

This is all I know of my Lord *Shaftesbury*; and the latter Part is wholly by Hearſay from *Walcot*. But by reaſon of this Agitation, we continued under Expectation till ſuch time as my Lord *Shaftesbury* went into *Holland*; where he ſhortly after died. And truly, I thought, at that time, much of the Deſign was quaſhed, and laid aſide: But, ſoon after *Ferguſon* came over; who, when he came here, began to revive and quicken the Buſineſs, and puſh it on to Execution. I ſpoke with him at the *One Bell* in the *Strand*; and there he gave me an Account of all the Steps that had been taken: He told me what Preparations had been made in the City, in general; what to ſeize the Gates of the City; what to poſſeſs themſelves of the *Tower*; what to attack the Guards; and ſeveral other things, which I can't now ſo well remember, the Impreſſions of them being worn out of my Memory, by length of Time, and other Accidents.

This, in general, is all that I can ſay, as to what was previous to the particular Engagement wherein I was concern'd: For, at laſt, after many Diſcourſes, the Troubles and Difficulties of the Time increaſing, and the Dangers that threatned us, as we thought, growing higher and higher, this gave an Occaſion for our uniting Counſels, and entering into a kind of *Junto*; which, I ſuppoſe, is foreign to this Affair before your Lordſhips; and therefore, I ſuppoſe, would be likewiſe impertinent for me to trouble your Lordſhips with.

L. H. Steward. Mr. *Attorney*, do you deſire my Lord *Howard* ſhould give an Account of the other Meetings, and Conſultations, at which he was preſent?

Mr. Att. Gen. My Lord, I think there will be no need of it; and I am unwilling to take up your Grace's Time to no purpoſe.

L. *Howard.* As for that Noble Lord at the Bar, I know nothing concerning him.

L. H. Steward. Then, Gentlemen, will you have him aſked any Queſtions?

Mr. Att. Gen. No, my Lord.

L. H. Steward. My Lord *Delamere*, will you aſk him any more Queſtions?

L. *Delamere.* No, my Lord.

Mr. Att. Gen. Before my Lord *Howard* goes, I would aſk him one Queſtion in general, whether he knew of any Deſign of a Riſing in *Cheſhire*?

L. *Howard.* No, my Lord, I knew of none at all.

Mr. Att. Gen. Then we desire my Lord *Grey* may be sworn.
[*Which was done.*

Mr. Att. Gen. Pray, will you give his *Grace* and my *Lords* an Account, what you know of any Designs of an Insurrection or Rebellion, when you were beyond Sea, or before? and who were engaged in it?

L. *Grey.* My Lord, I am *subpœna'd* hither on behalf of the King; and I am also *subpœna'd* on behalf of my Lord, the Prisoner at the Bar. I do not know any thing, that I can speak of my own Knowledge, against the Prisoner; nor have I any thing to say, that I know of, that will be for his Advantage. But I am here ready to answer such Questions as shall be ask'd me, either of one side, or the other.

Mr. Att. Gen. My Lord, the Question I ask you, is, What do you know of any Design of a Rising in *Cheshire*, and when?

L. *Grey.* About the Time of the Election of *Sheriffs* for the City of *London*; I mean, that memorable Time of the contested Election, which furnished the World with so much Discourse, and was the occasion of such Heats and Animosities: About that time, the Duke of *Monmouth* and my Lord of *Shaftesbury* began to discourse about making use of that, as an Opportunity to accomplish their Design; for they thought the Ferment was so high, that Men would easily be disposed to an Insurrection: and after many Discourses to that purpose, they came to this Resolution, that they would apply themselves to make what Interest they could, to procure a Rising in three several Parts of the Kingdom at once: one in *Cheshire*, whither the Duke of *Monmouth* was to betake himself; and there be advised by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Prisoner at the Bar, what Gentlemen were proper to apply to for joining in the Design. The second was in *London*, which was assigned to be the Province of my Lord of *Shaftesbury*. And the third was in the *West*, which was committed to the Care of my Lord *Russel*. The Duke of *Monmouth* did accordingly go his Progress into *Cheshire*, as is very well known; and upon his Return, was taken into Custody by the *Serjeant at Arms*: Upon which, Sir *Thomas Armstrong* was sent Post to Town, to get an *Habeas Corpus*; and, withal, to deliver a Message to me, to be communicated to my Lord *Russel*, and my Lord *Shaftesbury*: Which Message, as near as I can remember, was to this Effect; That he had been kindly received by the Gentlemen of the County, and had discours'd the Matter with them, and found them all inclined very much to his Satisfaction: That upon his being arrested, he had been advised to make his escape into *Cheshire*, and rise immediately; but that he would not do a Matter of that great Importance, without the Approbation of his Friends. This is all that I know of any thing that was designed in *Cheshire*.

Mr. Att. Gen. Pray, my Lord, what do you know of any Messages that Captain *Matthews* or *Jones* brought over from *Holland*, and to whom, and from whom?

L. *Grey.* Sir, I will give the best account I can upon the sudden, for I am not prepared to give a particular distinct account, in regard I did not know it would be expected from me, nor indeed that it would affect the Prisoner at the Bar.

L. H. Steward. Pray, my Lord, give my Lords the Peers as succinct and particular an Account as you can.

L. *Grey.* My Lord, soon after the late King's Death, the Duke of *Monmouth* was at *Amsterdam* with my Lord of *Argyle*, where there was an account given of the Design that was in hand, of an Insurrection in *Scotland*, and the Preparations that had been made in order to it; and at that time there came over to *Holland* Mr. *Crag*, that came as I was inform'd from Major *Wildman*, and his Errand was to promote and recommend a Reconciliation between the Duke of *Monmouth* and my Lord *Argyle*, who till that time had acted in separate Interests; and *Crag* then gave an account that Means and Money were prepared: he had no particular Message to the Duke, because he did not know of meeting him there at that time. The Duke of *Monmouth*, upon this Encouragement, did send Captain *Matthews* into *England*, with a Message to Major *Wildman*, wherein he did desire him that he would procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere*, and I think Mr. *Charleton*, and acquaint them that he had received a full account of my Lord *Argyle*'s Affair, and the Preparations that had been made for it, and accordingly he had ordered his own Affairs to join with him; he likewise sent *Crag* with a Message to the same purpose to other Friends in *London*, and he dispatch'd away one *Battescomb* into the *West*, to prepare things there. When *Crag* return'd back again to the Duke, he gave him an account that Major *Wildman* had procur'd a Meeting with those Lords and Gentlemen, that I mentioned before, who were all of Opinion, that the Duke of *Monmouth* should go for *Scotland*, for they thought that his coming there, would be the best Service he could do the Interest at present, and they should know the Strength of the Enemy here, by their sending Forces to suppress the Rebellion there. There was likewise a particular Message from Major *Wildman* to the Duke of *Monmouth*, that he desired he would bring over with him a Broad Seal to seal Commissions with, and to take upon him the Title of King. The other particular Branches of the Message I do not so well remember, but only this, he was particularly ask'd, whether the Prisoner at the Bar was there, and he said he was------

Mr. Att. Gen. Pray, my Lord *Grey*, will you give an account what you know of *Jones*'s coming over, and what Errand he was sent of?

L. *Grey.* *Jones* came some time after *Crag* return'd, and he gave an account of other things conformable to what *Crag* had said, and was sent back again to *England* by the Duke of *Monmouth* to give an account of his being ready to sail; he gave him also a Letter, the Contents whereof I did not see. I had some short account of it, but whether it were written to any particular Person, I cannot tell; the Sum of his Message was, that he would land by that time he could get thither.

Mr. Att. Gen. My Lord *Grey*, you had frequent Discourse with the Duke of *Monmouth*, and so I suppose you can give an account who he kept Correspondence with, and upon whose Assistance he relied.

L. *Grey.* I suppose few people will believe we were so weary of our Lives, as to come and throw them away with Threescore, or a very few more Men, (for it was but a very small number we began with) except we had had Expectation of good assistance. This I am sure of, by all Discourses with the Duke of *Monmouth*, he did depend very much upon *Cheshire*, and was resolv'd to have landed and begun there; but afterward he considered of it, and thought better to send some sort of excuse for not landing in *Cheshire*; that the Persons that were to be apply'd to there, being Men of Great Quality and Interest in their Country, and able to manage it, without his Assistance: but in the *West*, the Friends he relied on, were not of that considerable Quality, and therefore he chose to land there.

Mr. Att. Gen. What Lords did he name, that he depended upon?

L. *Grey.* I did name them; my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*; but I observed when the Duke of *Monmouth* spoke of his Friends in *Cheshire*, he did name my Lord *Macclesfield* and my Lord *Brandon* as Persons.

Earl of *Nottingham.* My Lord Steward, I humbly pray this Witness may be asked, to whom that Letter was written, that he saith the late Duke of *Monmouth* sent by *Jones?*

L. H. Steward. You hear my Lord's Question, who did *Monmouth* send that Letter by *Jones* to?

L. *Grey.* My Lord, I never saw the Letter, nor do I know any Directions there were upon it; I always looked upon it as a Paper of Instructions given to him about the time when, and the name of the place where, the Duke was to land.

Mr. Att. Gen. We will give an account of that by *Jones* by and by, my Lord. Now swear *Nathaniel Wade*. [*Which was done.*

L. H. Steward. Well, what do you ask this Witness?

Mr. Att. Gen. *Wade*, that which I call you for, is this, to give an account what you know of any Design of landing in *Cheshire*, or elsewhere, and of *Jones*'s coming over, and what Errand he was sent upon?

Mr. *Wade.* My Lord, I shall give an account as far as I know. After the death of the late King, Captain *Matthews* came to *Amsterdam*, and gave an account there, that the Duke of *Monmouth* intended to be there shortly to meet and consult with my Lord *Argyle*, who, we understood then, was preparing for an Expedition into *Scotland*; thereupon I was sent into *Friesland* to desire my Lord *Argyle* to come to *Amsterdam*, which he did; and there the Duke of *Monmouth* did consult with him, and they did agree together, that at the same time that my Lord *Argyle* made an Insurrection in *Scotland*, the Duke of *Monmouth* should invade *England*, and to that end, that he should send those Friends he had in *England*, to be ready to assist him when he came there; and in order to it, he did send Captain *Matthews*, who, amongst other things, was to go to the Duke's Friends in *Cheshire*, and amongst them, my Lord *Delamere* was named to be one, and the business was to desire them to be ready to assist him when he should land. Accordingly Captain *Matthews* went; but a little after his going away, I think one *Crag* came over, and he came from Major *Wildman*, and his business was to endeavour a good Understanding between the Duke of *Monmouth* and my Lord *Argyle*, who were then at some difference; and to endeavour to make them act jointly by united Counsel. A little after he was sent back again into *England* to Major *Wildman*, to desire him to assist them with some Money; he went back again, and returned, but brought no Money: thereupon he was sent again by the Duke of *Monmouth*, because the first time he was not sent by him. The Sum demanded was Six Thousand Pounds, or Four Thousand Pounds, and at last he sent for a Thousand Pounds. *Crag* returned with this Answer, That they could not assist them with Money, for they did not know to what end they should have Money but to buy Arms, and for that the People were well provided enough already, and there was no need of Money for that purpose. The Duke of *Monmouth* a while after sent Mr. *Crag*, and pawn'd all the Jewels he had to raise Money, and fitted out three Ships for this Service, laden with Ammunition; and because he had promised my Lord *Argyle* to make a Diversion in *England*, while he invaded *Scotland*, he resolved to go with that Provision he had, and desired by Mr. *Crag*, that since those Lords and Gentlemen that were to assist them, had sent no Money, as was desired of them, and expected from them, they should now trouble themselves with no further needless Consultations; but should repair each Man into his own Country, where their Interest was greatest, to be ready when he should come. And in order to this, the Duke of *Monmouth* did set sail from *Holland*, and came to *Lyme*, and landed there; and did afterwards order his March so that he might most conveniently meet with his *Cheshire* Friends; that is, towards *Glouceſter*, and so to get *Glouceſter*-Bridge, that thereby gaining the Command of the river of *Severn*, those of *Cheshire*, if they did, as was expected, make an Insurrection at the same time, they might easily join together. In pursuance of this Design we came to *Keinsham*-Bridge, and there a Party of the King's Horse set upon us, and we took some Prisoners, and thereupon thought it advisable not to let the King's Army join together, but to go back and engage those that were already come together; and that was the reason we did not go over the Bridge.

Mr. Att. Gen. Do you know any thing of *Jones*'s coming into *Holland*, and for what?

Wade. My Lord, I had forgot that; a little before *Crag*'s going last away, *Jones* came over, and his Business was to know why we staid so long, for the Duke of *Monmouth*'s Friends in *England* had expected him long before, and he was dispatch'd away quickly to acquaint them the Duke was coming.

Mr. Att. Gen. Who was it he sent to, to acquaint with his coming?

Wade. To Major *Wildman*, he was directed to Major *Wildman*.

Mr.

Mr. Att. Gen. Who elſe were to be acquainted with it?

Wade. Amongſt the reſt my Lord *Delamere*, my Lord *Macclesfield*, and my Lord *Brandon* were to be acquainted that he was coming, and expected that they ſhould raiſe what Forces they could to aſſiſt him.

L. H. Steward. Will my Lord *Delamere* aſk him any Queſtions?

L. *Delamere.* No, my Lord, I never ſaw his Face before, that I know of.

L. H. Steward. Who do you go to next, Mr. *Attorney?*

Mr. Att. Gen. Next we call *Richard Goodenough:* Swear him, [*Which was done.*] That which I would know of you, Mr. *Goodenough*, is, whether *Jones* were ſent of any Meſſage, and about what?

Goodenough. My Lord, I was beyond Sea with the Duke of *Monmouth*, and Mr. *Jones* was ſent (among other Perſons) to my Lord *Delamere* to give him notice that he ſhould be ready againſt the time that the Duke ſhould land, and take care to ſecure himſelf, that he might not be ſeized here in Town, for we were apprehenſive ſuch a thing would be attempted.

Mr. Att. Gen. What Directions were given him what Lords to go to?

Goodenough. My Lord, we were informed in *Holland*, that my Lord *Delamere* was one of thoſe Lords that had promiſed to draw his Sword in his behalf.

Mr. Att. Gen. Had you any diſcourſe with the Duke of *Monmouth* about it at any time?

Goodenough. Yes, I have diſcourſed with the Duke of *Monmouth* ſeveral times.

L. H. Steward. Ay, what did he ſay to you about it?

Goodenough. My Lord, he ſaid (among other things) that he hoped my Lord *Delamere* would not break his Promiſe with him.

L. H. Steward. My Lord *Delamere*, will you aſk him any Queſtions?

L. *Delamere.* No, my Lord. I never ſaw his Face before, that I know of, I will aſſure you.

L. H. Steward. That is pretty ſtrange, ſo famous an Under-Sheriff of *London* and *Middleſex*, as he was.

Mr. Att. Gen. Then ſwear *Jones.* [*Which was done.*] Pray will you give an account what Meſſage you received from the Duke of *Monmouth* upon your going over into *Holland*, and to whom you were to deliver it, and what became of it?

Jones. My Lord, I went to *Holland* about the latter end of *April* laſt; my going, as I have acquainted his Majeſty and the Council, was not only about this Affair, for I had other Buſineſs that called me thither, which I ſhall not now take up your time, or trouble you with repeating of: but having ſome knowledge from Mr. *Diſney*, that there were ſome Intentions of doing ſomething, tho' it was communicated to me but very darkly, and therefore that little I did know, made me the willinger to go for *Holland* ſo ſoon as I did: but before I went, I had a mind to underſtand ſomething more of the Deſign; and therefore the Night before I went, I came to Mr. *Diſney*, and acquainted him with my intended Journey. Mr. *Diſney* did perſuade me againſt it, thinking that I had gone upon this account, but I told him the Occaſion, which he partly knew, why I went; but withal I told him, I did intend to ſee the Duke of *Monmouth*, and if he had any Meſſage that he would have delivered to him, I would deliver it very ſafely. He told me all the Meſſage I ſhould deliver to the Duke of *Monmouth*, if I ſaw him, was to deſire him to keep to the laſt Concluſion, which he would find in a Letter that had been ſent to him, and that if he had not yet received the Letter, it was to come by the Crop-hair'd Merchant, or the Crop-ear'd Merchant, I cannot ſay which, but I think it was the Crop-hair'd. I aſked him what that Meſſage was, leſt the Letter ſhould miſcarry; for I told him, if I ſhould go to the Duke of *Monmouth*, and refer him to a Letter wherein a Meſſage was to be brought him, which he was to keep to, and that Letter ſhould miſcarry, I ſhould, in effect, bring no Meſſage at all to him. My Lord, thereupon he told me, that I ſhould acquaint the Duke of *Monmouth* that his Friends in *England* would not by any means have him come for *England*, but that he ſhould continue where he was, and if he thought good to go for *Scotland*, they approved of it. This is the Sum of what he ſaid to me, as near as I can remember. When I came to *Amſterdam*, there was one Mr. that was killed at *Philips-Norton*, went with me to the Duke of *Monmouth*'s, and when he came to him, I acquainted him, as Mr. *Diſney* appointed me to do, that there was ſuch a Letter ſent by ſuch a Perſon, and that ſuch a Meſſage was included in it. My Lord, he was in a great Paſſion, I know not how to expreſs it, and ſeemed to be very much troubled, and did reflect very much upon Major *Wildman*, and ſaid, that was *Wildman*'s Work; and he ſaid, (as I think that was the word he uſed) *Wildman* was a Villain, or to that purpoſe: but withal he ſaid, it was too late to ſend ſuch a Meſſage now, and that he was reſolved to come for *England*; and he would make *Wildman* hang with him, or fight for it with him: That *Wildman* did think by tying his own Purſe, he ſhould tye his Hand, but he ſhould find it ſhould not be ſo; and ſome other words of the like nature he uſed, but this is the Subſtance of what he ſaid. He gave ſome account what Preparations had been made; he ſaid Money was very ſhort, and he had been fain to pawn all he had, to raiſe what Money was raiſed upon his own Charge. He aſked me if I did think to return to *England* ſhortly; I told him if he had any ſervice to command me for *England*, I had ſome little buſineſs to do at *Rotterdam*, which I would diſpatch, and then I would perform his Commands. He told me, he would be glad I did return as ſoon as I could for *England*, and that this ſhould be the Meſſage I ſhould carry to *Wildman*, in anſwer to the Meſſage he had ſent him, that he would come for *England*, and he ſhould either fight with him, or hang with him; and that was all he had to ſay to him. I was coming away from him, but he ſtopped me, and told me he would not have me go out of Town till he had ſpoke with me again; this was upon the *Sunday:* accordingly I did go in the Evening to him, and when I came, he told me, he would have me ſtay till *Tueſday* Morning, for he was going out of Town, and intended to be back again at that time; but if not, I ſhould receive from my Lord *Grey* what he had to ſay to me. He did not come upon the *Tueſday*, but my Lord *Grey* did come, and I think to the beſt of my remembrance Mr. *Crag* was with me; he told me all he had to ſay was, that the Duke intended to be in *England* within nine days, and that upon the *Thurſday* ſeven-night after I came away, the Duke would be in *England:* and he bid me to remember to tell *Brand*, that when he heard the Duke was landed, he ſhould acquaint Sir *Robert Peyton* with it, but not till he was landed; for tho' they did think that he would join with them when the thing was begun, yet they ought to be careful who it was communicated to, for fear it ſhould be diſcovered and diſappointed: this was all that I had in command for my Lord *Grey*. I came to *Rotterdam*, and diſpatched my buſineſs there, and would have come away, but it happened there were no Ships coming for *England*, nor would there be any in a Fortnight's time; thereupon I returned to *Amſterdam*. When I came back, I went to ſee the Duke, to give him an account how it happened that I was not gone for *England*. The Duke told me he was glad I was not gone; for now he had a further Meſſage for me to carry, and he would have me ſtay two or three days in Town for it. I ſtay'd three days, and came again to him, but he told me he was not ready for me yet; then I ſtaid two or three days longer till the 21ſt of *May*, to the beſt of my remembrance; it was upon a *Thurſday* that he gave me the Meſſage that I was to bring into *England*. I came to him in the Morning, and he told me I ſhould come to him upon the Evening of that Day, and when I came, there was a Paper lay before him on the Table, and he took the Paper and ſeal'd it up; I cannot ſay he wrote all that was in that Paper, but the Paper that lay before him was not finiſhed when I came in, and that he did not write while I was there, I am ſure; but he took it up and ſealed it before me, and when he had ſealed the Paper, he told me, I muſt, as ſoon as I came to *London*, ſee for Captain *Matthews*, Sir *Thomas Armſtrong*'s Son-in-Law, who lodged at Mr. *Blake*'s in *Covent-Garden*, and deſire him to acquaint my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*, with his deſign of coming for *England*, and that he was reſolved to ſet out upon the *Saturday* Morning after I came away, which was upon the *Friday*. He told me Captain *Matthews* was to ſend one Poſt to that place that was named in the Note to receive Intelligence of his landing, and that ſhould be brought to his Friends here immediately, (he deſigned it ſhould be twenty-four Hours before the Court had notice of it in Town,) and thoſe Lords were to be in Readineſs, that as ſoon as they knew he was landed, they might repair to their ſeveral Poſts to aſſiſt him. I told him that I would deliver what Meſſage he gave me, and aſked him, what I was to do with the Paper he put into my hands; thereupon, as near as I remember, he uſed theſe Expreſſions to me; I do by you as Princes do by their Admirals, when they ſend them out upon any conſiderable Expedition, which requires Secrecy in the Management of it; they have their Commiſſion delivered to them ſealed, which they are not to break open till they are at Sea. So here I deliver you your Inſtructions ſealed up, which you are not to open till you are at Sea; and when you have opened them, and read what is contained in them, I would have you tear the Paper, and throw it into the Sea, or otherwiſe diſpoſe of it, leſt you be ſurpriſed and ſearched at your landing, and my Papers found about you. My Lord, I aſked him, becauſe I would be as punctual in my Meſſage as I could, what thoſe Lords were to do when they came out of Town, whether they ſhould come directly to him or no; he told me no, not but that they ſhould go into the Country, and ſecure their Intereſt for him there. I aſked him then, if Captain *Matthews* be out of the way, and I be diſappointed of meeting with him, ſhall I deliver this Meſſage to the Lords myſelf? He told me no, by no means, for thoſe Lords were Perſons of Quality, and that that was not a thing to be done by me. What ſhall I then do, my Lord, ſaid I, if Captain *Matthews* be out of the way? You need not queſtion that, ſaith he, but if you meet not with *Matthews*, ſpeak to *Wildman*.

My Lord, with theſe Inſtructions (and this as near as I can remember is the Sum of all he ſaid to me) I came away, and came to Sea; when I was out at Sea, I broke open the Letter that I had given me by the Duke, and I will tell you as near as I can, what were the Contents of it; there was written in it to this Effect:

TAUNTON *in* Somerſetſhire *is the place to which all are to reſort; the Perſons to be acquainted with the time of landing, are the Lord* Macclesfield, *the Lord* Brandon, *and the Lord* Delamere; *the Place to ſend the Coach to, is to* Taunton, *to Mr.* Savage's *Houſe at the* Red-Lion. *The place where the Poſt was appointed to return, was Captain* Matthews's *Lodging, at Mr.* Blake's, *and he was to receive the Meſſage, or if he did not, he was to appoint one that ſhould receive it; or if it were to return to any other place, that was left to him to do as he thought fit.*

And this was all, as near as I can remember. When I had ſeen this, I came to *London*, and being very weary and tired, when I came home I went to bed.

Mr. Att. Gen. Pray tell the Court as near as you can, what day it was you came.

Jones. I came out of *Holland* the 22d of *May*, I came home the 27th, and looking upon my Almanack, I find that it was the *Wedneſday* Fortnight before the Duke landed, that I came. When I was come home, I ſent for Mr. *Diſney*, and he came to me immediately; I told him I had ſeen the Duke, and deſired that he would help me to the Speech of Captain *Matthews.* He told me he was out of Town. Then I deſired to ſpeak with Major *Wildman*; he told me he was gone out of Town too. Then I told him I muſt deliver my Meſſage to him, and I told this Meſſage as I have told your Lordſhips before, and therefore left it to him to convey it to the Knowledge of thoſe Lords that were concerned; he did ſeem to be unwilling, and told me he did not know how to communicate it to thoſe Lords, and aſked me why I would not deliver the Meſſage myſelf. I told him I did aſk the Duke of *Monmouth* that very Queſtion, whether I might, and he had forbid me, and ordered me to deliver it either to Captain *Matthews*, or to Major *Wildman*; and ſince they were abſent, I knew not any to communicate it to but only to him, in order to their having notice

notice of it. He told me he would do what he could.

Mr. *At. Gen.* Pray who were present when you had this Discourse with *Disney?*

Jones. There was none present but himself then, for it was the first time that I spoke with him after I came from *Holland*; I told him there was a post to go to receive Intelligence which should bring notice of his landing twenty-four Hours before it could be known at *Whitehall*, and therefore it were fit they should be in a readiness. He did scruple at it, and said he did not know where to get any one that could convey the Message to them, but he would do what he could; and concluded to meet at night in *Smithfield*, and he did so; and there were two Persons with him, Mr. *Crag*, and Mr. *Lisle*, and another, I think his name was *Brand*, and he took me and *Brand* aside, and did ask me where was the Place that the Post was to go. I told him where, and then he did discourse of the Duke's coming over, but I mentioned not any thing of the Lords, but only to *Disney*; and after an Hour's talk or thereabouts, we parted. I saw Mr. *Disney* once afterwards, but what he did with the Message I cannot tell, he gave me no account of it; I did indeed before I went out of Town see him at the *Half-Moon* Tavern in
I went out of Town, and met the Duke of *Monmouth* at *Lyme* where he landed; and when I came to him, I told him what I had done with my Message, and how it happened that I could not deliver it to the Persons that he had ordered. The Duke told me that he was satisfied that I had done what I could, but seemed to be troubled that *Matthews* was out of Town. And this is the Sum of what passed in my Knowledge, as near as I can remember.

Mr. *At. Gen.* Had you no discourse with *Disney* what he had done with the Message, when you met at *Smithfield?*

Jones. No, because those Men were Strangers to me, and I had never seen them before.

Mr. *At. Gen.* But afterwards had you no Discourse with *Brand* nor *Lisle* about it?

Jones. No, not at all: *Brand* I never spoke but once with, and *Lisle* would not own that he was the Man that was there.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* No, my Lord.

L. H. Steward. My Lord *Delamere*, will your Lordship ask him any Questions?

L. *Delamere.* No, my Lord, I never saw his Face before this Time, that I know of, in my Life.

L. H. Steward. Then who do you call next, Mr. Attorney?

Mr. *At. Gen.* The next Witness that we call, my Lord, is *Story*.

[*Who was sworn.*

L. H. Steward. Well, what do you ask him?

Mr. *At. Gen.* Mr. *Story*, pray will you give an Account what Notice you had of *Jones*'s Message, and what was done upon it, and what Discourse you had with any Body concerning my Lord *Delamere*, the Prisoner at the Bar, and with whom?

Story. My Lord, I had Notice of it by one——that lived at *Bishopsgate*, who told me the 28th of *May* last, that Mr. *Jones* was returned home from *Holland* upon a Message from the Duke of *Monmouth*, and that he had agreed to go to *Taunton*, and there he expected Mr. *Dare* or Mr. *Williams* to bring an account that the Duke was landed; and he said that Mr. *Jones*'s Message was delivered to *Disney*, in the absence of Captain *Matthews*, who was out of Town; that after *Disney* had received the Message from *Jones*, he went and had some Discourse with my Lord *Delamere*, and that that Night my Lord *Delamere* went out of Town with two Friends, and went a By-way through *Enfield* Chase, towards *Hatfield*.

Mr. *At. Gen.* Pray when was it you went out of Town, *Story?*

Story. The 28th of *May*.

Mr. *At. Gen.* Who went out of Town with you?

Story. No body, but I overtook Mr. *Brand* that Evening.

L. H. Steward. Pray repeat what it was he acquainted you with.

Story. He told me that the Day before, *Jones* was returned Home with a Message from *Holland*, which Message was to be delivered to Captain *Matthews*, but in his absence *Disney* received it; and that Evening after he had discoursed with my Lord *Delamere*, my Lord that Night went out of Town, and two Friends of mine he said went with him, and did convey him away by a By-way through *Enfield* Chase towards *Hatfield*.

L. H. Steward. Have you many more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* Pray, Sir, had you any Discourse with the late Duke of *Monmouth* at *Shepton-Mallet?* and about what?

L. H. Steward. By the way, Friend, where is that *Brand* you speak of?

Story. He is kill'd; I did not see him die; but he is said to be kill'd at *Keinsham* Bridge.

Mr. *At. Gen.* Pray what Discourse had you with the late Duke of *Monmouth* about the Prisoner at the Bar?

Story. I heard the late Duke of *Monmouth* say at *Shepton-Mallet*, that his great Dependance was upon my Lord *Delamere* and his Friends in *Cheshire*, but he was afraid they had failed him, or betray'd him, or some such Word he used; and he said he could have been supply'd otherwise, but that he had a Dependance upon them.

Mr. *At. Gen.* Pray what Office had you under the Duke of *Monmouth?*

Story. I was Commissary-General.

Mr. *At. Gen.* Well, we have done with you.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere?*

L. *Delamere.* If your Grace please, I have a Question to ask him.

L. H. Steward. Ay, with all my Heart; what Question you will, my Lord.

L. *Delamere.* My Lord, I desire to know whether he knows one *Saxon?*

L. H. Steward. What *Saxon* does your Lordship mean, one that was in the Army?

L. *Delamere.* Yes, one *Thomas Saxon.*

Story. Yes, my Lord, I knew him a Prisoner in *Dorchester* Prison, where I was a Prisoner myself.

L. H. Steward. Has your Lordship nothing more to ask him but that?

L. *Delamere.* No, my Lord.

Mr. *At. Gen.* Now, my Lord, we call some Persons to prove, that that very Night when *Jones* came to Town, my Lord *Delamere* the Prisoner at the Bar goes out of Town without any Servant, changes his name, and goes a By-way: Swear *Vaux* and *Edlin.* [Vaux *was sworn.*

L. H. Steward, Well, what says this Man?

Mr. *At. Gen.* Pray give my Lords an account whither you went out of Town with my Lord *Delamere*, and when?

Vaux. My Lord, perhaps I may not remember the very words that I gave my Evidence in before, but I will repeat the Substance.

Mr. *At. Gen.* It is not so long ago, but you may easily recollect yourself; pray what Day was it that my Lord *Delamere* sent for you?

Vaux. The 26*th* Day of *May*, and I went out of Town the 27*th*.

Mr. *At. Gen.* You are upon your Oath, and you must remember you are sworn to tell the Truth, the whole Truth, and nothing but the Truth.

Vaux. Sir, I shall take care to do it as far as I can remember.

Mr. *At. Gen.* Whither was it that he sent for you?

Vaux. To the *Rummer Tavern* in *Queenstreet*, and the next Day I went out of Town with him.

Mr. *At. Gen.* What day of the Month did you go out of Town?

Vaux. It was the 27*th* day of *May*.

Mr. *At. Gen.* What time of the Night was it you went out of *London?*

Vaux. It was about nine or ten of the clock.

Mr. *At. Gen.* What name did my Lord *Delamere* then go by?

Vaux. He went by the name of *Brown*.

Mr. *At. Gen.* My Lord, I would acquaint your Grace, that this is an unwilling Witness, and we are forc'd to pump all out of him by Questions.

Vaux. I do tell you the Truth of all that I know.

Mr. *At. Gen.* How far did you ride that night?

Vaux. To *Hoddesdon*.

Mr. *At. Gen.* What time did you get thither?

Vaux. About twelve of the clock.

Mr. *At. Gen.* Whither did you go then?

Vaux. We went to *Hitchin*, and I return'd back again the next Day.

Mr. *At. Gen.* Whither was my Lord *Delamere* going then?

Vaux. To see his Son that was sick in the Country.

L. H. Steward. What! he told you so, did he?

Vaux. Yes, my Lord.

Mr. *At. Gen.* What other Company went with you?

Vaux. Two Gentlemen, the one I knew, the other I did not.

Mr. *At. Gen.* What was the Name of him you did know?

Vaux. It was *Edlin*.

Mr. *At. Gen.* Pray was that the direct Road to *Cheshire* that you went?

Vaux. We made it our Way.

Mr. *At. Gen.* You made it your Way; but I ask you whether it be the best Way?

Vaux. It is the freest Road from Dust.

Mr. *At. Gen.* But I ask you a plain Question, upon your Oath is it the best way into *Cheshire?*

Vaux. Truly, my Lord, I do not know that.

L. H. Steward. Pray who gave you Directions to call my Lord *Delamere* by the name of *Brown?*

Vaux. Himself, my Lord.

L. H. Steward. Was that the first time my Lord went by that name, as you know of?

Vaux. Yes, my Lord, I never heard that he was called by that name till that time.

L. *Delamere.* I was call'd by the name of *Brown* at that time, and I will give your Grace an account by and by of the reason of it.

L. H. Steward. Has your Lordship any Question to ask him?

L. *Delamere.* No, my Lord.

L. H. Steward. Then go on to the next.

Mr. *At. Gen.* Our next Witness is *Edlin*, pray swear him, [*which was done.*] Pray will you give my Lords and the Court an account whither you went with my Lord *Delamere* out of Town, and when?

Edlin. The 27*th* of *May* last; I was at the Custom-House, and there came Mr. *Vaux*, the Gentleman that was here last, who told me he was going out of Town as far as *Hitchin*, and asked me to go along with him; he said he was to go that Evening. I asked him what time he intended to return? he told me, he was resolved to return the next Day. I told him, then I would go along with him, and we appointed the place of meeting to be at the *Bell-Inn* in *Coleman-street*; when I came there, he said there was a Friend that was going along with him, one Mr. *Brown*; we went as far as *Hoddesdon* that night.

Mr. *At. Gen.* Pray Mr. *Edlin*, will you look upon that Gentleman that stands at the Bar; is that he that went by the name of *Brown?*

Edlin. Yes, my Lord, that is he.

Mr. *At. Gen.* Well then, what time did you set out?

Edlin. It was very near nine of the clock.

Mr. *At. Gen.* Pray when was it that *Vaux* met you at the Custom-House?

Edlin. It was about ten of the clock in the Morning.

L. H. Steward. Pray did you hear or know upon the Road, whither he was going?

Edlin. My Lord I did never see my Lord *Delamere* before in my life.

L. H. Steward. But did not he tell you as he went along, whither he was going?

Edlin. He said he was going for *Cheshire* to see a sick Child.

Mr. *At. Gen.* You say, Sir, that you went first for *Hoddesdon?*

Edlin. We did so, my Lord.

Mr. *At. Gen.* Pray, Sir, how long were you riding that, from the *Bell* in *Coleman-street* to *Hoddesdon?*

Edlin. It was three hours I believe, or about three hours and a half.

Mr. *At. Gen.* Then you rid hard out of Town.

Edlin. My Lord, it was towards nine of the clock when we got on Horseback, and it was about twelve or a little more, when we came to *Hoddesdon*.

L. H. Steward. Well, Mr. Attorney, is that all you have to ask him?

Mr. *At. Gen.* Yes, my Lord.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere?*

L. *Delamere.* No, my Lord.

Mr. *At. Gen.* Then, my Lord, to confirm this Evidence, and to explain it, I shall call you a couple of Witnesses to prove that this Gentleman went by the name of *Brown* in the Cant of those that were engaged in this Business, that the name was known as his name by all the Party, and called so constantly in their Letters and Messages. Swear *Tracey Paunceford*, and *Thomas Babington*. [*Which was done.*

L. H. Steward. Which will you begin with first?

Mr. *At. Gen.* We begin with *Paunceford.* Pray will you give his Grace and these Lords an account what Discourse you heard at *Disney*'s concerning the Prisoner at the Bar, and what name was he usually call'd by, in your Meetings.

Paunceford. My Lord, I shall give as just an account as I can; I was acquainted with Mr. *Disney*, and the 14*th* of *June* I was at his House.

L. H. Steward. What *June* do you mean?

Paunceford. Last *June*, my Lord, and there were three more besides, one *Joshua Lock*, and a Country Gentleman that I have understood since to be one *Hooper*, and there was one *Halsey*; and being there, *Lock* staid for some Declarations.

L. H. Steward. What Declarations were those you speak of?

Paunceford. The Declarations of the late Duke of *Monmouth.*

L. H. Steward. Were they printed at that time?

Paunceford. They were not ready at four of the Clock in the Afternoon: but about nine of the Clock they were finished, and three were printed off, and were delivered to *Joshua Lock*, and when he had received them at that Time, there was a discourse of having them sent into *Cheshire* to one Mr. *Brown.* After we had received them, we came over the Water together, and we landed at *Salisbury* Stairs, and *Lock* was very earnest for going out of Town that night, with those three Declarations, which, as he said, were to be carried to one Mr. *Brown:* This was at nine of the Clock, and so we parted.

L. H. Steward. Pray into what Country was he to carry them?

Paunceford. A little way out of Town he said.

L. H. Steward. Just now you said they were to go to *Cheshire.*

Paunceford. My Lord, the Discourse at *Disney*'s House was, that they were to be sent into *Cheshire*; but when we came over the Water, *Lock* said he was to go a little out of Town to one Mr. *Brown.*

Mr. *At. Gen.* Pray who was that Mr. *Brown* as they meant, as you apprehended?

Paunceford. I understood Mr. *Brown* to be my Lord *Delamere* by some discourse.

L. H. Steward. Whose discourse did you understand it by?

Paunceford. The first time, my Lord, that I heard of my Lord *Delamere*'s going by the name of *Brown*, was upon a discourse with one *Edlin.*

L. H. Steward. Prithee tell us what that discourse thou hadst with *Edlin*, was?

Paunceford. Mr. *Edlin*, about the latter end of *May* last, went out of Town, as I heard, and when he came back again, I asked him whither he went? he said he was invited by a Friend to go with him out of Town, and my Lord *Delamere* went along with them, and went by the name of *Brown.*

Mr. *At. Gen.* What Discourse had you with *Disney*, or any body else about my Lord *Delamere*'s going by the Name of *Brown?*

Paunceford. Mr. *Disney* did use to mention my Lord *Delamere* by the Name of *Brown.*

Mr. *At. Gen.* Pray were you at any Meeting with any body, and whom, at any Tavern, and what Tavern, where any such discourse was had?

Paunceford. My Lord, I was at a Meeting at the *Castle-Tavern* with Mr. *Vermuyden*, and my Brother *Babington*, and one *Manning*; but there was no mention then of any *Brown* that I remember, nor of my Lord *Delamere*, but only there was something in relation to the landing of the Duke of *Monmouth*; the Question was asked where he was to land, and Mr. *Vermuyden* made answer he did not know.

L. H. Steward. Will your Lordship please to ask this Witness any Questions, my Lord?

L. *Delamere.* Pray, Sir, did you ever know any body else that went by the name of *Brown* besides me?

Paunceford. May I answer this Question, my Lord?

L. H. Steward. Answer it! yes, you must, you are sworn to tell the Truth, and the whole Truth, Man.

Paunceford. My Lord, there was a discourse of Mr. *Vermuyden*'s going by the name of *Brown.*

L. H. Steward. Will you ask him any more Questions, my Lord?

L. *Delamere.* No, my Lord.

L. H. Steward. Then go on, Mr. *Attorney.*

Mr. *At. Gen.* Pray, Mr. *Babington*, do you tell my Lords what you know of my Lord *Delamere*'s going by the name of *Brown.*

Babington. My Lord, I shall give an account. When I first knew any thing of the Transactions, I was with my Brother *Paunceford*, Mr. *Vermuyden*, and one *Chadwick* that went into the West, and there was a discourse of two Gentlemen that went by names I did not know; *Brown* was one, and I was desirous to know who was meant by it: I was at that time but newly acquainted with the Concerns of these People; and so I found they were fearful to entrust me: but afterwards I was at the *Castle-Tavern* where my Brother, and my Uncle *Vermuyden* was, and in discourse of Mr. *Brown*, some body happened to name my Lord *Delamere*'s name, but he was presently taken up; you mean Mr. *Brown.* Ay, saith he, I do.

L. H. Steward. About what time was this, pray you?

Babington. About the middle, or latter end of *May* last.

Mr. *At. Gen.* Were you at *Disney*'s when the Declarations were printed there?

Babington. Mr. Attorney, I will give an account of that afterwards, but I have something else to say first. After this, I was diligent to know of my Uncle *Vermuyden* and my Brother, who this Mr. *Brown* was: my Uncle told me it was my Lord *Delamere*, and desired me whenever I discoursed of him, to call him by that name, and I have very good reason to believe Mr. *Vermuyden* knew of the matter, because he was acquainted with a great many of that sort of People, and declared he had collected and knew of Moneys that were gathered for that Purpose; and he had a good account of *Monmouth*'s landing, and of the Force he had in the West, and how long it was presumed that he could maintain that Force without Assistance from any body else; and so I presume he was very well acquainted with the whole Transaction. Afterwards I happened to be at *Disney*'s over the Water, there was my Brother *Paunceford*, Mr. *Halsey*, and myself.

Mr. *At. Gen.* Tell what passed there at that time.

Babington. Disney shew'd me a Declaration that was not perfected quite, but after that we fell into a discourse about Mr. *Brown*, and afterwards my Lord *Delamere*'s name was named by some body, that some of the Declarations were to be sent to him; and I remember Mr. *Disney* said he was afraid my Lord *Delamere* was not capable of doing that Service that was expected from him in *Cheshire* for want of some of those Declarations, which would be mighty useful to him to inform the People, they being *Monmouth*'s Declarations.

L. H. Steward. Had *Lock* any of those Declarations away for that Mr. *Brown* you speak of?

Babington. I never knew *Lock*, my Lord.

Mr. *At. Gen.* What number of Declarations did *Disney* print?

Babington. Disney told us he hoped in twenty four hours to have 500 printed, a good number of them were to be sent to my Lord *Delamere*, and several of them were dispersed.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* No, my Lord.

L. H. Steward. Will you ask him any questions, my Lord *Delamere?*

L. *Delamere.* No, my Lord.

Mr. *At. Gen.* Then may it please your Grace, the next Witness we shall bring, shall be to prove that my Lord *Delamere* took frequent Journies backward and forward, in a very little compass of time, and the same Witness will likewise tell you what Discourse he had with my Lord during the very time of *Monmouth*'s Rebellion, to stir up the People to join with him. Swear *Hope.* [*Which was done*] Pray tell my Lords what discourse you had with my Lord *Delamere*, and when?

Hope. Upon the Sunday before the Coronation, my Lord *Delamere* came down Post to my House, towards his own House in *Cheshire*——

L. H. Steward. Prithee where is thy House? For these noble Lords do not know thee, perhaps so well as I do; therefore tell us where it is?

Hope. My Lord, my House is at the *Three Tuns* in *Coventry.*

L. H. Steward. Well, go on, tell what thou knowest.

Hope. ——Some time after that he came down Post again, and a little after he went up again Post, and he told me he went down another way; and after that, the 21st of *June*, he came down Post again, this was upon a Sunday, the Sunday Seven-night after the Duke of *Monmouth* landed.

Mr. *At. Gen.* Had he any Servant with him at that time?

Hope. Yes, he had.

L. H. Steward. Had he a Servant with him every time he came down Post?

Hope. No, he came over, I remember, without any Servant, only with a Post-Boy.

L. H. Steward. Well, and what discourse had you with him at that, or at any other time?

Hope. My Lord, that Sunday, the 21st of *June*, my House was very full of People to enquire News; it being in the time of the Rebellion, every one was desirous to know how things went: and there was one *Ingram* in the House, that came to me, and asked what News from *London*, for they say, saith he, that the Duke of *Albemarle* is killed, and his Hearse brought to *Westminster* Abbey. Thereupon I knowing my Lord *Delamere* was come from *London*, I went into the Room to my Lord, and desired to know of his Lordship what was the news in *London.* He told me he wat little at Court, and therefore could not tell much News. I then asked him what he heard concerning the Duke of *Albemarle*; said I, they say here he is killed. Saith my Lord, I am sorry for it, if it be so, but I fear it is too true; but if he be killed, it is said he is killed by his own Party. I asked him how? He told me, a Party of the Duke of *Albemarle*'s Men were commanded to fire at the Duke of *Monmouth*'s Men, but instead of shooting at them, they shot into the Ground, upon which they were very severely handled by their Officers; which so enraged them, that they fired upon them, and killed several of them, and amongst others, the Duke of *Albemarle* was killed; and he told me the Duke of *Monmouth* had several Field-Pieces, and Arms sufficient for near thirty thousand Men.

Mr. *At. Gen.* Pray, did he shew you any Places in any Maps?

Hope. There was in the Room *Adams*'s Map of *England*, and my Lord *Delamere* shewed me which way *Monmouth* went, and pointed out such and such Towns that he was possessed of; and withal said, he did fear there would be many bloody Noses before the Business was at an end.

Mr. *At. Gen.* How many times do you think my Lord did ride post to and fro?

Hope. About five times, I believe.

L. H. Steward. Within what Space of time?

Hope. From the Sunday Sev'night before the Coronation to the Twenty-first of *June* following.

L. H. Steward. Have you done with him, Mr. *Attorney?*

Mr. *At. Gen.* Yes, my Lord.

L. *Delamere.* My *Lord High Steward*, with your Grace's Leave, may I ask this Witness any Questions?

L. H. Steward. Yes, my Lord, what you please.

L. *Delamere.* Pray, did I go down post four or five times, do you say in that space?

Hope. My Lord, I say you did go so often backward and forward.

L. *Delamere.* What time was that, you say, I came without any Servant, only with a Post-boy.

Hope. I cannot tell.

L. H. Steward. Will your Lordship ask him any more Questions?

L. *Dela-*

L. *Delamere.* No, my Lord.

Mr. *At. Gen.* Then, my Lord, we deſire *Thomas Saxon* may be ſworn: [*Which was done.*] Pray, Mr. *Saxon*, will you give an Account to his Grace and my Lords, what you know of my Lord *Delamere*, the Priſoner at the Bar, concerning any Inſurrection or Rebellion deſigned by him in *Cheſhire*, and when?

Saxon. At the beginning of *June* laſt, I was ſent for to *Mere*, my Lord *Delamere*'s Houſe in *Cheſhire*, where when I came I was conveyed into a lower Room, where were my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley*, and they told me I was recommended to them by my Lord *Brandon*, who had ſaid, I was an honeſt uſeful Man, and they hoped I would prove ſo: For they had ſent to the Duke of *Monmouth*, who was in *Holland*, and received an Anſwer by one *Jones*, and as ſoon as they had an Anſwer, my Lord *Delamere* came away poſt into the Country under another Name, and by being conveyed through *Moreſields*, came down to raiſe ten thouſand Men for the Duke of *Monmouth* in *Cheſhire*, by the firſt of *June*; but now they had conſidered of it, and found they could not raiſe them till *Midſummer*, for they muſt have Time to raiſe a Sum of Money, forty thouſand Pounds in that Country, to maintain the Men. They aſked me, whether I would not undertake to carry a Meſſage to the Duke of *Monmouth?* I told them I would, and I had there given me eleven Guineas, and five Pounds in Silver for my Journey, and I did hire a Horſe afterwards, and did deliver my Meſſage to the Duke of *Monmouth*.

L. H. Steward. When was this, do you ſay?

Saxon. This was the Beginning of *June*.

L. H. Steward. What Day of *June?*

Saxon. I cannot tell to a Day, what Day in *June* it was, for I did not ſet it down; but I believe it was the third or fourth of *June*.

L. H. Steward. How came you to be recommended by my Lord *Brandon* to theſe Gentlemen? Were you acquainted with my Lord *Brandon?*

Saxon. I was acquainted with him: The firſt Time I was with him was at *Over*, the next Time was at my Lord's own Houſe.

Mr. *At. Gen.* Ay, pray tell my Lord, how you came acquainted with my Lord *Brandon?*

Saxon. Upon the *Monday* in *Eaſter* Week laſt, being at *Over*, I was ſent for by my Lord *Brandon* to drink a Glaſs of Ale, and ſmoke a Pipe of Tobacco with him; and when I came thither, my Lord told me he had a Deſire to be acquainted with me; ſo we drank a conſiderable while; and he was attended at that Time with one *Hollinſhead*, and one Mr. *Lee*. And after we had drank pretty ſmartly, and after ſome Diſcourſe, *Lee* and *Hollinſhead* went forth, being called out to ſpeak with ſomebody, about an Eſtate or a Tenement that they were concerned in. After they were gone out, my Lord *Brandon* began to diſcourſe about the Elections of Parliament-Men, how unfairly they had been carried: he ſaid, he ſtood both for the Town and County of *Lancaſter*, but had loſt it by an unfair Election; for the other Party had made ſevenſcore Freemen in one Night in the Town, and by that Means had carried it againſt him; which had exaſperated the Country ſo much, that they were reſolved to make it an Occaſion of raiſing up the Country in Arms, under Pretence of maintaining the Chriſtian *Engliſh* Liberties; and that they had a Deſign to ſend for the Duke of *Monmouth*, and make him King, and that they muſt make uſe of ſuch Men as me, that were Men of Intereſt in the Country, to ſtir up the People to riſe in Arms: and if I would come to *Goſworth*, his Houſe, upon the *Monday* after, he would tell me more of that Buſineſs. I went according to the Time, and there he told me a great deal to the ſame Purpoſe, and withal he ſhewed me a Letter that he had written to the Duke of *Monmouth*; which Letter I afterwards ſaw at *Bridgwater*.

L. H. Steward. Have you any more Queſtions to aſk him?

Mr. *At. Gen.* No, my Lord; but if my Lord *Delamere* pleaſe to aſk him any Queſtions he may.

L. *Delamere.* I humbly pray he may repeat the Evidence he hath given againſt me, for I have not heard what he has ſaid.

L. H. Steward. Turn toward my Lord *Delamere*, and repeat the Evidence that you gave againſt him, ſo as he may hear you.

[*Which he did to the ſame Effect as before.*

L. H. Steward. Pray, from whom did you receive that Money?

Saxon. I received it from my Lord *Delamere*.

L. H. Steward. My Lord *Delamere*, will you aſk him any Queſtions?

L. *Delamere.* Yes, may it pleaſe your Grace.

L. H. Steward. Then the Method you are to take, is this, you muſt propound your Queſtions to me, and then I will propound them to the Witneſs.

L. *Delamere.* I deſire to know, may it pleaſe your Grace, when was the firſt Time that he declared this that he has now ſworn againſt me?

L. H. Steward. My Lord deſires to know of you, when it was that you firſt made known this againſt him?

L. *Delamere.* And to whom, my Lord?

Saxon. I ſuppoſe I told Mr. *Storey* of it firſt, my Lord, at *Dorcheſter* after I was taken Priſoner for the Rebellion.

L. *Delamere.* When did he tell it *Storey*, my Lord?

Saxon. I think it was a Fortnight after my Acquaintance with him.

L. H. Steward. Were you then in the ſame Priſon with *Storey?*

Saxon. Yes, I lay with him in the ſame Bed.

L. *Delamere.* If your Grace pleaſe, I would aſk him another Queſtion.

L. H. Steward. Ay, what you will.

L. *Delamere.* I deſire to know, when was the firſt Time that he made Oath of this, and upon what Occaſion it was?

L. H. Steward. What ſay you to that?

Saxon. The firſt Time I made Oath of it, was when I lay ſick.

L. *Delamere.* Will your Grace pleaſe to aſk him where that was, and when?

Saxon. It was before his Majeſty's Counſellers, that were ſent to take my Examination in *Newgate*.

L. H. Steward. Prithee, I do not know when thou cameſt to *Newgate*, it may be thou haſt been there oftener than once.

Saxon. I gave my firſt Information immediately after I was brought to Town, when I was removed from *Dorcheſter* Gaol to *Newgate*.

L. *Delamere.* My Lord, I deſire your Grace would aſk him what Time he came up?

Saxon. The Beginning of the laſt Term.

L. *Delamere.* Then I deſire to know, my Lord, whether he did remain a Priſoner in the Country all the other Time?

Saxon. Yes, I did ſo, from the Tenth of *July*, till the Time that I was brought up to *Newgate*.

L. *Delamere.* My Lord, I deſire to know of him, whether I had ever imployed him about any of my Concerns, that ſhould give me an Occaſion of truſting him with ſuch Secrets?

L. H. Steward. What Buſineſs of Importance had my Lord *Delamere* ever imployed you about before this Time?

Saxon. I was never imployed about any Concerns of my Lord *Delamere*'s before that Time, neither was I ever in his Company, but only then, and then as recommended by him to him; for they ſaid, they muſt make uſe of ſuch as me to make their Deſigns known to the Country, for the accompliſhing what they did intend.

L. *Delamere.* Recommended by him! who does he mean?

Saxon. By my Lord *Brandon*.

L. *Delamere.* If your Grace pleaſe, I deſire to know what the Buſineſs was that he was to do?

Saxon. I was to inform the Country concerning the Time of the Riſing, my Acquaintance abounded that Way, and by their Diſcourſe they had got Men in every Place to acquaint the Country when they ſhould riſe.

L. H. Steward. Were you acquainted with any great Number?

Saxon. My Lord, I was a publick Tradeſman in *Middlewich*, and much acquainted with the ordinary Sort of People.

L. *Delamere.* My Lord, he ſays he was ſent for to my Houſe, I deſire to know who was the Meſſenger that was ſent for him?

Saxon. My Lord, I did aſk him his Name, but he would not tell it me; he told me he was but a Tenant to my Lord *Delamere*, and had been imployed in ſuch Buſineſſes for my Lord *Delamere*'s Father, Sir *George Booth*; he was a lame Man in one Arm, for he had his Hand ſhot away at the Siege of *Nantwich*.

L. *Delamere.* It was *Tom Long* the Carrier, I ſuppoſe, or ſome ſuch Fellow or other, that I ſent for him; my Lord, I deſire to know what Time of Day or Night was it when he came to my Houſe?

Saxon. It was juſt when it began to be dark, the Meſſenger came to me in the Afternoon to fetch me thither, and I ſent for a Man's Horſe that lived near me, and when it was brought me, he aſked me what made me go ſo late; I told him I had occaſion to go late, and I ſhould return late, and the Man ſtaid at my Houſe for his Horſe till it was late: but I not coming Home, he left Order for his Horſe be brought to him.

L. *Delamere.* Next, my Lord, I deſire to know when he came to my Houſe, whether he did alight from his Horſe at the Stables that belong to the Houſe or no?

Saxon. I did alight juſt at the Old-Buildings, and the Man's Horſe that came with me and mine were taken into the Stables.

L. *Delamere.* Pray, my Lord, aſk him who took his Horſe from him?

Saxon. The Man that came with me, and he went into the Houſe, and brought out a Candle.

L. *Delamere.* My Lord, I would aſk him whether the Door he was let in at, was that which was neareſt the Stable, or which Door?

L. H. Steward. Do you know what Door of the Houſe you were let in at?

L. *Delamere.* My Lord, I aſk him whether it were the next Door to the Stable?

Saxon. My Lord, I cannot very well give an Account of that, for I never was at the Houſe before.

L. *Delamere.* Pray, my Lord, let him recollect himſelf, whether it were the Door next the Stable or not?

L. H. Steward. Ay, with all my Heart, if he can.

Saxon. I did not ſee any other Door but that I came in at, and therefore I cannot tell which Door it was.

L. *Delamere.* Theſe Queſtions, my Lord, I take to be proper for me to aſk, and I believe I ſhall make it appear to your Grace to be ſo by and by.

L. H. Steward. Good my Lord, take your full Liberty, and aſk what Queſtions you pleaſe; for I know my Lords here will be very well pleaſed that you have all the Scope allowed you that can be.

L. *Delamere.* I humbly thank your Grace; I deſire to know of him, who let him into the Houſe?

Saxon. The Man that came with me went with me juſt to the Door, and let me in within the Door, and I ſaw no other Man but that Man, till I came into the Room where my Lord and thoſe two Gentlemen were.

L. *Delamere.* Was there Nobody elſe but we there?

Saxon. No, you were ſo wiſe, you would let Nobody be by.

L. *Delamere.* My Lord, I ſhall trouble this Witneſs no farther at preſent.

L. H. Steward. Then Mr. *Attorney General*, will you proceed?

Mr. *At. Gen.* My Lord, we ſhall give no more Evidence at preſent, but ſhall reſt here till we ſee what Defence this Noble Lord will make for himſelf.

L. H. Steward. Then, my Lord *Delemere*, your Time is now come to make your Defence, you have heard what has been evidenced againſt you, and my Lords now expect to hear what you have to ſay for yourſelf.

L. *Delamere.* May it pleaſe your Grace, a great Part of the Day is ſpent, and I would beg the Favour of your Grace, that I may have the Favour till To-morrow Morning to review the Notes I have taken, and then I ſhall make my Defence.

L. H. Steward. My Lord *Delamere*, I had this very Thing in my Thoughts before I came hither this Day, becauſe I did foreſee that this was likely to be a long Cauſe, and the Proceedings in it would take up much Time: I have a little Doubt, I muſt needs ſay, in my own Mind, whether it may be done by Law; I know very well,

if this were a Trial in full Parliament, there have been Precedents to warrant the Adjournment till another Day, though it be in the Midst of a Trial; and in the Middle of the Evidence: But this Court I take to be of the same Nature, though of a Degree higher, with the other ordinary Courts of Judicature; and whether it be not obliged and tied up to the same Method of Proceedings with those other Courts, where all Capital Offences are tried, is a Thing I am in some Doubt about: In those Courts it has not been usual to adjourn the Court after Evidence given; nay, it has been sometimes a Question, whether the Judges in those Courts, after the Jury are gone from the Bar, to consider of their Verdict, could adjourn themselves: I say, the Judges have sometimes made a Doubt of it, though I know the Point is now settled, and the Practice is, that they may, and do. But this is most certain, after the Evidence given, the Jury cannot be adjourned, but must proceed in their Enquiry, and be kept together till they are agreed of their Verdict; this has caused some Hesitancy in me, what the Law may be in this Case; therefore I think it may be proper to consult with my Lords the Judges; for I desire the Thing may be considered and settled.

L. *Delamere.* My Lord, I humbly beg this Favour of your Grace, but to adjourn till To-morrow.

L. H. Steward. With all my Heart, my Lord, if it may be done by Law.

L. *Delamere.* I hope it may, my Lord, and I beg that Favour of your Grace.

L. H. Steward. My Lord, I should be very glad to comply with your Lordship's Desires; but truly I have considered it, and do doubt whether I can by Law do it: In full Parliament it is clear it may be done, but upon this Commission, after my Lords the Peers are once charged, and the Evidence partly given, whether I can then adjourn them till another Day, is with me a Doubt. My Lords, if your Lordships please, before such Time as my Lord, the Prisoner at the Bar, enters upon his Defence, I will with your Leave, propound the Question to my Lords the Judges, and hear their Opinion what the Law is.

L. *Delamere.* My Lord, I shall hardly be able to finish all I have to say in any convenient Time this Day.

L. H. Steward. But, my Lord, if an Adjournment cannot be by Law, I cannot help it.

L. *Delamere.* There has a great deal been said, and it will require a great deal of Time to give it an Answer.

L. H. Steward. Ay, but if it cannot be done as you would have it, we must be contented to stay the longer together; for I would not abridge you of your Defence: therefore, my Lords the Judges, if you will please to go together and consider of it, and report your Opinions, what the Law is in this Case, we will stay till you come again.

Then the Judges withdrew into the Exchequer Chamber.

E. of *Nottingham.* My *Lord High Steward,* I do humbly conceive this is a Matter that concerns the Privilege of the Peers; and because it is a Matter that doth so much concern the whole Peerage, I think my Lords here ought in some Measure to concern themselves about it: Therefore, my Lord, I have a short Motion to make to your Grace, That, considering the Consequence that the Precedent of this Case may draw with it, since my Lords the Judges are gone together to consult of this Point, of which, I may say, they are not altogether the sole Judges; we may also withdraw to consider of this Matter with them, because it may not be proper for my Lords in publick here, to offer what they may have to say, to incline my Lords the Judges in their Judgments one Way or other.

L. *Falconberg.* My Lord, I humbly offer this to your Grace, upon the Motion that this Noble Lord has made, That, with Submission, I take this to be a Thing that concerns the Privilege of Peerage only, and I conceive the Judges are not concerned to make any Determination of that Matter. I think therefore, my Lords here ought to retire with them to consider of it.

L. H. Steward. My Lords, I think, with Submission to your Lordships, that this is a Question naturally proper for my Lords the Judges to give their Opinions in, Whether this Court, as a Court of Judicature for the Trial of this Noble Lord, may, in the Midst of the Trial, adjourn till another Day? And the Privilege of the Peerage cannot at all come in Question here, as I conceive.

L. *Falconberg.* My Lord, that we conceive is a Point of Privilege, which certainly the inferior Courts can have no Power to determine.

L. H. Steward. If your Lordships have a mind to withdraw, you may.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew, and after Half an Hour the Judges returned and took their Places as before, and after about an Hour the Peers returned to their former Places.

L. H. Steward. My Lords the Judges, have you considered the Matter that has been proposed to you, and what is your Opinion?

L. C. J. Herbert. May it please your Grace, the Judges, in Obedience to your Grace's Commands, have withdrawn, and considered of what your Grace proposed to them, and with humble Submission they take the Question to be this.

Not, Whether your Grace may adjourn your Commission from one Day to another, for that is clear you may, and has been practised, for that is the Case of the Earl of *Somerset* and his Wife:

But the Question is, Whether after the Prisoner is upon his Trial, and the Evidence for the King is given, the Lords being, as we may term it, charged with the Prisoner, the Peers Triers may separate for a Time, which is the Consequent of an Adjournment to another Day.

And, my Lord, the Judges presume to acquaint your Grace, that this is a Matter wholly new to them, and that they know not upon Recollection of all that they can remember to have read, that either this Matter was done or questioned, whether it might or might not be done in any Case?

My Lord, if the Matter had been formerly done, or been brought into Question in any Case where it had received a Determination, and reported in any of our Books of Law, then it would have been our Duty to contribute all our Reading and Experience for the Satisfaction of this great Court: But being, as it is, a new Question, and a Question that not only concerns the particular Case of this Noble Lord at the Bar, but is to be a Precedent in all Cases of the like Nature for the future: All we can do is, to acquaint your Grace and my Noble Lords, what the Law is in the inferior Courts in Cases of the like Nature, and the Reason of the Law in those Points, and then leave the Jurisdiction of this Court to its proper Judgment.

My Lord, in the first Place, where the Trial is by a Jury, there the Law is clear, the Jury once charged can never be discharged till they have given their Verdict, this is clear; and the Reason of that is, for Fear of Corruption and tampering with the Jury. An Officer is sworn to keep the Jury together without permitting them to separate, or any one to converse with them; for no Man knows what may happen, for (though the Law requires honest Men should be returned upon Juries, and without a known Objection they are presumed to be *probi & legales homines*, yet) they are weak Men, and perhaps may be wrought upon by undue Applications.

This, my Lord, it is said, fails in this Case, because the Lords that are to try a Peer, are Persons of that great Integrity and Honour, that there is not the least Presumption of their being to be prevailed upon in any such Way; and for that Reason, because of the Confidence which the Law reposes (and justly) in Persons of their Quality, they are not sworn as common ordinary Jurors are, but are charged and deliver their Verdict upon Honour.

My Lord, in the Case of a Trial of a Peer in Parliament, as your Grace was pleased to observe, and as is very well known by late Experience, there the Matter has been adjourned till another Day, and for divers Days; the Evidence being in several Parcels, and there the Danger is as great (if any were to be supposed) of Tampering: But whether the Lords being Judges in that Case, and in this Case only in the Nature of a Jury, makes the Difference, though in both Cases it is but like a Verdict, for they give their Opinions *seriatim*, whether the Peer tried be Guilty or not Guilty, that they submit to your Grace's Consideration.

Upon the whole Matter, my Lord, whether their being Judges in the one, and not in the other Instance, alters the Case, or whether the Reason of Law in inferiour Courts, why the Jury are not permitted to separate till they have discharged themselves by their Verdict, may have any influence upon this Case, where that Reason seems to fail, the Prisoner being to be tried by his Peers, that are Men of unquestionable, unsuspected Integrity and Honour, we can't presume so far as to make any Determination in a Point that is both new to us, and of great Consequence in itself; but think it the propereſt Way for us, having laid Matters as we conceive them before your Grace and my Lords, to submit the Jurisdiction of your own Court to your own Determination.

L. H. Steward. My Lords, I confess I would always be very tender of the Privilege of the Peers wherever I find them concerned; but truly I apprehend, according to the best of my Understanding, that this Court is held before me. It is my Warrant that convenes the Prisoner to this Bar. It is my Summons that brings the Peers together to try him, and so I take myself to be Judge of the Court.

My Lords, 'tis true, may withdraw, and they may call the Judges to them to assist them, which shews they have an extraordinary Privilege in some Cases more before the High-Steward, than Juries have in inferior Courts in Cases of common Persons: For, if it be in a common Case no Jury can call either Counsel or Judges to assist them, in the Absence of the Prisoner; but if they will have Advice, it must be asked in open Court, in the Presence of the Party accused.

But now, my Lords, if you have a mind to consult with me in private, as I now sit by virtue of this Commission, which is his Majesty's Warrant for me to hold this Court, I could not withdraw with you; but you must ask all your Questions of me, in the Presence of the Prisoner in open Court: Whereas if it were in full Parliament, as were the Cases of my Lord *Stafford*, and my Lord of *Pembroke*, then he that were the High-Steward might go along with you when you withdrew, and consult with you, and give his Opinion, which I cannot do in this Case; for I am bound to sit in Court, while you withdraw to consider of the Evidence, and am not to hear any Thing said to me, but what is said in open Court in the Presence of the Prisoner; except it be when you deliver your Verdict.

This I confess, my Lords, has a great Weight with me, and I know your Lordships will be very tender of proceeding in such a Case any Way but according to Law: For though you are Judges of your own Privileges, yet, with Submission, you are not Judges of the Law of this Court; for that I take to be my Province.

Why then, suppose, my Lords, I should take upon me to do as my Lord *Delamere* desires, and adjourn the Court; and suppose the Law should fall out to be that indeed I ought not so to have done; would it be any Advantage to this Noble Peer if he should be acquitted by your Lordships after such an Adjournment? Might not the evil Consequence of that be, that he might be indicted for the same Crime, and tried again? For all the Proceedings after that would be void, and liable to be reversed.

And if, on the other side, your Lordships should think fit, upon the Evidence you have now heard, and what he shall say for himself, to convict him, after I have adjourned as is desired, and I pass Judgment upon him, as it will be a Duty incumbent upon me to pass Sentence on him, if you convict him; what will become of the Case then? and how shall I be able to answer it, as having done my Duty, when I pronounce a Judgment notoriously Erroneous and Illegal? for so it will be, if the Law prove to be against my adjourning. This, my Lords, is a matter of great Moment, and worth the Consideration.

But in the other Case of a Trial in full Parliament, the Lord that sits where I do, is only as the Chairman of the Court rather than Judge, he gives a Vote in such Proceedings; and therefore, my Lord, the Prisoner did very well at the beginning to ask the Question, whether I had any Vote in his Trial, as a Peer, jointly with your Lordships? If I sat in full Parliament, I should without all question give my Vote as well as any other Peer; but sitting here by immediate Commission from the King *pro hac vice*, High-Steward; I acquaint you as I did him, I have no authority to give any Vote: my Business is to see the Law observed and fulfilled as Judge.

Certainly, my Lords, your Lordships and I, and all Mankind ought to be tender of committing any Errors in Cases of Life and Death, and I would be loth, I will assure you, to be recorded for giving an Erroneous Judgment in a Case of Blood, and as the first Man that should bring in an illegal Precedent, the Consequence of which may extend I know not how far.

Mr. Att. Gen. Will your Grace give Direction for my Lord to proceed?

L. H. Steward. Yes; he must proceed, I think.

L. *Delamere.* May it please your Grace, and you, my Lords, it is an Offence of a very high nature, for which I am this day to answer before your Lordships; yet, I thank God, I am not afraid to speak in this place, because I am not only certain and well assured of my own Innocency, no such Thought having as yet entered into my Heart; but I am also well assured of your Lordships Wisdom and Justice, which cannot be imposed upon or surprised by Insinuations and florid Harangues, nor governed by any thing but the Justice of the Cause.

My Lords, I can with a great deal of Comfort and Satisfaction say, that these Crimes wherewith I am charged are not only Strangers to my Thoughts, but also to what has been my constant Principle and Practice; for I think that in matters relating to the Church, and the things enjoined therein, few have conformed more in Practice than I have done, and yet do I confess, and am not ashamed to say it, that I have always had a Tenderness for all those who could not keep pace with me, and Charity for those that have outgone me, and differed from me, though never so far; nay, though of a different Religion: For I always thought Religion lay more in Charity than Persecution.

While I had the Honour to be a Magistrate in my Country, I did constantly, duly, and impartially, execute the Laws, and in every publick Trust I was very faithful in the Discharge of it; for I never voted nor spoke in any manner but as my Conscience and Judgment did dictate to me. I have always made the Laws the measure of my Loyalty, and have still been as Zealous and Careful to give the King his Prerogative, as to preserve to the People their Properties, and have endeavoured, as far as in me lay, to live peaceably with all Men.

This, my Lords, was not only the Dictates of my own Inclinations, but it was the Principle of my Father, and the Lesson that he taught me: I say my Father, who was so greatly instrumental in snatching this Nation out of its Confusion, and restoring it to its ancient Government, by settling his late Majesty upon his Throne, and consequently was the means of his present Majesty, that now is, his coming so peaceably to the Crown. And this I may the more boldly speak, because I speak it by good Authority; because in the Patent that created my Father a Peer, his late Majesty is pleased to say, his Rising was mainly instrumental in his Restauration. I beg the Favour of your Grace and my Lords, that I may read you that Clause in the Preamble of the Patent, which I have here ready to produce.

Which was read, and then my Lord proceeded as follows, viz.

My Lords, I suppose most of your Lordships did know him; and whosoever did so, I dare say, did believe him to be a good Man: For my part, I did not know a better Copy to write after than his Example, which I endeavoured always to imitate, and that I hope will go very far to vindicate me from the Imputation of being inclined to any such Crime as I stand charged with.

My Lords, it is now late, and therefore I shall cut off a great deal of what I had intended to say to your Lordships, that I may not take up too much of your time, and come immediately to my Defence, as to what I stand accused of.

And first, my Lords, I shall observe, that here have been a great many Witnesses produced, and a great deal of Swearing, but little or nothing of Legal Evidence to affect me; for there is but one Man that saith any thing home and positively against me (and whom I shall answer by and by); all the rest are but Hearsays, and such remote Circumstances, as may be tacked to any Evidence against any other Person, but are urged against me for want of greater matters to charge me with; and therefore I hope the producing and pressing of these things against me, is rather a strong Argument that I am innocent, and that there have been mischievous and ill Designs of some against me, than that I am Guilty; for if they had had other and greater matters, your Lordships would have been sure to have heard of them.

With your Lordships leave, I cannot but observe to your Lordships an excellent Saying of that great Man, my Lord of *Nottingham*, (whose Name will ever be remembred with Honour in our *English* Nation) when he sat in the same place that your Grace does now, at the Trial of my Lord *Cornwallis*, which I will read to your Lordships. Speaking to the Peers, he has this passage:

I know your Lordships will weigh the Fact, with all its Circumstances, from which it is to receive its true and its proper doom. Your Lordships are too just to let Pity make an abatement for the Crime, and too wise to suffer Rhetorick to make any Improvement of it: This only will be necessary to be observed by all your Lordships, that the fouler the Crime is, the clearer and the plainer ought the Proof of it to be; there is no other good Reason can be given, why the Law refuses to allow the Prisoner at the Bar Counsel in Matter of Fact when Life is concerned, but only this, because the Evidence by which he is condemned ought to be so very evident and so plain, that all the Counsel in the world should not be able to answer it.

My Lords, I think the Evidence that has been given against me this Day does not come up to this. And I hope your Lordships will regard this Saying of my Lord *Nottingham*'s, as more worthy of your consideration, than the fine Flourishings and Insinuations of the King's Counsel, which tend (if it be not so designed) rather to misguide your Lordships, than to lead you to find out the Truth.

My Lords, I shall now tell you the method that I shall proceed in, in making my Defence; and I begin with *Saxon*; for he, I perceive, is the great *Goliah*, whose Evidence is to maintain this Accusation, and if I cut him down, I suppose I shall be thought to have done my own business: therefore to that I shall apply myself first, and do it if I can; and I will in the first place examine several Persons that are his Neighbours, and have conversed with him, what they have heard and know of him: and first I desire *Richard Hall* may be called.

L. H. Steward. My Lord *Delamere*, if you begin that way to call Witnesses against *Saxon*, it is fit he should be here to know what is said against him.

L. *Delamere.* Ay, with all my heart, my Lord.

L. H. Steward. Then call *Saxon* again.

[*Then* Saxon *and* Hall *came both in.*

L. *Delamere.* Pray Mr. *Hall* tell my Lords here what you know of *Thomas Saxon?*

L. H. Steward. What is it you ask of this Witness.

L. *Delamere.* My Lord, I desire him to give an account what he knows of a Letter, that was forged by *Saxon*, in the name of one *Hildage?*

Hall. About the nineteenth of *December*, in the Year 1683, I received a Letter by *Thomas Saxon*, from *Richard Hildage*, wherein he desired me to send him the sum of six pounds odd money which I owed him: I received the Letter and paid the money, and to the best of my knowledge, some little time after I met with the said *Hildage* at *Newcastle*, who asked me to pay him the money I owed him. I replied I had paid the money according to his Note; but he said he never gave any such Note, and threatned to sue me; thereupon I sent one *Lord* to *Hildage*, that is here now in the Court, and desired *Hildage*'s forbearance for a while, till I could get the money from *Saxon* back again, and afterwards he sent again for his money, and I sent to *Saxon* for it, but still the money did not come.

L. H. Steward. Did you ever speak with *Saxon* himself?

Hall. No, but with his Wife, who came to me about it; but he acknowledged he wrote the Letter before *John Lord.*

Saxon. Did not my Wife tell you that *Richard Hildage* lent me the money?

L. H. Steward. Nay, you must not dialogue with one another, but if you have any Questions, you must propound them to the Court: My Lord *Delamere*, have you any Questions to ask him?

L. *Delamere.* No, my Lord.

L. H. Steward. Then what is it you would have him asked, *Saxon?*

Saxon. I desire you would please to ask him, whether or no he did not lend me the money?

L. H. Steward. He! who do you mean?

Saxon. Richard Hildage did.

L. H. Steward. What say you, did *Richard Hildage* lend him the money?

Hall. No, my Lord.

L. H. Steward. Look you, my Lord *Delamere*, the Objection carries a great deal of weight in it, to prove him a very ill man, if it be fully made out.

L. *Delamere.* My Lord, if your Grace please, I can prove that he owned the writing of the Letter to another man.

L. H. Steward. My Lord, he does own here, that he wrote a Letter, and that he wrote it in *Hildage*'s name but he saith, the Letter; he so wrote in *Hildage*'s name, was by *Hildage*'s direction; and if so, that takes off the Objection made against him.

L. *Delamere.* I must submit that to your Grace, whether what he says in that matter be Evidence?

L. H. Steward. What *Hildage* did, or did not, is the main turn of the Question in this Case; for he might lend him the Money, and yet afterwards might say, when he thought he might lose it, that he did not send any such Letter, and all this be true, and *Saxon* in no fault: I must confess, if *Hildage* were here himself, and should deny the lending of the Money, or the giving him Directions to receive it, you would have fixed a shrewd Objection upon him; but otherwise Hear-says and Discourses at second hand are not to take off the Credit of any Man's Testimony.

L. *Delamere.* But *Hall* says *Hildage* denied the receipt of the Money, or any Order for receiving of it.

L. H. Steward. That signifies nothing, being but by second-hand.

Saxon. If it please your Grace, here is my Brother in Court will give you an account of it.

L. H. Steward. Well, well, hold your tongue; will your Lordship please to go on?

L. *Delamere.* The next Witness, my Lord, that I shall call, shall be *Francis Ling.* [*Who came in.*]

L. H. Steward. What do you ask this Witness?

L. *Delamere.* Mr. *Ling*, pray will you tell his Grace, and my Lords, what you know concerning *Saxon*'s receiving any Money in the Name of Mrs. *Wilbraham*, without her Order.

Ling. He called at this same *Hildage*'s at *Newcastle*, and received twenty five Shillings, and said it was for Mrs. *Wilbraham*, in her name; but she never received a penny of the Money, nor knew of his having received it, till he came to pay another Quarter.

L. H. Steward. Where is that Mrs. *Wilbraham?* Is she here?

Ling. No, my Lord, she is a Neighbour of ours, an Ancient Woman, fourscore years of Age, and cannot come so far.

L. H. Steward. This is the same Case with the other, you can never think to take off the Credibility of Witnesses by such Testimony; for this is only a Tale out of an Old Woman's Mouth: What if that Old Woman told him a false Story?

Ling. She said——

L. H. Steward. I care not what she said, this is no Evidence at all.

L. *Delamere.* Then pray call *Richard Shaw*.

[*Who came in.*

L. H. Steward. Well, what says this Witness?

L. *Delamere.* *Shaw*, can you tell any thing of *Thomas Saxon*'s writing a Letter, and sending it in the name of one *Pangston* a Bayliff?

Shaw. He writ a Letter, as I understand, concerning some Money that I owed him; for I owed him a little Money, and being I did not pay it, he does forge a Letter and puts *William Pangston*'s name to it, so I got up the other Morning——

L. H. Steward. Where is *Pangston?* Is he here?

Shaw. No, my Lord, he is not, but he told me he did not write the Letter.

L. H. Steward. Why, this is just the same again, and we all know how easy a thing it is to hear a Bayliff tell a Lye.

Shaw. I cannot tell, but I called——

L. H. Steward. All that is nothing. It is a difficulter matter to hear such Fellows speak Truth, than any thing else, I am sure.

L. *Delamere.* The next Witness that I shall call is *Peter Hough*.

[*Who appeared.*

L. H. Steward. There is your Witness. What say you to him?

L. *Delamere.* Pray acquaint his Grace, and my Lords, what you know of *Saxon*'s cheating you in the making of a Bond.

Hough. My Lord, he had six Pound ten Shillings in Money, and ten Shillings in Work done, for which he was to give me a Bond, and hereof he made the Bond himself. I thought it had been right, and took it; but about the time when the Money was become due, I looked upon it, and it proved to be but for 6 *l.*

L. H. Steward. What should it have been for?

Hough. It should have been for six Pounds ten Shillings in Money, and ten Shillings in Work.

L. H. Steward. Did not he give thee a Bond for all thy Money?

Hough. It should have been so, but I never had it.

L. H. Steward. Had you never the Money?

Hough. No, I never had the Money.

L. H. Steward. What did he say the Bond should be made for?

Hough. For seven Pounds.

L. H. Steward. What say you to it, *Saxon?*

Saxon. My Lord, I had five Pounds ten Shillings of him, and ten Shillings in Work, for which I gave him Bond; there were the Witnesses Names at it, the Bond was fairly read, and I sealed it, and he took it with him.

L. H. Steward. Ay, but he says it was to be for seven Pounds.

Saxon. I never had any more of him than six Pounds, and for that I gave him Bond.

L. H. Steward. Was the Bond read to you?

Hough. He read it himself, and he made it himself.

L. H. Steward. How did he read it? What did you apprehend by his reading it was made for?

Hough. I took it as he read it to be made for seven Pounds.

Saxon. He may say what he pleases, but I had no more of him but six Pounds; I was to give Bond for no more.

L. H. Steward. Now the Witnesses to this Bond would be very proper to be produced here: For, if he did make the Bond but for six Pounds, when the Debt that was to be secured was seven Pounds, that is a sign that he had an intention to cheat him of the Twenty Shillings.

L. *Delamere.* That shews what a kind of Man he is.

L. H. Steward. But this is but Witness against Witness, for he says, he owed no more, and was to make the Bond for no more.

Hough. It was as I tell you, I assure you, my Lord.

Saxon. I had no more of him than six Pound.

Hough. Did not I ask you afterwards one Question more, and told you it was a Cheat, and you said it should be mended?

L. H. Steward. Well, my Lords have heard it, they will consider what weight to lay upon it.

L. *Delamere.* Pray call *Edward Wilkinson.* [*Who appeared.*

L. H. Steward. What do you ask him?

L. *Delamere.* *Wilkinson*, pray tell my Lords, how *Saxon* dealt with you about your Horse?

Wilkinson. My Lord, he hired a Horse of me for three Days, and was to give me twelve-pence a Day, but he never came again, nor had I any Satisfaction for my Horse; but I lost my Horse by the bargain, and my Money too.

L. H. Steward. How long ago was it since he hired your Horse?

Wilkinson. My Lord, it was the twenty third of *June*, to the best of my remembrance.

L. H. Steward. Did he not agree with you for 12 *d.* a day as long as he used your Horse?

Wilkinson. I expected to have my Horse in three days time.

L. H. Steward. But mind my Question, did you agree that he should have him but three Days? Or, was he to give you 12 *d.* a Day for so long as he kept him out?

Wilkinson. I was to have 12 *d.* a Day for him.

L. H. Steward. What! as long as he used him, or only for three Days?

Wilkinson. He did agree with me to bring him again in three Days.

L. H. Steward. I perceive by the time, he rid into the Rebellion with his Horse, and he was a very Knave for so doing, upon my Conscience.

L. *Delamere.* Call *William Wright*, [*who came in.*] Pray will you give my Lords an account what Reputation this *Thomas Saxon* is of in his Country?

Wright. My Lord, this *Thomas Saxon* came to live at *Sambige*, and I had some dealings with him as well as other Men, and I never found him to perfect his Word in any thing.

L. H. Steward. What didst thou never find him?

Wright. To perfect his Word in any thing, my Lord.

L. H. Steward. That is, make good his word, I suppose; but that is your *Cheshire* Phrase.

Wright. Whereupon I met with him one Evening after Evening-Prayer, and said to him, *Thomas Saxon*, if I cared no more for keeping my Word than thou dost, it were no matter if I were hang'd; for to be sure if thy Mouth open, thy Tongue lyes: and he turn'd away from me, and would not answer me a word; and since that he owed me some Money, and when I asked him for it, he told me if I did trouble him for the Money, it should be the worse for me; whereof all the Town knows as well as I, that I cannot set him forth in words as bad as he is.

L. H. Steward. Can you instance in particular, Friend, of any Fraud, Cheat, or Cozenage, that he has been guilty of? For it is not what the Town says, but what can be proved, that we must take for Evidence; the Town that thou livest in may reckon thee but an idle Fellow, and yet thou may'st be a very honest Man for all that.

Wright. I trust, my Lord, I am so, and shall always prove so.

L. H. Steward. Well, what do'st thou know ill of him?

Wright. He did not keep his Word with me.

L. H. Steward. Wherein dost thou mean?

Wright. As to Money he owed me.

L. H. Steward. How much Money did he owe thee?

Wright. He owed me a deal.

L. H. Steward. How much do'st thou call a deal?

Wright. I cannot tell how much exactly.

L. H. Steward. Does he owe thee any thing now?

Wright. Yes, but I cannot justly tell how much.

L. H. Steward. My Lord *Delamere*, I would be very unwilling to interrupt the method of your Defence, or abridge you in your Evidence; but really this Objection that you endeavour to prove by this Witness, is not at all, as I conceive, for your Lordship's Service: For it is a very hard case, if any one that owes Money and does not pay it, shall for that very reason lose the credit of his Testimony; this rather gives a countenance to what he says, that you know no other Objections but such trivial ones to make against him.

L. *Delamere.* Then, if your Grace please, I will make short work of it, and spare your time; I shall pass over this part of my Evidence, tho' I have more Witnesses to this Point, and come to other matters, to Matter of Fact, to encounter this positive Proof that has been given against me. Your Grace and my Lords do observe, that this Man *Saxon* has testified, that about the third or fourth of *June* last (for there he fixed the time) this Man as an extraordinary Person that was fit to be trusted in an Affair of this nature, being confided in, and recommended by my Lord *Brandon*, was sent for by me to *Mere*, where he found me and Sir *Robert Cotton* and Mr. *Offley*, who did employ him to transact the matter of stirring up the Country in order to a rising and joining with the late Duke of *Monmouth:* Now I will first prove to your Lordship in general, that Sir *Robert Cotton* was not in *Cheshire* for many Weeks, nay, several Months, both before and after the time he speaks of: and next in particular I shall prove as to the time that he has pitched upon, by divers Persons that saw Sir *Robert Cotton* here then in *London*, and give you particular Reasons for it. First to prove, that he was here in Town so long in general, I shall produce his Servants that saw him every day: Call——*Billing.* [*Who appear'd.*] Pray Sir, will you give an account what time Sir *Robert Cotton* came to *London*, when he went out of *London*, and whether you were frequently in his Company and saw him here?

Billing. My Lord, to the best of my remembrance, Sir *Robert Cotton* came to Town the 10*th* of *April* last, and I was with him here in Town, at his House at the Horse-Ferry, till the latter end of *July*, and saw him constantly more than once or twice every day for that time: I used to come into his Chamber most Mornings before he was up; I used to buy in his Provision for his House, I saw him a-bed, or heard he was in Bed every Night.

L. H. Steward. Did you belong to him?

Billing. I am his Servant.

L. *Delamere.* He lived with him in the House all the while, he says.

Billing. Then about the latter end of *July* he went out of Town for three Days to *Epsom*, and then he came to Town again, and continued here till the time he was committed to the Tower, and never was in *Cheshire* since the 6*th* of *April* last.

L. H. Steward. How came you to remember so punctually when he came to Town, and that he staid here all the while?

Billing. I know it by my Accounts for the Journey up, and by the Tradesmen's Bills for the Provision of the House ever since.

L. H. Steward. In what Capacity did you serve Sir *Robert Cotton?*

Billing. I bought in all the Provision for his House, and paid the Tradesmen's Bills.

L. H. Steward.

L. H. Steward. Have you any Papers in your Pocket that will point to any particular Time?

Billing. I have not the Tradeſmen's Bills here, my Lord, nor my own Accounts; but I have look'd upon them, and by that I am ſure what I have teſtified is true.

L. H. Steward. Who do you call next, my Lord?

L. *Delamere.* Call *Margaret Davis.* [*Who appeared.*] Pray will you give an account to my Lord, what time Sir *Robert Cotton* came to Town, and to the beſt of your Remembrance when he went out of Town again?

Davis. He came to Town upon the Tenth of *April* laſt, or thereabouts, and he has not been out of Town any Night ſince, except it were in *Auguſt.*

L. H. Steward. What Day did he come to Town, do you ſay?

Davis. About the tenth of *April.*

L. H. Steward. And you ſay he did not go out of Town till *Auguſt?*

Davis. No, my Lord.

L. H. Steward. How do you know this?

Davis. I was conſtantly in the Houſe with him.

L. H. Steward. But how came you to be ſo exact as to the Time?

Davis. I ſaw him continually every Day.

L. H. Steward. How came you to ſee him?

Davis. I live with him in the Houſe.

L. H. Steward. Pray recollect yourſelf as to the Time he went out of Town, for I perceive the other Man ſays it was the latter end of *July.*

Davis. It was in *Auguſt* certainly, my Lord.

L. *Delamere.* My Lord, the other Witneſs ſaith it was the latter end of *July*, and that may be very well conſiſtent, neither of them ſpeaking to a Day.

L. H. Steward. Well, are you ſure he was in Town all the Month of *June?*

Davis. Yes, he was.

L. H. Steward. Well, who do you call next?

L. *Delamere.* Mrs. *Sidney Lane.* [*Who appeared.*

L. H. Steward. What do you aſk this Gentlewoman?

L. *Delamere.* I examine her to the ſame Point: And I queſtion not but I ſhall make it out to your Grace, and my Lords, none of us all three that he has named were there at that Time.

L. H. Steward. I ſhall be very glad of it, my Lord.

L. *Delamere.* Pray Mrs. *Lane* will you give an account when it was Sir *Robert Cotton* came to Town, and how long he ſtaid here?

Mrs. *Lane.* He came to Town the *April* before the Coronation, and never lay out of Town I am ſure all thoſe three Months of *April*, *May*, and *June*, after he came to Town.

L. *Delamere.* This Gentlewoman, my Lord, lived in the ſame Houſe with him.

Mrs. *Lane.* I did ſo, my Lord, and ſaw him every Night and Morning.

L. *Delamere.* If your Grace pleaſe, I have two or three more Witneſſes to the ſame purpoſe; but I would ſpare their Lordſhips time, if this Point be fully cleared.

L. H. Steward. Pray, my Lord, do not abridge yourſelf, for I know my Lords will not grudge the Time, but are very deſirous you ſhould have full Liberty in what is pertinent.

L. *Delamere.* Then I deſire *Charles Reeves* may be called. [*Who appeared.*] I pray, my Lord, that this Man may give an account what time it was Sir *Robert Cotton* came to Town, and how long he ſtaid here?

Reeves. If it pleaſe your Lordſhip, he was in Town before the Coronation, and I ſaw him here every day from that time till after *July* once or twice every day.

L. H. Steward: Did you belong to him?

Reeves. Yes, and I do now.

L. H. Steward: In what Capacity, Friend?

Reeves. My Lord, I am his Footman.

L. *Delamere.* May it pleaſe your Grace, the next Witneſs I have to produce is Mr. *Aſhburnham*; being he cannot eaſily remove, I beg he may be heard in the Place where he is.

L. H. Steward. Ay, let him ſpeak where he is, and let him ſpeak out.

L. *Delamere.* Pray Sir, will you pleaſe to recollect yourſelf what time you ſaw Sir *Robert Cotton*, and where, the laſt Summer?

Aſhburnham. My Lord, I being at Sir *Robert Cotton*'s Houſe at *Weſtminſter*, he deſired me to preſent a Petition of his to the Houſe of Commons for him, and it was about the latter end of the time allotted for Petitions, I cannot exactly tell what Day of the Week or Month it was, but I ſaw him that day I preſented his Petition, and I ſaw him at the Committee of Elections two or three days after.

L. *Delamere.* Sir *William Twiſden* I deſire may be alſo heard what he has to ſay to the ſame Point? [*Who anſwered to the ſame effect.*

L. *Delamere.* Mr. *Heveningham* is my next Witneſs, my Lord; who I deſire that he would pleaſe to give your Grace and my Lords an account, when he remembers to have ſeen Sir *Robert Cotton* in Town.

Mr. *Heveningham.* My Lord, it was a more than ordinary Occaſion that makes me remember the thing and the time ſo particular. I was engaged in a diſpute in the Houſe of Commons about my own Election, and that was upon the ſecond of *June*; then was a Caſe debated in the Houſe, whether a Mayor that was elected a Burgeſs for any Town could ſit upon his own Return? It was then carried he ſhould not. And the next day, which was the third of *June*, another Queſtion came on, whether Sir *Joſeph Williamſon* was duly elected and returned? And I remember at that time I was walking with Sir *Robert Cotton* in the Court of Requeſts, and Mr. *Neal* came out of the Houſe and told me, that it was carried by five, that he was not; and then Sir *Robert Cotton* was with me.

L. H. Steward. So you ſpeak as to the ſecond and third of *June?*

Mr. *Heveningham.* My Lord, had it not been upon this particular occaſion, I could not have remember'd the time ſo exactly.

L. H. Steward. You give a very good token for your remembrance, and my Lords hear what you have ſaid.

L. *Delamere.* Will your Grace pleaſe that the Clerk of the Houſe of Commons may be called, and examined to the Journal of that Houſe, when it was Sir *Robert Cotton* preferred his Petition, and that will fix the time as to what Mr. *Aſhburnham* and Sir *William Twiſden* have ſaid?

L. H. Steward. Call whom you pleaſe, my Lord.

L. *Delamere.* It ſeems he is not ready, but I hope I have given your Grace and my Lords ſufficient Satisfaction, that Sir *Robert Cotton* was not there at that time that this Fellow ſpeaks of. I will now go on, and prove Mr. *Offley* was not there neither; and the firſt Witneſs I call to that, ſhall be Sir *Willoughby Aſton*, whom I deſire your Grace will be pleaſed to hear ſpeak in his Place.

L. H. Steward. Well, what do you ſay, Sir *Willoughby?*

Sir *W. Aſton.* My Lord, I deſire to be guided in what account I ſhall give by the Queſtions that ſhall be aſked.

L. H. Steward. What is it you aſk Sir *Willoughby Aſton?*

L. *Delamere.* Pray can you remember, Sir *Willoughby*, what time it was, and whether about the latter end of *May* laſt, or when, that you know of Mr. *Offley*'s being at your Houſe, and how long he ſtaid there?

Sir *W. Aſton.* I can give an account of his Motion for ten Days together, but that perhaps may be more than is neceſſary.

L. H. Steward. It will not be improper, Sir, for you to give as exact and particular account as you can of the Times.

Sir *W. Aſton.* If your Grace pleaſe, I will do it.

L. H. Steward. Pray do, Sir.

Sir *W. Aſton.* Upon the twenty-ſixth of *May*, which was *Tueſday*, at Night Mr. *Offley* and his Lady, and ſome of their Relations, came to my Houſe; upon *Wedneſday* the twenty-ſeventh of *May* Mr. *Offley* was ſo ſick that he kept his Chamber and his Bed all Day; upon the twenty-eighth of *May* which was *Thurſday*, he was ſo ill that he kept his Chamber all Day, and roſe about five at Night, and I then waited upon him, and ſat with him three Hours in his Dreſſing-Room. On *Friday* the twenty-ninth of *May* he went to Church, that Day was employed a great part in Devotion. Upon the thirtieth of *May*, which was *Saturday*, Mr. *Offley* and his Lady went, and a great part of my Family went with them, to one Mr. *Pickering*'s ſix Miles off my Houſe, there they dined, and returned at Night to my Houſe. Upon *Sunday* the thirty firſt of *May*, I have a particular Remark whereby I remember that Mr. *Offley* went to viſit Mr. *Needham*. Upon *Monday* the firſt of *June*, Mrs. *Offley* and the Women of my Family went to viſit my Lady *Brooks*, but Mr. *Offley* not being well, ſtaid at home. On *Tueſday* the ſecond of *June* he was ſtill at my Houſe, there was a great deal of Company there, and he was in the Company all the Day long. On *Wedneſday* the third I fell ſick in the Morning about four of the Clock, but Mr. *Offley* was in the Houſe all the Morning; but in the Afternoon he went to make a Viſit two Miles from my Houſe, at a Place called the *Ware-houſe*, where the Ships ride at Anchor: And upon *Thurſday* Morning, which was the fourth of *June*, he went from my Houſe. Now, if your Lordſhip deſires to know any thing about any particular Time about this Compaſs, I'll give you the beſt account I can.

L. H. Steward. Can you tell where he went when he went from your Houſe?

Sir *W. Aſton.* He went directly home, as he ſaid.

L. H. Steward. Did you hear at any time that he ſtaid by the way, between his going from you and coming to his own Houſe?

Sir *W. Aſton.* My Son went with him two or three Miles of his way, and I heard that at *Middlewich* he ſtaid to ſpeak with ſome of the Militia Officers that he met with by the way there at a Muſter, and afterwards went directly home.

L. H. Steward. Pray is the uſual Way from his Houſe to your's by my Lord *Delamere*'s?

Sir *W. Aſton.* No, my Lord, directly another way.

L. H. Steward. Will you aſk Sir *Willoughby Aſton* any more Queſtions?

L. *Delamere.* No, my Lord.

Mr. Att. Gen. If your Grace pleaſe, I would aſk Sir *Willoughby Aſton* one Queſtion. Sir, I deſire to know how far it is from your Houſe to my Lord *Delamere*'s?

Sir *W. Aſton.* Sir, it is about eleven Miles.

L. H. Steward. Eleven Miles you ſay, Sir?

Sir. *W. Aſton.* Yes, my Lord, eleven of thoſe *Northern* Miles.

L. *Delamere.* My Lord, I have ſome more Witneſſes to examine to this Point.

L. H. Steward. Call whom you pleaſe, my Lord?

L. *Delamere.* I call Mr. *Gregory* next, my Lord. [*who appeared.*] Pray give my Lord an account, when Mr *Offley* went from Sir *Willoughby Aſton*'s laſt Summer, and whither he went?

Gregory. My Lord, my Maſter went from Sir *W. Aſton*'s Houſe——

L. H. Steward. Who is your Maſter?

Gregory. Mr. *Offley*, my Lord. It was upon the fourth of *June* at nine of the Clock in the Morning, and went from thence to *Middlewich*, and was at Home at his own Houſe about five of the clock in the Evening, as I was told, for I did not go directly Home with him.

L. H. Steward. Was he at *Mere* that Day at my Lord *Delamere*'s?

Gregory. No, not that I know of, I was not with him.

L. *Delamere.* Then pray call *Thomas Kidd.* [*Who appeared.*] Pray were you that Day with Mr. *Offley* when he went from Sir *Willoughby Aſton*'s?

Kidd. Yes, my Lord, I was.

L. *Delamere.* What Day was it?

Kidd. The fourth of *June.*

L. *Delamere.* Then whither went he?

Kidd. He went the direct Road to his own Houſe, I never parted from him, nor did he ſtop any where till he came to *Middlewich*, where the Country *Militia* were exerciſing; and he juſt alighted off his Horſe, and ſpoke with Major *Minſhaw* and ſome of the Officers, but never ſo much as drank by the way till he came to his own Houſe.

L. H. Steward. What! To his Houſe in *Staffordſhire?*

Kidd. No, but to *Crew-Hall* in *Cheshire.*

L. H. Steward. Does *Mere* lie in the Road between Sir *Willoughby Aston*'s and *Crew-Hall*, so that your Master might be there within that time? —— *Kidd.* No, that he could not do.

L. H. Steward. Were you with Mr. *Offley* the whole Journey home?

Kidd. Yes, my Lord, I was.

L. H. Steward. Were you no time from him?

Kidd. No, my Lord, I was not.

L. H. Steward. What time did he come home?

Kidd. He came to his own House about four or five o'clock at night.

L. H. Steward. And did not he go from thence that night?

Kidd. No, my Lord.

L. *Delamere.* Now, my Lord, I will prove as to myself that I was in *London* at the time he speaks of. And first, I desire Sir *James Langham* may be heard to that. [*He appeared, but gave no Evidence.*

L. *Delamere.* Pray call —— *Booth,* [*who appeared.*]

L. H. Steward. What is this Gentleman's Name?

L. *Delamere.* He is my Brother, my Lord, his Name is —— *Booth.*

L. H. Steward. What do you ask him?

L. *Delamere.* Pray can you remember what time in *June* you saw me in Town here?

Mr. *Booth.* My Lord, I saw my Brother here in Town, the third, fourth, fifth, sixth, and so on to the tenth of *June*, and the tenth of *June* I went out of Town myself; I saw him sometimes twice or thrice a-day in that time, for I did not lodge above half a score Doors from him.

L. H. Steward. Where was that?

Mr. *Booth.* In *Great Russel-street.*

L. H. Steward. How come you to remember the time so particularly?

Mr. *Booth.* It was that Day Se'nnight before I went out of Town, which was *Wednesday* the tenth of *June*, and had it not been for that particular Circumstance, I had not remark'd it so much as to be able particularly to remember it.

Mr. Att. Gen. Pray, Mr. *Booth*, did you know of your Brother's going out of Town the twenty-seventh of *May?*

Mr. *Booth.* I heard he was gone out of Town about that time.

L. H. Steward. Why then, when came he hither to Town again?

Mr. *Booth.* I cannot tell, but I saw him upon the third of *June* in the Evening.

Mr. Att. Gen. My Lord, it is not possible for him so to do in that time, if he rode Post.

L. H. Steward. He did make a great deal of haste backward and forward, that is certain.

L. *Delamere.* My Brother does not know when I went, but as he heard, he says.

L. H. Steward. But pray, my Lord, mind the Objection that has been made, for it carries a great deal of weight in it. It is plainly proved by two Witnesses, that you went out of Town the twenty-seventh of *May* at nine of the Clock at Night, and rode to *Hoddesdon*, and the next Day came to *Hitchin* about Noon; then they left you and return'd back again to *London* that Night, and you told them you were going to see a sick Child of your's in *Cheshire*; how came you to make such post-haste back again, that he should see you here in *London* the third of *June?*

Mr. *Booth.* My Lord, I am certain I saw him that day in the Evening, and so on to the tenth.

L. H. Steward. Did my Lord then tell you how your Friends did in *Cheshire?*

Mr. *Booth.* I cannot remember the particular discourse we had.

Mr. Att. Gen. Pray, Sir, when did he tell you he came to Town?

L. H. Steward. You say you used to see him every day once or twice a-day?

Mr. *Booth.* Yes, I did so.

L. H. Steward. Pray where was he the second of *June?*

Mr. *Booth.* He was not come to Town.

L. H. Steward. How long time was it before that, that you had not seen him?

Mr. *Booth.* I had not seen him of several days before.

L. *Delamere.* If it please your Grace, here is another Brother of mine that saw me at the same time; and tho' he be my Brother, I hope he is a good Witness.

L. H. Steward. Ay, God forbid else; what is his Name?

L. *Delamere. George Booth.*

L. H. Steward. Well, what say you, Sir?

Mr. *George Booth.* My Lord, I saw my Brother *Delamere* here in Town the fourth of *June*, by this particular Circumstance which I cannot err in, That the next day, as I take it, I went down with him to the House of Lords to hear my Lord *Macclesfield*'s Cause, which was then there to be heard upon the Appeal of Mr. *Fitton*; and my Brother was in the House of Lords at that time, which was the fifth of *June.*

L. H. Steward. My Lord *Delamere*, I think it not amiss to put you in mind of one thing, which it is fit your Lordship should give some answer to: Does your Lordship deny that you went out of Town the twenty-seventh of *May?*

L. *Delamere.* No, my Lord, I do not; I acknowledge I did so.

L. H. Steward. Then it will be fit for you to give an account where you were the twenty-eight day of *May*, and so all along till the third of *June.*

L. *Delamere.* If your Grace please, I hope I shall give you full satisfaction in that by and by; but I have one Witness more to this point of my being in Town, at such a time that I could not be in *Cheshire*, when this Fellow says I was; and that is my Lord *Lovelace.*

L. H. Steward. There is my Lord *Lovelace*, what will you ask him?

L. *Delamere.* Whether he did not see me at the Trial of my Lord *Macclesfield* in the House of Lords?

L. *Lovelace.* I was in the House of Lords that day that my Lord *Macclesfield*'s Trial was, and I remember I did see my Lord *Delamere* there.

L. H. Steward. But we are as much at a loss now as ever we were, for what day that Trial was does not appear: What day was my Lord *Macclesfield*'s Trial?

L. *Delamere.* The Journal of the House of Lords proves that to be the fifth of *June.*

L. *Lovelace.* My Lord stood just by the Bar, and if I am not mistaken took Notes.

L. *Delamere.* My Lord, I hope now I have satisfied your Grace, and the rest of my Lords, that none of us three whom this Fellow has mentioned were there at that time at *Mere*, when he says we were: For my own part, I do positively affirm, and I speak it as in the Presence of Almighty God, that I have not seen Sir *Robert Cotton* at my House that I know of these many Years; and I believe Mr. *Offley* was never in my House since I was Master of it: And I do likewise protest, that to my Knowledge, I never saw the Face of this Man till now that he is produced as a Witness against me; I am sure I never spoke with him in all my Life, nor never sent for him to come to my House: And if your Lordship please to consider the Story that he tells, it will easily appear to be very improbable, for he neither tells you who the Messenger was that was sent for him, nor the Way that he came into the House; which any Body that has ever been at the House could not mistake. For when I asked him what Door it was he came in at, it was for this Reason, because he must needs have gone a great way about, if he had not come in at the usual Entry into the House, for I have but one Door into my House except that by the Stables, which is a great way off the House. And it being about that time of the Year, if it were eight or nine of the Clock in the Evening he must needs discern which way he came in. And, besides, my Lords, is it probable what he says, that he should see no Body stirring about the House except it were this Man without a Hand, that he says was sent for him? I assure your Lordships, I have not, nor had my Father ever that I know of, any Servant or Tenant that was maimed in that Manner that he speaks of. He saith, he was recommended to us by my Lord *Brandon:* But he cannot tell your Lordship any Thing that ever he had done to recommend him either to him or us. I did ask him what important Service he had ever done for me, that might give a credibility to my employing him in such a Business as this. My Lord, I cannot help it if People will tell false Stories of me, but I hope your Lordships will consider the Credibility of it; is it to be imagined that I would take a Man I knew nothing of, upon another Man's Word, into so great a Confidence as to employ him about a Business of this Nature? I am glad that he was called in here again for your Lordships to view him. I beseech your Lordships to look at him; Is this Fellow a likely Fellow to be used in such an Affair? Does he look as if he were fit to be employ'd for the raising of ten thousand Men? Does he seem to be a Man of such considerable Interest in his Country? A Fellow, that though it be not direct Evidence, yet by several Witnesses I have shewn to be a Man of no Reputation in his Country, nay, of a very ill one; and could we have none else to employ in a Matter of this Moment, but such a Fellow as his neighbours would not take his Word for any Thing? It is an improbable Story upon these accounts, if I should say no more. Your Lordships likewise see, that he is so well thought of, that he dare not be trusted out of *Newgate*, but is kept still a Prisoner, and as such gives Evidence here: And I know your Lordships will not forget that he swears to save himself, having been a Rebel by his own Confession, and he would fain exchange his Life for mine; till he has a Pardon, which as yet, as I am informed, he has not. The Objection will still lie upon him, that he swears to save himself, which will render his Testimony not credible, and the Law requires the Witnesses in Treason, to be credible ones: And yet, forsooth! this Man, that no Body that knows him will believe a Word he says, must be taken to be a Man of Integrity, Zeal, and Industry; the Man of Management and Dispatch; the Man of Interest and Authority in his Country; that nothing can be done, but he must have a Hand in it. My Lords, I think I need say no more of him; your Lordships Time is precious, too precious indeed to be spent upon such a Subject, and so I set him aside.

My Lords, there is a Thing that I perceive the King's Counsel lay a great weight upon; and that is my going down upon the 27th Day of *May*, and my frequent riding Post to and fro. I shall now satisfy your Lordships of the Reasons of my Journeys. The first Time, which was betwixt the Coronation and the Sitting of the Parliament was upon this Reason; I went down to take Possession upon a Lease of a considerable Value which was renewed to me by the Bishop. I did not think of going down at that Time so soon; but I had Word wrote me out of the Country that the Bishop was ill, and that obliged me in Point of Interest to make haste down. And this I shall prove by one that was Attorney for me, and another that was a Witness of my taking Possession: And for this, I first call Mr. *John Edmonds.* [*Who came in.*] Pray, Sir, will you tell his Grace and my Lords, what you know of my coming down into the Country in the beginning of *May*, and upon what Account, and what Time it was?

Mr. *Edmonds.* May it please your Lordship, upon the fifth of *May* my Lord *Delamere* did me the Honour to come to my House, and he staid there a little while, and desired me to be a Witness of his taking Possession upon Lease of my Lord Bishop of *Chester*'s, and we went into the House that was next to mine, which was and there did take Possession.

L. H. Steward. Where is your House?

Mr. *Edmonds.* At *Boden*, in *Cheshire.*

L. H. Steward. When was this, do you say?

Mr. *Edmonds.* The fifth of *May.*

L. *Delamere.* Pray Sir, will you satisfy my Lord, whether the Bishop was not ill at that time?

Mr. *Edmonds.* My Lord, I had been a little before at *Chester*, and hearing my Lord Bishop was not very well, I went to Mr. *Allen*, and told him I was desirous to see my Lord, and speak with him, if I might; he told me my Lord was so ill, that he would speak with no body.

L. H. Steward. Was it a Lease for Years, or a Lease for Lives?

Mr. *Edmonds.* It was a Lease for Lives.

L. H. Steward. Then that might require my Lord's taking Possession. Who do you call next, my Lord?

L. *Delamere.* Mr. *Henry.*

L. H. Steward.

L. H. Steward. What do you aſk this Man, my Lord?

L. *Delamere.* Pray will you give his Grace and my Lords an account whether you were not Attorney, and deliver'd me Poſſeſſion upon the Leaſe of my Lord Biſhop of *Cheſter?*

Mr. *Henry.* My Lord, I was Attorney by Appointment, and the 5th of *May* laſt I delivered Poſſeſſion to my Lord *Delamere* at one of the moſt remarkable places of the Land that belonged to that Leaſe of the Biſhop.

L. *Delamere.* My Lords, I hope this is a ſatisfactory Reaſon for my going down at that time, the Biſhop being ill, and the Leaſe being worth 6 or 7000*l.* The next time that I have to ſpeak to, is, That of my going the 27th of *May*, and for that I give this anſwer; I did go out of Town the 27th of *May*, the occaſion of my going was, I had taken up a Reſolution before to go ſee my Child that was not well, but I had not taken my Journey ſo ſoon, nor with ſuch Privacy, but that I had notice, there was a Warrant out to apprehend me; and knowing the Inconveniences of lying in Priſon, I was very willing to keep as long out of Cuſtody as I could, and therefore I went out of the way, and under a borrowed Name. When I came to my Houſe in *Cheſhire*, there were not above five of my own Servants that ſaw me all the while I was there, and I ſaw nobody but them; but while I was there, my Wife ſent me an Expreſs, that as to the Warrant ſhe hoped it was a Miſtake, and there was no ſuch thing; but my eldeſt Son was very ill, and if I intended to ſee him alive, I muſt make haſte up: this was the occaſion of my quick return, and I ſhall ſatisfy your Lordſhips by Proof, that I came thither in that manner to avoid the Warrant, and for no other Reaſon.

L. H. Steward. You ſay you went to ſee a ſick Child in the Country.

L. *Delamere.* May it pleaſe your Grace, my Mother that is here, wrote me word that my Child was not well.

L. H. Steward. Pray what made you come back ſo ſoon?

L. *Delamere.* Becauſe I had an Expreſs ſent me by my Wife that my other Son was like to die.

L. H. Steward. Call your Witneſs, my Lord.

L. *Delamere.* Mrs. *Kelſey*, [*who came in.*] Pray will you give an account what I ſaid, when I came down, was the occaſion of my coming ſo privately and changing my Name?

Mrs. *Kelſey.* My Lord heard, he ſaid, there was a Warrant for taking of him up, and he gave me that for a Reaſon; beſides his little Son in the Country was ill.

L. H. Steward. What, ſhe lived in the Country, did ſhe?

Mrs. *Kelſey.* My Lord, I was in the Houſe with him.

L. *Delamere.* If your Lordſhips pleaſe, my Mother may be examined?

L. H. Steward. Yes, with all my heart. [*She ſat by him at the Bar.*

L. H. Steward. Pray, Madam, will you lift up your Voice, that my Lords may hear what you ſay.

Lady *Delamere.* My Lords, this Child of his that was in the Country, was more than ordinarily precious to him, in regard it was born to him at that time; when he was an innocent honeſt Man, (as he is now), a Priſoner in the *Tower* for High-Treaſon, above two Years ago, and I think it increaſed his Affection to the Child, that God had given it to him when he was in that Affliction. My Lord, I knowing the Affection that the Father and Mother both had to the Child, my Care in their abſence I thought ought to be more exerciſed about him: The Child ſucked, but I ſaw the Child decline, and therefore I was of Opinion that he ſhould be wean'd, and I ſent up word that if they did not take care quickly, and look a little after him, I was afraid he would go into a Conſumption. Upon this, my Son came down, I ſaw him not indeed, becauſe he was very private all the while he was in the Country; but while he was there, it pleaſed God to viſit his eldeſt Son with a dangerous Diſtemper, upon which my Daughter ſent for him Poſt, if he intended to ſee his Son alive. And thereupon I think he made what haſte back again he could.

L. H. Steward. Were you in the ſame Houſe with him, Madam?

Lady *Delamere.* My Lord, I ſay, I did not ſee him all the time he was there, I only tell you what I heard.

L. H. Steward. How long was he in the Country?

Lady *Delamere.* I cannot exactly tell that, I think he was not above two days.

L. H. Steward. He muſt be but one day by Computation of Time?

L. *Delamere.* Pray, my Lord, I will ſatisfy you in that point preſently: Mrs. *Kelſey* will give an account what time it was that I came down, and when I went away.

Mrs. *Kelſey.* My Lord came down on the *Sabbath-day* night, and ſtaid there Monday, and went away the Tueſday Morning.

L. H. Stew. Look you, my Lord, the 27th of *May* was upon a Wedneſday, that night you went out of Town, and went to *Hoddeſdon*. Thurſday, which was the 28th, you came to *Hitchin* at Noon. Friday was the 29th. Saturday the 30th. Sunday was the 31ſt, then you came to your Houſe; Monday the firſt of *June*, Tueſday the 2d, then you came away, and upon Wedneſday the 3d you were in Town, ſo ſays your Brother.

L. *Delamere.* It was ſo, my Lord.

L. H. Steward. Which way did you come back?

L. *Delamere.* I came Poſt through *Coventry*, my Lord, and that was the time that *Hope* ſpeaks of, that I told him I had come another way into *Cheſhire*, when I came down.

L. H. Steward. My Lord, you ſay you went down to ſecrete yourſelf from a Warrant that you apprehended was out againſt you, and that made you go a by-way; How come you then to come ſo publick back the ordinary Poſt-Road?

L. *Delamere.* If your Grace pleaſe, I have told you I had an Expreſs came from my Wife, that told me it was a Miſtake as to the Warrant, but that my Child was very ill, and I muſt make haſte up.

L. H. Steward. Have you any more Witneſſes, my Lord?

L. *Delamere.* Yes, my Lord, I deſire Mr. *Kelſey* may be called.

[*He came in.*

L. H. Steward. Well, what ſay you?

Mr. *Kelſey.* My Lord came down upon the Sunday night at eleven of the clock, and ſtaid at home all Monday; and on Tueſday Morning at three of the clock in the Morning, he took horſe for *London*; and I have Letters by me that are dated the 4th of *June*, which was Thurſday, that told me my Lord was come to Town the night before.

L. H. Steward. Whoſe are thoſe two Letters?

Mr. *Kelſey.* They were from my Lady and Mrs. *Vere Booth*, and both came by the ſame Poſt.

L. *Delamere.* I ſhall call one Witneſs more, my Lord, to prove that my Child was ſick here in Town, and the time; and that is Sir *Thomas Millington*, who was his Phyſician.

[*Sir* Thomas *was called, and came in.*

L. *Delamere.* Pray, Sir *Thomas*, can you recollect yourſelf what time my Son was ill laſt Year?

Sir *Thomas Millington.* My Lord, I was ſent for to my Lord *Delamere*'s Son upon the 28th of *May*, and I found him then very ill, and he continued ſo for two days, inſomuch as I told my Lady *Delamere*, his Mother, that I thought the Child would not eſcape. I told it likewiſe to Sir *James Langham*, who is my Neighbour in *Lincolns-Inn-Fields*; what they did upon it, whether they ſent for my Lord *Delamere* to Town or no, I cannot tell; but I know punctually this was the time, by reaſon the Bills I wrote are dated on that day, otherwiſe I could not have remembered the time; but the Bills being ſent me from the Apothecary, I find that date to them.

L. H. Steward. Pray, Mr. *Atterney*, will you call *Edlin* again, or *Vaux*, either of them?

Mr. Att. Gen. Here is *Edlin*, my Lord.

L. H. Steward. Where did you part with my Lord *Delamere*, and when?

Edlin. Upon Thurſday the 28th of *May* at *Hitchin*.

L. H. Steward. What time of the day was it when you parted?

Edlin. It was about ten of the Clock

L. H. Steward. He went forward Poſt into *Cheſhire*, did he not?

Edlin. He did not go Poſt I ſuppoſe, for he went upon his own Horſe;

L. H. Steward. Did he go upon his own Horſe?

Edlin. It was the ſame Horſe he went to *Hitchin* upon.

L. H. Steward. Have you any more Witneſſes, my Lord?

L. *Delamere.* No, my Lord, I hope I have given their Lordſhips Satisfaction in all Points, and need to give no further Evidence.

L. H Steward. Have you any thing more then to ſay, my Lord?

L. *Delamere.* My Lords, I acknowledge I did go at that time privately a By-Road, and by the name of *Brown*; and as for *Jones*, who it is ſaid came from *Holland* that day, I appeal to him himſelf, and I call God to Witneſs I never ſaw the Man before now in my Life; nay, till after I was made a Priſoner upon this account, I never ſo much as heard of his Name: and your Lordſhips ſee by the Proofs, that all that has been ſaid againſt me, except what this Fellow *Saxon* has teſtified, is but hearſay, nay indeed but hearſay upon hearſay, at the third and fourth hand.

My Lords, if People will make uſe of my Name, and ſay this, and that, and the other, and among themſelves talk of Meſſages ſent to me; can I or any Man in the world help it? At this rate who can be innocent, if a Man muſt be guilty becauſe others intend to draw him into Treaſon? For there is no more in the utmoſt that this Proof can amount unto. It is at the pleaſure of any two Men in the World to take away the Lives, Honours, and Eſtates of any of your Lorpſhips, if it be a proof ſufficient to make you guilty of Treaſon, for them to ſwear you were intended to be drawn into Treaſon.

And, my Lords, as to the Truth of the thing itſelf, that there was any Meſſage or Correſpondence between the late Duke of *Monmouth* and me, I call God to witneſs I have neither wrote nor ſent Letter or Meſſage to him, or received Letter or Meſſage from him, this three Years: I cannot tell what expectation he might have concerning me or any body elſe. It is very probable he might have Expectation of Aſſiſtance from ſome body; and that without ſuch Expectation he would not have made the attempt he did: But, my Lords, all that is nothing to me; I had no Correſpondence either by Letters or Meſſages with him; ſo that all that has been ſaid upon that point of his Expectations, and what he declared, I muſt give the ſame anſwer to, that I gave to the Evidence about *Jones*'s Meſſage, That admitting it to be true he did declare ſo, yet, no proof being made of an actual Correſpondence, it is no more but only an Intention in him to draw Men into Commiſſion of Treaſon; and if that be allow'd for Proof of guilt, I muſt repeat it again, there's no Man can be innocent.

Upon the whole matter, my Lords, I muſt leave my Caſe to the Conſideration of your Lordſhips: I am not Maſter of ſo much Law or Rhetorick as the King's Counſel, to plead in my own Cauſe, and I have had but little time to recollect and apply my Defence to my Accuſation; but I hope what Evidence I have offered, has given your Lordſhips full Satisfaction that I am not guilty of what I ſtand charged with.

And after all that has been ſaid, my Lotds, I would beg your Lordſhips to conſider this, that if in caſe I were guilty of theſe things, and were conſcious to myſelf of having been engaged in an Affair of this nature, can any Man imagine I could have been ſo hardy as to have ſurrendered myſelf upon the King's Proclamation: nay, if I with thoſe other two Gentlemen, that he has named, had had any Tranſactions of this kind, with ſuch a Fellow as he has been made appear to be by his Neighbours, (that muſt needs be thought a Man of no Faith, becauſe of no Reputation, tho' he gives himſelf a great Character as a Man of great Intereſt, of wonderful Diſpatch and Dexterity in the Management of ſuch matters) ſo as at firſt ſight to put this large Confidence in him; can it be imagined I ſo little regarded my own Life, and all that is dear to me, as to have ſurrendered myſelf, were it not that I was certain of my own Innocence and Integrity? Life itſelf, my Lords, is to be preferred above all things but Honour and Innocence; and *Job* ſaith, *Skin for Skin, and all that a Man hath will he give for his Life:* and why ſhould I be preſumed to have ſo little value for it, as voluntarily to deliver up myſelf to Deſtruction, had I been conſcious that there was any one, who could really teſtify any thing that could hurt me?

Beſides, my Lords, this very Fellow *Saxon* is but one Evidence, and how far you will believe him, I muſt ſubmit it to you: But ſurely one Witneſs will never be ſufficient to convict a Man of Treaſon, tho' thouſands of Hear-ſays, and ſuch trivial Circumſtances be tacked to it; eſpecially when

when they are tacked to an Evidence, which, I dare say, your Lordships are far from thinking it deserves any Credit.

My Lords, I desire your leave to ask this one Question; Would not any of your Lordships think himself in a bad Condition as to his Fortune, if he could produce no better Evidence to prove his Title to his Estate, than what has been produced against me this day to take away my Life? And if such Evidence as this would not be sufficient to support a Title to an Estate, certainly it can never be thought sufficient to deprive a Man of Life, Honour, Estate, and all.

My Lords, I am not the only Man that has been, or may be falsely accused: God knows how soon the Misfortune of a false Accusation may fall to the Lot of any of your Lordships; I pray God it never may; but since that may happen, I question not but your Lordships will be very cautious how, by an easy Credulity, you give Encouragement to such a Wickedness: For Knights of the Post will not end in my Trial, if they prosper in their Villainy; and perhaps it may come home to some of your Lordships, if such Practices be encouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this day; nay, I may say, your Lordships are now judging the Cause of every Man in *England*, that shall happen to come under like Circumstances with myself at any time hereafter: For accordingly as you judge of me now, just so will inferior Courts be directed to give their Judgments in like Cases in time to come.

Your Lordships very well know, Blood once spilt can never be gathered up again; and therefore unless the Case be very clear against me, you, I am sure, will not hazard the shedding of my Blood upon a doubtful Evidence. God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy; and both God and the Law require from your Lordships Tenderness in all Cases of Life and Death: and if it should be indifferent, or but doubtful to your Lordships, (which upon the Proofs that I have made, I cannot believe it can be) whether I am innocent or guilty, both God and the Law require you to acquit me.

My Lords, I leave myself, my Cause, and all the Consequences of it, with your Lordships; and I pray the All-wise, the Almighty God direct you in your Determination.

L. H. Steward. Have you any thing more to say, my Lord?

L. *Delamere.* No, my Lord.

L. H. Steward. Then Mr. *Attorney*, and you that are of the King's Counsel, what have you to say more?

Mr. Finch. *Mr. Sol. Gen* *. May it please your Grace, and you my noble Lords the Peers of my Lord *Delamere*, the Prisoner at the Bar: The Evidence that hath been given against this noble Lord is of two Natures, part of it is positive Proof, and part is circumstantial; and though it be allowed that there must be two Witnesses in Cases of Treason, and that Circumstances, tho' never so strong, and sufficient to fortify one positive Proof, do not, nor can make a second positive Witness; yet I crave leave to say, that there may be Circumstances so strong and cogent, so violent and necessary to furnish a positive Testimony, that will in Law amount to make a second Witness, such as the Law requires.

My Lords, I do not say every Circumstance will do it, but such as is necessarily and violently tending to the same thing that was positively proved. As for Example:

If a Man comes and swears against another that he said he will go immediately and kill the King; and another Man that did not hear those Words, comes and testifies his lying in wait; that Circumstance of lying in wait, that was an Action indifferent in itself; yet, when applied to the positive Proof, will be a second Witness to satisfy the Law, which requires two Witnesses in Treason.

I must confess, my Lords, when we will make Circumstances to be a second Evidence, they must be such as are necessarily tending to fortify the positive Evidence that was given by the single Witness: Now whether that be so in this Case, I must, as becomes me, leave to your Lordships Consideration. It is not my business to carry the Evidence further than it will go, and I am sure it is not my duty to let it lose any of its weight; and if it have not that force it ought to have, I should be to blame, as not having done what belongs to me to do. I will therefore state the Fact to your Lordships plainly as it stands upon the Proof, and submit the whole to your Lordships Determination.

My Lords, our positive Proof, with which I crave leave to begin, is but by one single Witness, and that is *Saxon*; and his Evidence is this, that being in *Cheshire*, where he lives, he was sent for about the third or fourth of *June* last to my Lord *Delamere*'s House at *Mere*; that there he was brought into a lower Room, where he saw my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley*: That my Lord *Delamere* told him he had received a Message lately by one *Jones*, that was sent from the Duke of *Monmouth*, whereby he understood that the Duke would speedily be in *England*, and that they must provide Men and Arms to assist him when he came; that he was a Man recommended to them by my Lord *Brandon*, and that upon his Recommendation they had thought fit to intrust him in the matter, and withal told him, they were to raise 40000 *l.* and 10000 Men in that County: He tells you likewise, these Gentlemen gave him eleven Guineas and 5 *l.* in Silver to go of an Errand for them to the Duke of *Monmouth*, which he undertook to do, and hired a Horse to that purpose.

This, my Lords, is the positive Proof, and this, I must acknowledge, standing single and by itself, will make but one Witness; but whether the Circumstances that have been offered to your Lordships by the other Witnesses, be such violent Circumstances as necessarily tend to fortify and support that positive Evidence, and so will supply the defect of a second Witness, is the next Question that I come to consider, and I shall take them into Consideration in the same order that the Evidence was delivered.

The first Step, my Lords, that was made as to any Evidence that toucheth this noble Lord at the Bar, was what was testified by my Lord *Grey*; for as to the other part of the Evidence that related to the Conspiracy in general, I need not trouble your Lordships with the Repetition of it, (that there was such an one, is notoriously known) but I say that part of the Evidence in his History of the Conspiracy, which my Lord *Grey* brought home to my Lord *Delamere*, was this:

That upon the first Meetings and Consultations, it was resolved upon, that the Duke of *Monmouth* should go into *Cheshire* to make an Interest there; and among the Persons that he was directed to go to, and to apply for advice there, as Persons fit to be trusted, this noble Lord was one.

That upon the Duke of *Monmouth*'s Return out of *Cheshire*, he did give his Confederates here in Town an Account, how well he had been received, and that he liked all things very well there. This, my Lords, is the first Circumstance that has been offered to you, to shew that he had a Confidence in my Lord *Delamere*, as a principal Support of his Designs at that very time.

The next thing that we offer, is this Message of *Jones*'s, and, for that, our Evidence has fully and plainly made it out to your Lordships, that *Jones* did go over into *Holland*, and his Business there was an Errand from *Disney* and Major *Wildman*, and the Confederates here. The effect of his Message was, that it was their Opinion, that the Duke of *Monmouth* should go for *Scotland* and join with my Lord *Argyle*; but upon the Receipt of the Message, he being angry, said, It was too late for such a Message now, and he would come into *England*, for he was ready to sail: and thereupon he did send this same *Jones* back again into *England* upon a Message, to inform the Lords and others of his Party, among whom my Lord *Delamere* was one, that he would have them betake themselves into their several Countries, and not stay to be taken or clapped up here, for that, he did understand, was the Design: and this Message was delivered in Writing; (now that the Duke of *Monmouth* did write a Note, and give it to *Jones*, is verified by my Lord *Grey*'s Testimony too) and this sealed up, and he was not to open it till he came to Sea; and when he did open it, he found it contained a Signification of the Place were he was to land, and where he was to rendezvouz, which was *Taunton*, and who were the Persons that were to have Notice of it, among whose Names we find my Lord *Delamere*'s to be one: but he likewise tells you, he was not the Man that was to carry the Message to these Persons, but he was to deliver it to *Matthews* or *Wildman*, and they were to transmit it to the other Persons.

He tells you likewise that when he came to Town, which was the 27th of *May*, he met neither with *Matthews* nor Major *Wildman*; whereupon being at a loss what he should do with his Message, for want of those other Persons, he acquainted *Disney*, that was executed, with his Errand, who promised to take care that it should be delivered.

This, my Lords, is all *Jones*'s Evidence; for *Jones* does not say that he himself acquainted, or that *Disney* did acquaint my Lord *Delamere* with the Message.

But here, my Lords, is the main Circumstance that renders the matter suspicious; that very Night that *Jones* came to Town, and *Disney* being acquainted with the Message, had undertaken to get it delivered, does my Lord *Delamere* at Ten of the clock at Night go out of Town, in the Company of two Friends, under the Disguise of the Name of *Brown*, and a Bye-Road, and so goes down to his own House in *Cheshire*; this, I say, is the Circumstance that renders the thing suspicious.

Now, my Lords, if we do prove by such sufficient Evidence, as may make the matter manifest to you, that my Lord *Delamere* had notice of *Jones*'s Message, (for upon that Point the Case will turn, whether he had Notice whether such a Message was brought, that such things were in agitation, such Preparations made, and that they were all to go into the Country) then I say, his going down is a violent Presumption he had an Intent to comply with the Message, and join in the Design.

But now, my Lords, comes the Question, the main Question, How is it made out that he had notice *Jones* brought such a Message?

Jones indeed, my Lords, does not say that he himself imparted it to him, or that *Disney* told him he had communicated it; but I think there is another Witness, and that is *Storey*, who saith, that *Brand*, one that knew of the Message, did acquaint him, that my Lord had received it at the Coffee-House, and that Night went out of Town.

It is true, my Lords, this is but a Hear-say, but that which followed being Matter of Fact, my Lord's going out of Town that Night, so late in the Night, and in such an unusual suspicious manner, gives more Credit to the Relation, than a bare Hear-say could have of itself.

For unless there be some good account given of my Lord's thus going out of Town, it is a kind of necessary Presumption, that he was acquainted with the Message, part of which was, that he should go out of Town; and if so, it can have no other Construction, with Submission, than to be in pursuance of, and complying with, the Directions that that Message brought him from the Duke of *Monmouth*.

My Lords, to carry this a little further, there were two Witnesses produced that went out of Town with him: they seem indeed unwillingly to give their Evidence, but I shall faithfully repeat what Testimony they gave: Their Names were *Vaux* and *Edlin*.

Vaux, he saith, he met my Lord *Delamere* at the Rummer-Tavern in *Queen-street* the 26th day of *May*, which was the Day before *Jones* came to Town, and that then he appointed to go out of Town the next day, which was the 27th; and accordingly he did go.

Edlin, he saith, he met *Vaux* at the Custom-house upon the 27th of *May* in the Moring, and being desired by him to go with him out of Town, he did so, and there was with him a Gentleman whose Name was *Brown*, and who now appears to be my Lord *Delamere*; they went in Company with him as far as *Hitchin*, where they left him upon Thursday the 28th at Noon.

This Evidence is produced to shew, that my Lord did go out of Town at that time, and in that manner as has been alledged, and that these Persons went with him to conduct him to a private way, that he should not go the common Road. Your Lordships will consider what Answer hath been given to this, and what Account my Lord *Delamere* has given of himself.

Another thing, my Lords, that renders this matter suspicious, is the Name which my Lord was pleased to assume to disguise himself by, it being a Name by which the Party use to call my Lord in their Discourses of him; and to prove that, we have likewise produced two Witnesses, *Babington* and *Paunceford*.

Babington.

Babington, he says, That in their Consultations there were Discourses of my Lord *Delamere*, under the Name of *Brown*; and once at a Tavern, when my Lord *Delamere* was named by one in the Company, he was presently catched up for it, and replied to, You mean Mr. *Brown*; and so it seems that was the Canting Name under which they discoursed of my Lord *Delamere*.

The other Witness *Paunceford*, he tells you, That being at *Disney*'s House, and concerned with him in printing the late Duke of *Monmouth*'s Declarations (for the printing of which *Disney* was executed) one *Locke* came for some of those Declarations for Mr. *Brown*, and they were to be sent into *Cheshire*: So that though your Lordships observe the Witness saith, some body else was called by the Name of *Brown*, yet you have had no Account given you, that there was any other *Brown* in *Cheshire*.

It is true, indeed, my Lords, that these are only things that *Disney* said; and *Locke* said; but I must take leave to say, it is very suspicious, that if my Lord went out of Town into *Cheshire* under the Name of *Brown*, and some Persons shall, on the behalf of *Brown*, come for Declarations to be sent into *Cheshire*, and my Lord commonly in that Party go by the Name of *Brown*, that those Declarations were for my Lord, and that will be a great Evidence of his Correspondence with *Monmouth*.

But I confess, my Lords, all this while our Proof is circumstantial, and indeed there is no positive Proof but that of *Saxon*, and in him our Proof must center; for without him, I must acknowledge, nothing that has been offered will be Proof against my Lord upon this Indictment: for bare Circumstances, and bare Suspicions will be no Proof against any Man, but such as are violent and necessary, and those joined to a positive Proof, such as the Law requires.

Now then, my Lords, I come to the Consideration, of what Weight and Stress is to be laid upon this positive Evidence of *Saxon*: And here I must confess there are Objections made to this Testimony, to which I cannot readily give an Answer; for *Saxon* has sworn, That he was there at such a Time, and that he was sent for, and entertained as a Person recommended by my Lord *Brandon*, as fit to be entrusted with the Secret, and capable of being employed to stir up the Country, in order to the Prosecution of a Design they had on foot to raise a Rebellion; and he does charge Sir *Robert Cotton* and Mr. *Crew Offley* to have been there at the same Time.

The Evidence, my Lords, that has been produced to falsify this positive Witness, in the Point of Sir *Robert Cotton*'s being there, has been by five or six Witnesses, who testify Sir *Robert Cotton*'s being in Town, and not elsewhere, from the tenth of *April* to the latter end of *July*; and I do not see what we have to say in answer to their Testimony. I must agree the Proof to be full in that Point; and if the Evidence they give be true, I cannot say that *Saxon*'s Evidence can be true in that Point.

Likewise as to Mr. *Offley*, Sir *Willoughby Aston* and others have testified that he was not at my Lord *Delamere*'s at the Time *Saxon* speaks of: For he gives you an Account where he was every Day, from the twenty-sixth of *May* to the fourth of *June*; and his own Servants bring him to his own House upon the fourth of *June* in the Evening, which is quite another Way than from Sir *Willoughby Aston*'s to my Lord *Delamere*'s: If this likewise be true, what *Saxon* says cannot be true, I must agree to it.

There is another Thing that is offered on my Lord *Delamere*'s Part, that he was himself in Town at that Time that *Saxon* says he was at *Mere*: But here indeed the Matter seems to be a little more strange and dubious, that my Lord should make so much Haste down, as to go out late at Night, and so cautiously, as to go by a wrong Name, and yet to ride to Town again the Post-way, to be here just the third of *June*, when *Saxon* swears he was in *Cheshire*.

I must confess there is the Proof of his two Brothers, that say, they saw him in Town the third and fourth of *June*: There is likewise some Account given of his going out out of Town, that it was upon a Message received from his Mother, that his Child in the Country was sick; and indeed he did go a Bye-way, and change his Name, for fear of a Warrant in a Messenger's Hands that was out against him to apprehend him.

Now, my Lords, I do not hear any thing that has been offered, that there was any such Warrant, or any Discourse to ground that Apprehension upon: My Lord had the first and only Apprehension of a Warrant; but upon what Reasons he himself best knows: This Apprehension made him go out of Town so privately, he says, because he would not be prevented of seeing his sick Child.

But how comes it to pass, that my Lord makes such a speedy Return? By the Proofs, it appears he did not get there till *Sunday* Night, and upon the *Tuesday* Morning comes Post for *London*.

The Account that he gives of that, is this, His Haste was to see another Child that was here sick in Town: For he had received an Express from his Wife upon the *Monday*, to acquaint him, that the Coast was clear, and there was no Warrant out against him; but if he intended to see his Child alive, he must make Haste up to Town; and accordingly, upon the *Tuesday* Morning early, he sets out, and upon the *Wednesday* in the Evening is here in Town again.

But, with Submission, my Lords, there is no good Account given by this noble Lord, what Reason there was for so many Post-Journies backward and forward, as, has been testified, he made within a very little Compass of Time; for besides this of his Return Post upon the second of *June*, there is only an Answer given to one of the rest, which is that of the fifth of *May*, when he saith he went to take Possession of the Land that he held by a Lease then renewed to him by the Bishop, which being of some Value and Consideration to his Lordship, and the Bishop being sick, he thought it necessary to go down Post himself, and would not be content to receive Livery by Attornment. This is the only Answer that is given to all those Times of his riding Post that have been given in Evidence.

These are Matters of Suspicion that are offered to your Lordships; but I confess, Matters of Suspicion only, unless clear, positive, probable Proof be joined with them, will not weigh with your Lordships to convict a Man of High-Treason, where two Witnesses are required. But whether these Matters of Suspicion be such violent and necessary Presumptions as tend to fortify the positive Testimony, I must leave that to the Consideration of your Lordships.

L. H. Steward. You do not call any more Witnesses then, I perceive?

Mr. Sol. Gen. No, my Lord.

L. H. Steward. My Lords, it has not been usual of late, for those who have sat in the Place where I now am, upon those Occasions to give your Lordships any Trouble in repeating or observing upon the Evidence. In this Case the Evidence that hath been given has been very long, and it would be too great a Presumption in me, should I have any manner of Doubt in the least, that either your Lordships have not well observed it, or the learned Counsel for the King have been defective in collecting or remarking upon it, so as to need my Assistance.

But, my Lords, I confess there is something I cannot omit taking Notice of, not for your Lordships Sakes, but for the Sake of this numerous and great Auditory, that one Mistake in Point of Law might not go unrectified, which seemed to be urged with some Earnestness by the noble Lord at the Bar, *That there is a Necessity in Point of Law, that there should be two positive Witnesses to convict a Man of Treason.*

He seemed to lay a great Stress upon that; but certainly his Lordship is under a great Mistake as to the Law, in that Point; for without all doubt, what was urged in answer to this Objection by that learned Gentleman that concluded for the King, is true, There may be such other substantial Circumstances joined to one positive Testimony, that, by the Opinion of all the Judges of *England*, several Times has been adjudged and held to be a sufficient Proof.

As for the Purpose, in this Case, suppose your Lordships, upon the Evidence that has been given here this Day, should believe *Saxon* swears true, who is a positive Witness, and shall then likewise believe that there was that Circumstance of *Jones*'s coming over from *Holland* with such a Message upon the twenty-seventh of *May* (which is directly sworn in Evidence, you are the Judges of that Evidence), and what the other Witnesses have sworn likewise, and is not denied by my Lord, the Prisoner at the Bar, that he went out of Town that Night, changed his Name, and went in an indirect Bye-Road; certainly these Circumstances, if your Lordships be satisfied he went for that Purpose, do necessarily knit the positive Testimony of *Saxon*, and amount to a second Witness.

That is, if *Saxon*'s positive Testimony be true; then suppose all these Circumstances that gave the Jealousy, do make up a strong Presumption to join with the positive Evidence of *Saxon*; then you have two Witnesses, as the Law requires, especially, if the Answer given by the Prisoner to those Circumstances be not sufficient (as the slender Account he gives of his so frequent Journies in so short a Compass of Time), but that there still remains some Suspicion. I could have wished, indeed, that Matter might have been made somewhat more clear, that no Shadow of Suspicion might remain.

Your Lordships are Judges: And if you do not believe the Testimony of *Saxon*, whose Testimony hath been so positively contradicted by divers Witnesses of Quality, the Prisoner ought to be acquitted of this Indictment. If your Lordships please, you may go together, and consider of it.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew in their Order, according to their Precedency, with the Serjeant at Arms before them.

L. H. Steward. Lieutenant of the *Tower*, take your Prisoner from the Bar.

The Prisoner was taken into the little Room appointed for him at the Entrance into the Court.

The Peers staid out about half an Hour, and then returned in the same Order that they went out in, and seated themselves in their Places as before.

Cl. Crown. Serjeant at Arms, take the Appearance of the Peers. *Lawrence*, Earl of *Rochester*, Lord High Treasurer of *England*.

He stood up uncovered, and answered,

Lord Treasurer. Here.

And so did all the rest.

L. H. Steward. My Lords, are you agreed of your Verdict?

Lords. Yes.

The Lord High Steward took their Verdict Seriatim, *beginning with the puisne Peer, in this Manner.*

L. H. Steward. How say you, my Lord *Churchill*, is *Henry*, Baron of *Delamere*, guilty of the High-Treason whereof he stands indicted, and hath been Arraigned, or Not Guilty?

The Lord Churchill *stood up uncovered, and laying his Hand on his Breast, answered,*

Lord Churchill. Not Guilty, upon my Honour.

And so did all the rest of the Peers.

L. H. Steward. Lieutenant of the *Tower*, bring your Prisoner to the Bar.

The Prisoner was brought again to the Bar.

L. H. Steward. My Lord *Delamere*, I am to acquaint you, that my Noble Lords, your Peers, having considered of the Evidence that hath been given, both against you and for you, after they were withdrawn, have returned, and agreed on their Verdict, and by that Verdict have unanimously declared, that you are Not Guilty of the High-Treason, whereof you have been Indicted, and this Day Arraigned, and therefore I must discharge you of it.

L. *Delamere.* May it please your Grace, I shall pray to Almighty God, that he will please to give me a Heart to be thankful to Him for his Mercy, and my Lords for their Justice; and I pray God deliver their Lordships, and all honest Men, from wicked and malicious, lying and false Testimony; I pray God bless his Majesty, and long may he reign.

L. H. Steward. And I pray God continue to him his loyal Peers, and all other his loyal Subjects.

Cl. of Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O-yes! My Lord High-Steward of *England*, his Grace, straightly willeth and commanded all manner of Persons here present to depart hence in God's Peace, and the King's; for his Grace, my Lord High-Steward of *England*, now dissolves his Commission.

God save the King.

At which Words his Grace taking the White-Staff from the Usher of the Black-Rod, held it over his own Head, and broke it in two; thereby dissolving the Court.

CXL. *Proceedings againſt Dr.* Henry Compton, *Lord Biſhop of* * London, *in the Council-Chamber at* White-Hall, *by the Lords Commiſſioners appointed by his Majeſty to inſpect Eccleſiaſtical Affairs, for not ſuſpending* † *Dr.* John Sharp, *Rector of St.* Giles's, Auguſt 1686. 2 Jac. II.

The King's Eccleſiaſtical Commiſſion.

'JAMES the Second, by the Grace of God, King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, &c. To the moſt Reverend Father in God, our Right Truſty and Well-beloved Counſellor, *William* Lord Archbiſhop of *Canterbury*, Primate of all *England*, and Metropolitan. And to Our Right Truſty and Right Well-beloved Counſellor, *George* Lord *Jefferеys*, Lord Chancellor of *England*. And to Our Right Truſty, and Right Well-beloved Couſin, and Counſellor, *Lawrence* Earl of *Rocheſter*, Lord High-Treaſurer of *England*. And to Our Right Truſty, and Right Well-beloved Couſin and Counſellor, *Robert* Earl of *Sunderland*, Preſident of Our Council, and our Principal Secretary of State. And to the Right Reverend Father in God, Our Right Truſty and Well-beloved Counſellor, *Nathaniel* Lord Biſhop of *Durham*. And to the Right Reverend Father in God, Our Right Truſty and Well-beloved *Thomas* Lord Biſhop of *Rocheſter*. And to Our Right Truſty and Well-beloved Counſellor, Sir *Edward Herbert*, Knt. Lord Chief Juſtice of the Pleas, before Us to be holden, Aſſigned, *Greeting*. We, for divers good, weighty and neceſſary Cauſes and Conſiderations, Us hereunto eſpecially moving, of Our meer Motion, and certain Knowledge, by Force and Virtue of Our Supreme Authority and Prerogative Royal, do aſſign, name and authorize by theſe Our Letters Patent under the Great Seal of *England*, *you the ſaid* Lord Archbiſhop of *Canterbury*, Lord Chancellor of *England*, Lord High Treaſurer of *England*, Lord Preſident of Our Council, Lord Biſhop of *Dureſme*, Lord Biſhop of *Rocheſter*, and Our Chief Juſtice aforeſaid, or any three or more of you, whereof you the ſaid Lord Chancellor to be one, from Time to Time, and at all Times during Our Pleaſure, to Exerciſe, Uſe, Occupy and Execute under Us, all manner of Juriſdictions, Privileges, and Preheminencies in any wiſe touching or concerning any Spiritual or Eccleſiaſtical Juriſdictions, within this Our Realm of *England*, and Dominion of *Wales*, and to viſit, reform, redreſs, order, correct, and amend all ſuch Abuſes, Offences, Contempts, and Enormities whatſoever, which by the Spiritual or Eccleſiaſtical Laws of this Our Realm can or may lawfully be reformed, redreſſed, corrected, reſtrained, or amended, to the Pleaſure of Almighty God, and Increaſe of Virtue, and the Conſervation of the Peace and Unity of this Realm. And We do hereby give and grant unto you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, thus by Us named, aſſigned, authorized and appointed, by Force of our ſupreme Authority and Prerogative Royal, full Power and Authority, from Time to Time, and at all Times, during Our Pleaſure, under Us to exerciſe, uſe, and execute all the Premiſes, according to the Tenor and Effect of theſe Our Letters Patents, any Matter or Cauſe to the contrary, in any wiſe notwithſtanding. And We do by theſe Preſents give full Power and Authority unto you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, by all lawful Ways or Means, from Time to Time hereafter, during Our Pleaſure, to enquire of all Offences, Contempts, Tranſgreſſions and Miſdemeanors done and committed, and hereafter to be done and committed, contrary to the Eccleſiaſtical Laws of this Our Realm, in any County, City, Borough, or other Place or Places, exempt or not exempted, within this Our Realm of *England*, and Dominion of *Wales*, and of all and every Offender or Offenders therein, and them, and every of them, to order, correct, reform and puniſh by Cenſure of the Church. And alſo We do give and grant full Power and Authority unto you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, in like Manner as aforeſaid, from Time to Time, and at all Times during Our Pleaſure, to enquire of, ſearch out, and call before you, all and every Eccleſiaſtical Perſon or Perſons, of what Degree or Dignity ſoever, as ſhall offend in any of the Particulars before-mentioned, and them, and every of them, to correct and puniſh for ſuch their Misbehaviours and Miſdemeanors, by ſuſpending or depriving them from all Promotions Eccleſiaſtical, and from all Functions in the Church, and to inflict ſuch other Puniſhments or Cenſures upon them, according to the Eccleſiaſtical Laws of this Realm. And further, We do give full Power and Authority unto you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, by Virtue hereof, and in like Manner and Form as is aforeſaid, to enquire, hear, determine and puniſh all Inceſt, Adulteries, Fornications, Outrages, Misbehaviours, and Diſorders in Marriage, and all other Grievances, great Crimes or Offences, which are puniſhable or reformable by the Eccleſiaſtical Laws of this Our Realm, committed or done, or hereafter to be committed or done, in any Place exempt or not exempt, within this our Realm, according to the Tenor of the Eccleſiaſtical Laws in that Behalf: Granting you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, full Power and Authority to order and award ſuch Puniſhment to every ſuch Offender, by Cenſures of the Church, or other Lawful Ways, as is aforeſaid. And further, we do give full power and Authority unto you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, all and every Offender and Offenders in any of the Premiſes, and alſo all ſuch as by you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, ſhall ſeem to be ſuſpected Perſons in any of the Premiſes, and them to examine, touching every or any of the Premiſes which you ſhall object againſt them; and to proceed againſt them, and every of them, as the Nature and Quality of the Offence, or Suſpicion in that Behalf ſhall require: And alſo to call all ſuch Witneſſes, or any other Perſon or Perſons that can inform you concerning any of the Premiſes, as you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, and them, and every of them, to examine upon their corporal Oaths, for the better Trial and Opening of the Truth of the Premiſes, or any Part thereof. And if you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, ſhall find any Perſon or Perſons whatſoever obſtinate or diſobedient in their Appearance before you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, at your Calling and Commandment, or elſe not in obeying, or in not accompliſhing your Orders, Degrees, and Commandments, or any Thing touching the Premiſes, or any Part thereof, or any other Branch or Clauſe contained in this Commiſſion, that then you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, ſhall have full Power and Authority to puniſh the ſame Perſon and Perſons ſo offending, by Excommunication, Suſpenſion, Deprivation, or other Cenſures Eccleſiaſtical; and when any Perſons ſhall be convented or proſecuted before you, as aforeſaid, for any of the Cauſes above expreſſed, at the Inſtance and ſuit of any Perſon proſecuting the Offence in that Behalf, that then you, or any three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, ſhall have full Power and Authority to award ſuch Coſts and Expences of the Suit, as well to and againſt the Party as ſhall prefer or proſecute the ſaid Offence, as to and againſt any Party or Parties that ſhall be convented, according as their Cauſes ſhall require, and to you in Juſtice ſhall be thought reaſonable. And further Our Will and Pleaſure is, That you aſſume our Well-beloved Subject *William Bridgman*, Eſquire, one of the Clerks of our Council, or his ſufficient Deputy or Deputies in that Behalf, to be your Regiſter, whom We do by theſe Preſents depute to that Effect, for the Regiſtring of all your Acts, Decrees, and Proceedings, by Virtue of this Our Commiſſion; and that in like Manner you, or any three or more of you, whereof you the ſaid Lord Chancellor to be one, by your Diſcretions ſhall appoint one or more Meſſenger or Meſſengers, or other Officer or Officers neceſſary and convenient to attend upon you for any Service in this Behalf. Our Will and expreſs Commandment alſo is, That there ſhall be two Paper Books indented and made, the one to remain with the ſaid Regiſter, or his ſufficient Deputy or Deputies, the other with ſuch Perſon, and in ſuch Places as you the ſaid Commiſſioners, or any three or more of you, whereof you the ſaid Lord Chancellor to be one, ſhall in your Diſcretions think moſt fit and meet; in both which Books ſhall be fairly entered all the Act, Decrees, and Proceedings made, or to be made, by Virtue of this Our Commiſſion. And whereas Our Univerſities of *Oxford* and *Cambridge*, and divers Cathedral and Collegiate Churches, Colleges, Grammar-Schools, and other Eccleſiaſtical Incorporations, have been erected, founded, and endowed by ſeveral of Our Progenitors, Kings and Queens of this Realm, and ſome other by the Charity and Bounty of ſome of their Subjects, as well within Our Univerſities as other Parts and Places, the Ordinances, Rules and Statutes whereof be either imbezzled, loſt, corrupted, or altogether imperfect; we do therefore give full Power and Authority to you, or any five or more of you, of whom We will you the forenamed, the Lord Chancellor always to be one, to cauſe and command in Our Name, all and ſingular the Ordinances, Rules, and Statutes of Our ſaid Univerſities, and all and every Cathedral and Collegiate Churches, Colleges, Grammar-Schools, and other Eccleſiaſtical Incorporations, together with their ſeveral Letters Patents, and other Writings, touching, or in any wiſe concerning their ſeveral Erections and Foundations, to be brought and exhibited before you, or any five or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one; willing, commanding, and authorizing of you, or any five or more of you, as aforeſaid, whereof you the ſaid Lord Chancellor to be one, upon the exhibiting and upon diligent and deliberate View, Search, and Examination of the ſaid Statutes, Rules and Ordinances, Letters Patents and Writings, as is aforeſaid, the ſame to correct, amend and alter; and alſo where no Statutes are extant, in all or any of the aforeſaid Caſes, to deviſe and ſet down ſuch good Orders and Statutes as you, or any five or more of you, whereof you the ſaid Lord Chancellor to be one, ſhall think meet and convenient, to be by Us confirmed, ratified, allowed, and ſet forth, for the better Order and Rule of the ſaid Univerſities, Cathedral and Collegiate Churches, Colleges and Grammar-Schools, Erections and Foundations, and the Poſſeſſions and Revenues of the ſame, and as may beſt tend to the Honour of Almighty God, Increaſe of Virtue, Learning and Unity in the ſaid Places, and the publick Weal and Tranquillity of this Our Realm. Moreover, Our Will, Pleaſure, and Commandment is, that you Our ſaid Commiſſioners, and every of you, ſhall diligently and faithfully execute this Our Commiſſion, and every Part and Branch thereof, in Manner and Form aforeſaid, and according to the true Meaning thereof, notwithſtanding any Appellation, Provocation, Privilege or Exemption in that Behalf, to be had, made, pretended, or alledged by any Perſon or Perſons reſident or dwelling in any Place or Places, exempt or not exempt, within this Our Realm; any Law, Statutes, Proclamations or Grants, Privileges or Ordinances, which be, or may ſeem contrary to the Premiſes notwithſtanding. And for the better Credit, and more manifeſt Notice of your ſo doing, in the Execution of this Our Commiſſion, Our Pleaſure and Commandment is, That to your Letters miſſive, Proceſſes, Decrees, Orders, and Judgments, for or by you, or any three or more of you, as is aforeſaid, to be awarded, ſent forth, had, made, decreed, given or pronounced, at ſuch certain publick Places as ſhall be appointed by you, or by any three or more of you, as is aforeſaid for the due Execution of this Our Commiſſion, you are ſome three or more of you, as is aforeſaid, whereof you the ſaid Lord Chancellor to be one, ſhall cauſe to be put and fixed a Seal, engraven with a Roſe and Crown, and the Letter *J.* and Figure 2 before, and the Letter *R.* after the ſame, with a Ring or Circum-

* *Burn.* Hiſt. of his Own Times, Vol. I. p. 676. † Ibid. 674.

'Circumference about the ſame Seal, containing as followeth, *Sigillum Commiſſionariorum Regiæ Majeſtatis ad Cauſas Eccleſiaſticas.* Finally, We 'will and command all and ſingular other our Miniſters and Subjects in 'all and every Place and Places, exempt and not exempt, within our Realm 'of *England*, and Dominion of *Wales*, upon any Knowledge or Requeſt 'from you, or any three or more of you, as is aforeſaid, to them, or any 'of them, given or made, to be aiding, helping, or aſſiſting unto your 'Commandments, in and for the due executing your Precepts, Letters, 'and other Proceſſes, requiſite in and for the due executing of this our 'Commiſſion, as they and every of them tender our Pleaſure, and will 'anſwer the contrary at their utmoſt Perils. In Witneſs, *&c.*

The King's Letter.

Dated *Monday*, *June* the 14*th*.

Delivered at *Fulham* on *Thurſday*, being the 17*th* of the ſame *June*, in the Afternoon, by Mr. *Atterbury* the Meſſenger.

JAMES R.

'RIGHT Reverend Father in God, We greet you well. Whereas, We 'have been inform'd, and are fully ſatisfied, that Dr. *John Sharp*, 'Rector of the Pariſh-Church of St. *Giles in the Fields*, in the County of '*Middleſex*, and in your Dioceſe, notwithſtanding Our late Letter to the 'moſt Reverend Fathers in God the Archbiſhops of *Canterbury* and *York*, 'and our Directions concerning Preachers, given at our Court at *White-'hall*, the 15th of *March*, 1685, in the ſecond Year of Our Reign; yet 'he, the ſaid Dr. *John Sharp*, in Contempt of the ſaid Orders, hath in 'ſome of the Sermons he hath ſince preached, preſumed to make unbe-'coming Reflections, and to utter ſuch Expreſſions as were not fit or pro-'per for him; endeavouring thereby to beget in the Minds of his Hearers 'an evil Opinion of Us and Our Government, by inſinuating Fears and 'Jealouſies, to diſpoſe them to Diſcontent, and to lead them into Diſo-'bedience and Rebellion. Theſe are therefore to require and command 'you immediately upon Receipt hereof, forthwith to ſuſpend him from 'further Preaching in any Pariſh Church or Chapel in your Dioceſe, 'until he has given Us Satisfaction, and Our further Pleaſure be known 'herein: And for ſo doing, this ſhall be your Warrant: And ſo We bid 'you heartily Farewel.

'Given at Our Court at *Windſor*, the 14th Day of *June*, 1686. in the 'ſecond Year of Our Reign.

By his Majeſty's Command. 'SUNDERLAND.'

The Biſhop of *London*'s Anſwer,

Sent by Dr. *Sharp* to the Earl of *Sunderland*, then at *Hampton-Court*, upon *Friday*, *June* 18, who could have no Anſwer.

To the Right Honourable the Earl of *Sunderland*, Lord Preſident, *&c.*

MY LORD,

'I ALWAYS have, and ſhall count it my Duty to obey the King in 'whatever Commands he lays upon me, that I can perform with a 'ſafe Conſcience: But in this, I humbly conceive, I am obliged to pro-'ceed according to Law; and therefore it is impoſſible for me to comply; 'becauſe though his Majeſty commands me only to execute his Pleaſure, 'yet, in the Capacity I am to do it, I muſt act as a Judge; and your Lord-'ſhip knows no Judge condemns any Man before he has Knowledge of 'the Cauſe, and has cited the Party. However, I ſent to Mr. Dean, and 'acquainted him with his Majeſty's Diſpleaſure, whom I find ſo ready to 'give all reaſonable Satisfaction, that I have thought fit to make him the 'Bearer of this Anſwer, from him that will never be unfaithful to the 'King, nor otherwiſe than,

'My Lord, your Lordſhip's

'moſt humble Servant;

'*H. London.*'

On *Sunday* after, Dr. *Sharp* carried a Petition to *Windſor*, which was not admitted to be read: Which is as follows.

To the King's moſt Excellent Majeſty,

The humble Petition of *John Sharp*, Clerk,

Sheweth,

'THAT nothing is ſo afflictive to your Petitioner, as his Unhappineſs 'to have incurred your Majeſty's Diſpleaſure; which he is ſo ſen-'ſible of, that ever ſince your Majeſty was pleaſed to give Notice of it, 'he hath forborn all publick Exerciſe of his Function, and ſtill conti-'nues ſo to do.

'Your Petitioner can with great Sincerity affirm, that ever ſince he 'hath been a Preacher, he hath faithfully endeavoured to do the beſt Ser-'vice he could in his Place and Station, as well to the late King, your 'Royal Brother, as your Majeſty, both by preaching and otherwiſe.

'And ſo far he hath always been from venting any thing in the Pulpit 'tending to Schiſm or Faction, or any way to the Diſturbance of your 'Majeſty's Government, that he hath upon all Occaſions in his Sermons, 'to the utmoſt of his Power, ſet himſelf againſt all Sorts of Doctrines 'and Principles that look that way: And this he is ſo well aſſured of, 'that he cannot but apprehend that his Sermons have been very much 'miſrepreſented to your Majeſty.

'But if in any Sermon of his, any Words or Expreſſions have unwa-'rily ſlipt from him, that have been capable of ſuch Conſtructions, as to 'give your Majeſty Cauſe of Offence, as he ſolemnly profeſſes he had no 'ill Intention in thoſe Words or Expreſſions, ſo he is very ſorry for them, 'and reſolves for the future to be ſo careful in the Diſcharge of his Du-'ty, that your Majeſty ſhall have Reaſon to believe him to be your moſt 'faithful Subject.

'And therefore he earneſtly prayeth, that your Majeſty, out of Your 'Royal Grace and Clemency, would be pleaſed to lay aſide the Diſ-'pleaſure You have conceived againſt Your humble Petitioner, and 'reſtore him to that Favour which the reſt of the Clergy enjoy under 'your Majeſty's gracious Government.

'So ſhall Your Petitioner ever Pray; *&c.*'

In the Council-Chamber *at* White-Hall, *&c.*

Mercurii, 4 die Auguſti, 1686.

Preſent in Council, *Lord Chancellor*, *Lord Biſhop of* Durham, *Lord Treaſurer*, *Lord Biſhop of* Rocheſter, *Lord Preſident*, *Lord Chief Juſtice* Herbert.

Upon my Lord Biſhop's appearing before them, according to a Summons ſent unto him, the Lord Chancellor Jefferеys *began*, viz.

Lord Chancellor. MY Lord Biſhop of *London*, the Lords here preſent have received Orders from the King to inſpect all Eccleſiaſtical Affairs and Perſons; and He hath commanded us to cite you before us; and I deſire you would give a poſitive and direct Anſwer to it: What was the Reaſon you did not ſuſpend Dr. *Sharp*, when the King commanded, and ſent you expreſs Orders ſo to do, and told you what it was for, *viz.* for preaching ſeditiouſly and againſt the Government?

Lord Biſhop. I have received ſuch an Order; and if what was done in that Affair was done amiſs, and contrary to my Duty, it was my Ignorance and Inadvertency, and not a wilful Fault: I have been always ready to expreſs my Duty to his Majeſty; and if in this Particular I have not complied, it was becauſe, as I was told, I could not. I was not ſo ſhallow as to go on my own Head, but took the beſt Advice I could get: I conſulted thoſe whoſe Buſineſs it is more perfectly to underſtand theſe Proceedings; all told me I could not legally do it, but by way of Citation and hearing him.

Lord Chanc. Ignorantia Juris non excuſat; you ought to have known the Law, and it was a wonder you did not: The King is to be obey'd, and if you have any Reaſon to ſhew in this Particular, we are ready to hear you.

Lord Biſhop. I knew not what would be laid to my Charge, and therefore was not provided to make ſuch a Defence as I might have done; but if your Lordſhips will give me a Copy of your Commiſſion, and a Copy of my Charge, and allow me ſome Time, I will endeavour to give your Lordſhips Satisfaction.

Lord. Chanc. My Lord, I would not miſinterpret your Words but ſhall deſire you to explain their Meaning. If by deſiring a Copy of our Commiſſion, you deſign to quarrel with the Juriſdiction and Legality of the Court, I have another Anſwer for you; but till I know your Meaning here, my Anſwer is, that no Copy of the Commiſſion can be granted, and it is unreaſonable to deſire it; it is upon Record; all the Coffee-houſes have it for a Penny a-piece, and I doubt not but your Lordſhip has ſeen it.

Lord Biſhop. I have never ſeen it, nor have I deſired it for ſuch Ends, to diſpute the Legality of it: But your Lordſhips know it is a Thing altogether new to this Generation, and, it may be, ſomething may be found in it, whereby I may be inſtructed and directed in my Anſwer and Behaviour in the Matter. But, my Lord, if I may not have a Copy of it, will your Lordſhips pleaſe I may either read, or hear it read?

Lord Chanc. That is a Thing I cannot grant of myſelf, I muſt aſk my Lords Commiſſioners Judgment; and if you will be pleaſed to withdraw you ſhall hear it.

The Biſhop and all the Company withdrew for a Quarter of an Hour; then returning, the Lord Chancellor ſaid,

My Lord, all the Commiſſioners are of Opinion, that your Requeſt is not to be granted, and that it is unreaſonable. Might every one that appears here challenge the ſight of our Commiſſion, and the reading of it, all our Time will be ſpent in the reading, and we have ſomething elſe to do.

The Proceedings of Courts in this Kind are never by Libel and Articles; *Sapientem ſuccinctim ore tenus*, by Word of Mouth only; and it is a ſhort Queſtion I aſk, Why you did not obey the King?

Lord Biſhop. It is a ſhort Queſtion, but requires more Words to anſwer it. I pray your Lordſhips to conſider I am a Peer, a Biſhop, and have a Publick Truſt, though unworthy, under a Publick Character; and I would behave myſelf as becomes one in theſe Capacities.

Lord Chanc. We know very well your Lordſhip's Quality and Character, and are willing to ſhew all due Reſpect to your Lordſhip; but yet we muſt have a due Regard for the King and Government too: His Majeſty muſt not be neglected.

Lord Biſhop. My Lord, I ſuppoſe there is no Appeal from the Court; and when a Man is to be condemned at one Bar, and is in Danger of being knock'd down at one Blow, you would think it unreaſonable he ſhould not have ſome Time to make his Defence.

Lord Chanc. My Lord, I ſuppoſe their Lordſhips will be willing to grant ſome Time: I pray what Time does your Lordſhip deſire?

Lord Biſhop. My Lord, it is the Aſſize-time, and moſt of the Counſel, upon ſome Occaſion or other (either Buſineſs or Diverſion) are in the Country: I pray you, my Lord, I may have till the beginning of the Term.

Lord Chanc. Hah! That's unreaſonable: His Majeſty's Buſineſs cannot admit of ſuch Delays; methinks a Week ſhould be enough: What ſay your Lordſhips? Is not a Week enough?

The Commiſſioners being aſked, ſignified by the Chancellor that a Week was enough.

Lord Biſhop. Since your Lordſhip will grant no more, I will aſk no more.

Lrd Chanc. Adjourn until *Monday* next, the Ninth of *Auguſt*, 1686.

Upon

Upon the Ninth Day his Lordſhip came, attended with his Nephew, the Earl of Northampton, *his Brother in Law, Sir* John Nicholas, *and his Brother, Sir* Francis Compton, *&c.*

There being preſent in Council the ſame as before in the ſame Proceedings.

Lord Chanc. MY Lord, we are here to hear your Reaſons.

Lord Biſhop. My Lord, I have loſt no Time for preparing my Anſwer, but am not ſo ready as I might have been, becauſe I could not light of the Commiſſion your Lordſhip told me was upon Record, and in every Coffee-houſe, but employed a whole Week to ſearch for it, and could not have a Sight of it until laſt Night: If your Lordſhip doubts the Truth of this, I have the Perſon ready to make Oath here of it.

Lord Chanc. My Lord, you are a Perſon of Honour, and we will not queſtion the Truth of what you ſay, there needs no Oath: But, my Lord, I muſt tell you, that we will not admit of any quarrelling with our Commiſſion, we are well aſſured of the Legality of it, otherwiſe we would not be ſuch Fools as to ſit here.

Lord Biſhop. My Lord, I have other Reaſons why I deſire a Sight of your Commiſſion; it may be, it may not reach me, being a Peer and a Biſhop; and it may be, it may not reach this particular Caſe; and therefore I deſire a Sight of it, in regard I could not ſee it until the laſt Night. I have not had time to take Advice what to anſwer; if your Lordſhip will not be ſatisfied, I muſt give ſuch an Anſwer as I have prepared; but it is my Deſire to have longer Time for it.

Lord Chanc. Is this all you have to ſay?

Lord Biſhop. This is the firſt Thing: I do not deſire to prolong the Time, the Neceſſity of the Caſe requiring it, the Counſel being out of Town in whom I think to confide.

Lord Chanc. If your Lordſhip will withdraw, we will give you an Anſwer.

He withdrew for a Quarter of an Hour.

Lord Chanc. My Lord, as I formerly told you, we will not endure any quarrelling at our Commiſſion; it will be an odd Thing in us to give you Time to pick Holes in it; but we are willing to pay all due reſpects to your Lordſhip: What Time do you require?

Lord Biſhop. I ſhall ſubmit to your Lordſhips; but I hope a Fortnight will not be unreaſonable.

Lord Chanc. Agreed: You ſhall have it until to Morrow Fortnight in the Morning.

To which my Lord Chancellor added,

Lord Chanc. My Lord, when I told you our Commiſſion was to be ſeen in every Coffee-houſe, I did not ſpeak with any Deſign to reflect on your Lordſhip, as if you were a Haunter of Coffee-houſes. I abhorred the Thoughts of it, and intended no more by it, but that it was common in the Town.

Note, When the Biſhop ſpake concerning the Commiſſion, Sir *Thomas Clarges* ſpake with a loud Voice, ſaying, *Well put, well put; my Lord ſpeaks nothing but Truth.* There was alſo another Gentleman, Sir *John Lowther* of *Lincolnſhire*, who as he was coming away in the Crowd, ſaid, *There are ſome who have repreſented me as a Papiſt, but the contrary ſhall appear; I will not be afraid, nor aſhamed, to vindicate my Lord Biſhop's Cauſe before the Commiſſioners themſelves.*

TUESDAY, *Auguſt* 23, 1686.

There being preſent in Council the ſame as in the former Proceedings:

The Lord Biſhop attending, the Proceedings were as follow.

Lord Chanc. MY Lord, we are now ready to hear your Lordſhip's Anſwer.

Lord Biſhop. My Lord, notwithſtanding the Time hath been very ſhort, conſidering the Weightineſs of the Matter, and the Abſence of many of the learned Counſel, I have taken what Advice I could, and have conſulted thoſe that are very learned in the Laws. I hope there will be no Miſinterpretation of my Words, I do not intend any Thing which is derogatory to the King's Supremacy, that is undutiful to his Majeſty, or diſreſpectful to your Lordſhips. My Counſel tells me, that your Proceedings in this Court are directly contrary to the Statute Law, and are here to plead it, if your Lordſhips will admit them.

Lord Chanc. We will neither hear your Lordſhip nor your Counſel in the Matter; we are ſufficiently ſatisfied of the Legality of our Commiſſion, as we often told you.

Lord Biſhop. My Lord, I am a Biſhop of the Church of *England*, and by all the Law in the Chriſtian Church in all Ages, and by the particular Law of this Land, I am, in Caſe of Offence, to be tried by my Metropolitan and Suffragans: I hope your Lordſhip will not deny the Right and Privilege of Chriſtian Biſhops.

Lord Chanc. My Lord, you know our Proceedings are according to what has been done formerly, and that we have an original Juriſdiction: This is ſtill queſtioning our Court.

Lord Biſhop. It is partly.

Lord Chanc. Nay, it is abſolutely ſo.

Lord Biſhop. My Lord, I hope you will interpret every Thing in your Commiſſion in Favour of the Perſon that is brought before you: I humbly conceive that your Commiſſion doth not extend to the Crimes laid to my Charge, for you are to cenſure Faults which ſhall be committed: This that I am accuſed of, was before the Date of your Commiſſion.

Lord Chanc. I confeſs there is ſuch a Clauſe, but there are general Clauſes, that take in Things that are paſt, as well as thoſe that are to come. Hath your Lordſhip any thing more?

Lord Biſhop. My Lords, proteſting in my own Right to the Laws of the Realm as a Subject, and the Rights and Privileges of the Church as a Biſhop, I ſhall, with your Lordſhips leave, give you my Anſwer.

Which was accepted; and the Biſhop withdrew, and left Dr. Sharp's *Petition, which the King had refuſed to accept.*

Lord Chanc. My Lord, we have read the Paper.

Lord Biſhop. My Lord, it is Dr. *Sharp*'s Petition to the King.

Lord Chanc. My Lord, be pleaſed to take it again, we are not concerned in it; will you pleaſe that your Lordſhip's Anſwer be read?

Lord Biſhop. Yes, if your Lordſhip pleaſe. My Lord, I have this to ſay further, What I did in this Matter was *Juriſperitorum Concilio.* I conſulted my Counſel, who is the Judge of my Courts, as well as others; and the Law ſays, That what is done by the Advice of Counſel, ſhall not be interpreted to be done maliciouſly, or obſtinately. The Law, in this Caſe, requires, that if a Prince require a Judge to execute an order, which is not agreeable to the Law, he ſhall *Reſcribere & Reclamare Principi.* Now, my Lord, I conceived I acted in this according to my Duty, for I wrote back to my Lord Preſident, in as becoming Words as I could; and acquainted him, that an Order to ſuſpend before Citation and hearing the Perſon, is againſt Law, and expected his Majeſty's further Pleaſure.

In the next Place, my Lords, I did in Effect what the King commanded to be done; for I adviſed Dr. *Sharp* to forbear Preaching till his Majeſty had received Satisfaction concerning him; and accordingly he hath forborn in my Dioceſe.

Lord Chanc. My Lord, will you have your Paper read?

Lord Biſhop. Yes, if your Lordſhip pleaſe.

Which contained the King's Letter, and the Biſhop's Anſwer thereto.

Lord Chanc. Hath your Lordſhip any more to ſay?

Lord Biſhop. My Lord, I deſire your Lordſhip would hear my Counſel, by whom you may have more clear and full Satisfaction concerning what I have ſaid.

Whereupon the Biſhop was deſired to withdraw, and after half an Hour, he and his Counſel were called in; who were Drs. Oldiſh, Hodges, Price, *and* Newton. *A brief Account of what they pleaded.*

Dr. *Oldiſh.* My Lord, the Queſtion before your Lordſhip is, Whether the Biſhop of *London* hath been diſobedient to the King's Command? Concerning which, it muſt be conſidered?

Firſt, What was commanded to be done?

Secondly, What he did in Obedience to it?

Thirdly, What Judgment ought to have been given by him.

It is apparent by the Letter, that the King did not take Cognizance of the Cauſe, for the Words are, *Being informed that Dr.* Sharp, *&c.* So that it could not be an abſolute Suſpenſion; for that ſuppoſeth a Proof of the Crime charged upon him: Then let us conſider the Words themſelves:

That you ſuſpend him from Preaching. Now, my Lords, we have no ſuch Thing in our Laws; ſo that the Meaning muſt be Silencing of him. Where there is an abſolute Suſpenſion, there ought to be Citation, Form of Proceeding, Judgment and Decree; to act otherwiſe is contrary to the Law of God, of Nature, of all Nations in all Ages, and was never known in the World.

Lord Chanc. I am loth to interrupt you; but I muſt tell you, this is an unneceſſary Harangue; we know that it was not an abſolute Suſpenſion: But the Queſtion is, Whether the Biſhop could ſuſpend him from Preaching?

Dr. *Oldiſh.* Then, my Lords, I have gained another Point; if it were only Silencing him, the Queſtion is, Whether the Biſhop did not execute the King's Commands? I think he did, and in ſuch a Method as is obſerved in our Courts.

When any eminent Perſon is accuſed, the Judges ſend to him by a Letter; and if he appears and complies with the Judges Order, the Law is ſatisfied.

Judicium redditur in invitum non in volentem: The Biſhop did ſend for Dr. *Sharp*, ſhewed him the King's Letter, adviſed him not to Preach till the King had received Satisfaction; in which he promiſed to obſerve his Lordſhip's Command, and hath not preached to this Day; ſo that his Majeſty's Command was, in Effect, fulfilled. My Lord, there is the like Proceedings in the Common Law; for if an Attorney takes a Man's Word for his Appearance, there lies no Action againſt the Attorney.

Lord Chanc. Cujus contrarium: There lies an Action of Eſcape againſt the Attorney——

Dr. *Hodges.* My Lords, the Matter of Fact hath been ſtated, and the Queſtion is, Whether the Biſhop hath been diſobedient to the King's Command? It appears that he has not; becauſe, upon the Receipt of his Majeſty's Letter, he required the Doctor not to Preach, and he hath obeyed him in that which the King commanded. To ſuſpend him, the Biſhop could not do, the Act of Suſpenſion is a Judicial Act: The King writes to him as to a Biſhop, to ſuſpend as a Biſhop and as a Judge, which could not be done without the hearing of the Cauſe. If the Prince ſends to a Perſon that is not a Judge, that is only in a miniſterial Office, that Officer is to execute his Commands: But when the King commands a Judge, he commands him to act as a Judge. This is no light Matter the Doctor is accuſed of; it is for preaching Sedition and Rebellion, which requires a ſevere Cenſure. And if the Biſhop, as a Judge, had ſuſpended him, he had begun at the wrong End, for this had been Judgment before Proceſs: In this Cauſe there ought to have been a Citation, our Books giving many Inſtances, which would be too tedious to your Lordſhips——I will give this one: The Emperor's Proceedings againſt the King of *Sicily*, upon Information which he had received; and giving him no Citation, the King appealed to the Pope, who declared the Proceedings to be void; and that it was againſt the Law of Nature, which is above all poſitive Laws, to paſs Sentence before Citation. This is the Method of proceeding before all Courts, and I humbly conceive it is, and will be, the Method of this Court; for otherwiſe, the Biſhop need not to have been cited before you. The Biſhop has done what was his Duty, he was bound to return his Reaſon to the King, why he did not do that which he commanded, and to expect his further Anſwer; which was done. I affirm, that if a Prince, or a Pope, command a Thing which is not lawful, it is the Duty of a Judge *Reſcribere*; which is all he can do, quoting his Author.

Dr. *Price.* The Queſtion is *ut ſupra:* A Citation is *Jure Gentium*, and can never be taken away by any poſitive Command or Law whatſoever: The Biſhop hath obeyed the King ſo far as he could, and did reſcribe, expecting his Majeſty's further Pleaſure. If the Biſhop could have ſuſpended him, it muſt have been done *in Aulâ*; but in regard it was only ſilencing him, which was required, it might be done in a private Room: The Advice of a Biſhop is in ſome Senſe an Admonition,

which is a Judicial Act, and this was given by a Bishop, and obeyed by the Doctor.

Dr. *Newton*. My Lord, the Question is *ut supra*, the Bishop hath not been disobedient. As in Nature no Man can be desired to do that which is impossible, so no Man can be obliged to do an unlawful Act. (*Id non fit quod non legitime fit.*) This Rule obliges all Men, at all Places, and at all Times. The Charge against Dr. *Sharp* is of a very high Nature; and he desired to be heard before he was condemned.

My Lords, the Bishops are *Custodes Canonum*, and therefore must not break themselves. I affirm, the Bishop was so far from being Disobedient, that he was obedient to the King: For where he did *Referibere*, and heard not the further Pleasure of the King returned, he ought to conclude, the King was satisfied with what he had written, according to his Duty, and the King had altered his Commands. A Citation, as your Lordships have heard, is according to all Laws, in all Places, in all judicial Acts; there is something to be done according to Law, and somewhat according to the Discretion of the Judges, and for that Reason, as well as these, the Offenders ought to be cited before him; that which was in the Bishop's Power to do, he hath done, and it was in Effect what the King commanded to be done.

Lord Bishop. If through Mistake I have erred in any Circumstance, I am ready to beg his Majesty's Pardon, and shall be ready to make any Reparation I am capable.

The Bishop withdrew for Half an Hour, and was then called in.

L. Chanc. We will be here again on *Wednesday* next, and I desire your Lordship to be here again about Ten in the Forenoon.

Lord Bishop. My Lord, I desire that Care may be taken concerning the Minutes, which are taken by the Clerks, of what hath passed, and that I may not be misrepresented to the King by the Mistake of the Penman.

Lord. Chan. My Lord, you need not fear it; I hope you have a better Opinion of us; there shall be no Advantage taken by them or us.

Bishop Roch. There shall be no Advantage taken, but all imaginable Care taken concerning it.

Note, When the Counsellers were Pleading, Dr. *Pinfold*, the King's Advocate, stood at the Chancellor's Elbow, and took Notes; by which it was expected that he should make a Reply, but he said nothing: and 'tis supposed that he staid with the Council, when the Bishop withdrew, and gave them Reasons for his Silence.

Die Lunæ, 6 *September*, 1686.

There being present in Council the same as in the former Proceedings.

Lord Chanc. MY Lord, pray sit down. You were desired to appear this Day to hear your Sentence, which (to prevent Mistake) we have ordered to be put in Writing.

Lord Bishop. My Lord, may I have leave to speak before Sentence is read?

L. Chanc. My Lord, we have heard you and your Counsel already.

Then the following Instrument, whereby the Bishop of *London* was suspended, was, by the Commissioners Order, read by Mr. *Bridgman*, their Lordships Register.

By his Majesty's Commissioners for Ecclesiastical Affairs.

WHEREAS *Henry*, Lord Bishop of *London*, hath been convened before Us, for his Disobedience, and other his Contempts mentioned in the Proceedings of this Cause; and the said Bishop being fully heard thereupon, We have thought fit, upon mature Consideration of the Matter, to proceed to this Our definitive Sentence, declaring, decreeing, and pronouncing, that the said *Henry*, Lord Bishop of *London*, shall for his said Disobedience and Contempt, be suspended during his Majesty's Pleasure; and accordingly We do, by these Presents, suspend him the said Lord Bishop of *London*, peremptorily admonishing and requiring him hereby, to abstain from the Function and Execution of his Episcopal Office, and from all Episcopal and other Ecclesiastical Jurisdiction, during the said Suspension, upon Pain of Deprivation and Removal from his Bishoprick.

Given under our Hand and Seal the 6th Day of *September*, 1686. Sealed with the Seal of the Court, *C. J.* 2. Rose and Crown, with this Inscription round it, *viz. Sigillum Commissionariorum Regiæ Majestatis ad Causas Ecclesiasticas*.

Signed by no body at all.

Some Days since, one of the Messengers attending the Court, deliver'd to the Dean of St. *Paul*'s a Warrant, the Tenor whereof followeth:

By his Majesty's Commissioners for Ecclesiastical Affairs.

WHEREAS We have given Sentence of Suspension against *Henry* Lord Bishop of *London*, a Copy of which Sentence, under our Seal, is hereunto affixed: We have thought fit and do hereby enjoin and require you, to cause the said Sentence to be affix'd on the Door of that Chapter-House, and on the Place now called the South Door of the said Church, to the End that publick Notice may be taken of the said Suspension. And you are to certify Us, under your Common Seal, of the due Execution of what is hereby required.

At our Council-Chamber at *Whitehall*, on *Tuesday* the 28th of this Instant *September*, at Eleven o'Clock in the Morning. Given under our Seal this Day of *September*, 1686. Sealed with the same Seal as the Sentence, but no Persons Names. Subscribed to the Dean and Chapter of *London*.

Dr. *Sharp* was also suspended about the same Time, but he was soon after restor'd to the Exercise of his Function; and when the King receiv'd Advice of the Prince of *Orange*'s intended Expedition, the Bishop's Suspension was taken off.

CXLI. *Proceedings against Dr.* John Peachell, *Vice-Chancellor, and the University of* Cambridge *, *for not admitting* Alban Francis, *a* Benedictine *Monk, to the Degree of* Master of Arts, April *and* May 1687. 3 Jac. II.

ON the ninth Day of *February*, being *Ash-Wednesday*, came a Letter under his Majesty's Signet Manual, dated the seventh of the same Month; the Substance whereof was, That hearing much in Commendation of one *Alban Francis* a Benedictine, the King was pleased to command the University, that they should admit him to the Degree of Master of Arts, without administering to him any Oath or Oaths whatsoever, any Law or Statute to the contrary in any wise notwithstanding, with which his Majesty was graciously pleas'd to dispense in the Behalf of the said *Alban Francis*. On *Monday* the 21st, the Vice-Chancellor having summon'd a Congregation, read his Majesty's Letter, purporting as before, and superscrib'd to our trusty and well-belov'd Vice-Chancellor of Our University of *Cambridge*, to be communicated to the Senate there; on the reading whereof, the Senate, who made the best Advantage they could of the Vice-Chancellor's Delay, in order to get Advice, resolved to testify their common and almost unanimous Sense of the Thing, and in a Matter of such Consequence and novel Matter to interpose; accordingly there was a Paper, it is commonly call'd a Grace, the original Paper whereof I have seen drawn up in order to be put to the Vote of the House after the ordinary and usual Way; but the Constitution of that Body being such, that this must then of Necessity have been first proposed to what we call the Head, which consists of six Persons, each of which has an arbitrary Voice and Power, upon dislike to stop any Proceedings finally, and hinder it being put to the House at all; This Method was laid aside as impracticable upon that Occasion; because Mr. *Basset*, a declar'd *Roman* Catholick, and one that had openly asserted Mr. *Francis*'s Cause, happened to be one of the six who compose the Head for this Year; it was therefore presum'd, with great Appearance of Reason, that he would put a Bar to the Proceedings; so the Grace not being suffered to be offered to the House, the Senate's Sense could never have been fully and particularly known thereupon.

This Consideration constrain'd them to the Use of another Course, which was, without the Formality of a Suffrage, voluntarily to testify their Concurrence with the Vice-Chancellor, and advise him to forbear the admitting Mr. *Francis* till the King had been petitioned to revoke his Mandate. As soon as the Letter came to Town, the Vice-Chancellor wrote a Letter to the Duke of *Albemarle*, our Chancellor, to beg his Interceſſion with the King, which he returned Word was tried with none Effect, but possibly such a Body as the University concurring and signing a Petition, if that could be admitted, might prove better and more successful. Now, perhaps, if every single Man present, to the Number perhaps of one hundred and fifty or two hundred, should address in Person the Vice-Chancellor, this might look tumultuary, and it was thought the more quiet, decent, and respectful Way to send up their Sense by Messengers from each House: To this Purpose Dr. *Smoult*, Professor of Casuistical Divinity, was made Choice of by the Non-Regents, and Mr. *Norris*, a Fellow of *Trinity*-College, by the Regents. The Substance of what they delivered, was, That the House thought the Admission of Mr. *Francis* without the usual Oaths, illegal and unsafe, and for that Reason advis'd the King might be petition'd, in the doing which they were ready to join and make it their Act. The Opinions were given freely to the two Messengers of each House, and the thing was so unanimously approved of, that the only Persons taking notice of it, were three Papists, and one or two besides: afterwards there was a Gentleman admitted Doctor of Physick, having first taken the Oaths; and the Esquire-Beadles and Registers were sent to let Mr. *Francis* know, that the Senate were ready to admit him also, provided that he would swear as the Law appointed; but he refused, insisting on the King's Dispensation: and this was the Business of the first Meeting about this Matter.

Immediately upon the Congregation's breaking up, Mr. *Francis* took his Horse for *London*, to represent at *Whitehall* what had been done; and the same Afternoon the Heads met in the Consistory, to consult what Letters should be sent, and to whom: They agreed upon one to the Duke of *Albemarle*, and another to the Earl of *Sunderland*, being the Secretary of State, through whose Hands the Mandate passed: An Esquire-Beadle was dispatched presently to *London*, who after having waited on the Duke of *Albemarle*, endeavoured several times to get Access to the Lord *Sunderland*, but could not; at last having sent his Letter, the Main whereof was a most humble Submission to his Majesty, with very solemn and unfeigned Protestations, that what was now done, proceeded from no Principle of Disobedience and Stubbornes, but a conscientious Sense of our Obligation to Laws and Oaths, and a respectful Intimation that we were ready to petition the King that it might be admitted; but not daring to approach Him without some Significations that it would be acceptable, we applied ourselves to his Lordship, desiring him to do the University the Favour to mediate for them, &c. He was dismissed without any particular Answer: Within a few Days came a second Letter, dated *February* 24, which by reason of the Assizes and some other publick Business intervening, was not read in the Senate till *Thursday*, *March* the 11th: The University and the Vice-Chancellor in the mean Time received a Letter,

* *Burn*. Hist. Own Times. Vol. I. p. 697.

wherein they found great Satisfaction by the Opinions of ſome eminent Lawyers, who concurred in the Approbation of what was already done, and for the future, could adviſe no better Courſe than humbly to repreſent the Caſe to his Majeſty, and entreat him not to think amiſs of ſo Loyal a Body, always as the Univerſity has ſhewed herſelf to be. The ſecond Letter being read the Day aforeſaid, which was exactly the ſame as the former, excepting only the Addition of a Clauſe, to do it at our own Peril; the Senate proceeded as before, to adviſe the Vice-Chancellor to ſome expedient Form, repreſenting the Caſe fully and clearly to the King, as well with reſpect to the Illegality of ſuch Admiſſion, as the many ill Conſequences that were likely to enſue from it: This the Non-Regent Houſe did by Mr. *Billers*, Fellow of St *John*'s-College (the publick Orator) and Mr. *Newton*, Fellow of *Trinity* College (the Mathematical Profeſſor); the Regent Houſe by Mr. *Henry Finch*, Son to the late Lord Chancellor, Mr. *Burton* of St. *John*'s-College, and Mr. *William Bowles* of *King*'s-College: All which was done without the leaſt Hurry or Irregularity, without ſo much as aſking an Opinion; but every Man went and gave it quietly and of his own Accord, ſo that no manner of Inducement was put upon any one to declare himſelf in the Buſineſs, but what proceeded meerly from his own Conſcience, and a due Senſe of Things. Another large Letter being prepared for the Duke of *Albemarle*, wherein was every thing that could be thought of to prevail with his Majeſty; and one likewiſe ſhorter and leſs particular to the Earl of *Sunderland*; that every Afternoon Mr. *Braddock*, Fellow of *Katharine-Hall*, and Mr. *Stanhope* of *King*'s-College, were deſired by the Vice-Chancellor to go to *London* with theſe Letters, and other Inſtructions, to apply themſelves to ſeveral Perſons of Quality and Character, that they would join Forces, and think it a common Cauſe; for ſo addreſſing to the King, the Succeſs would be more probable, and the Honour done to the Univerſity the greater. *Sunday*, *March* the 13th, the two Gentlemen waited on the Duke of *Albemarle* their Chancellor, who received them with all the Goodneſs in the World, with Aſſurance, that notwithſtanding he had waited on the King before, and he knew his Inclinations; nay, though he had been received with ſomething of Diſpleaſure, yet conſidering the Relation he bore us, he would make another Attempt, and thought himſelf obliged to omit no Endeavours for the Univerſity's Safety and Advantage. *Monday* the 14th in the Evening, the Duke of *Albemarle* waited on the King, and in the Paſſage towards the Bed-chamber, took the two *Cambridge* Gentlemen into the Anti-chamber, that they might be introduced if Occaſion were: The King, on the Duke of *Albemarle*'s acquainting him with the Affair, told him he had not then Leiſure to talk, but he commanded the Letter which the Vice-Chancellor ſent to the Duke of *Albemarle*, with which in his Hands he paſſed through the Rooms; and making that Evening a Viſit to the Queen *Dowager*, gave the Duke no further Opportunity of knowing his Pleaſure at that Time. At the Duke's return from the Inner-Room, the Gentlemen deſired him to give leave that they might uſe his Name to procure an eaſy Admittance to the Earl of *Sunderland*; for they reſolved to deliver their Letter to no Hands but his own, if that might be: The Duke immediately ſent his Gentleman of the Horſe to one of the Lord *Sunderland*'s Secretaries, making it his Deſire that Mr. *Braddock* and his Companion might ſee the Earl, who accordingly appointed them to attend next Morning, and then conducted them to the Earl of *Sunderland*'s Bed-ſide, who took the Letter, and after ſome further Application to him by Word of Mouth, he promiſed to acquaint his Majeſty, and tell them his Pleaſure. On *Thurſday*, at that Time when Mr. *Braddock* and Mr. *Stanhope* came, the Account they received was only this, That the King had ſeen the Vice-Chancellor's Letter, and was offended at the Proceedings of the Univerſity, and would take Care very ſhortly to give a further Anſwer.

Saturday the *ninth* of *April*, Mr. *Atterbury* came down with a Summons from the Eccleſiaſtical Commiſſioners to this Effect: That whereas Complaint to them was made againſt the Vice-Chancellor and Senate of *Cambrige*, for having refuſed to comply with his Majeſty's Royal Letters in Behalf of Mr. *Francis*; they were therefore commanded to appear, the Vice-Chancellor in Perſon, the Senate by themſelves, and Deputies before the Lords Commiſſioners, in the Council-Chamber, the 21*ſt* of *April*, to anſwer to ſuch things as ſhall be objected againſt them in his Majeſty's Behalf upon the Premiſes, *&c.* *Monday*, *April* the 11*th*, a Senate was called, and Perſons nominated to repreſent the Univerſity, together with the Vice-Chancellor; all which being unanimouſly approved by the Senate, they empowered them, by an Inſtrument under the Common-Seal, to anſwer in their Behalf, and be their full Actors, Attorneys and Proctors, as to what ſhould ariſe from the Commiſſion upon the late Summons. And Mr. *Atterbury* having received private Inſtructions to ſtay, and cite every Man that was choſen perſonally, he came accordingly into the Senate-Houſe, and ſummon'd as many as were preſent, waiting on the reſt on a convenient Time. The Perſons deputed by the Senate to repreſent and act were theſe:

Dr. *John Peachell*, Vice-Chancellor, Maſter of *Magdalen*-College.
Dr. *John Eachard*, Maſter of *Katharine-hall*.
Dr. *Humfrey Babington*, Fellow of *Trinity*-College.
Dr. *Thomas Smault*, Fellow of St. *John*'s College, and Profeſſor of Caſuiſtical Divinity.
Dr. *William Cook*, Doctor of Civil Law, and Fellow of *Jeſus*-College.
Mr. *John Billers*, Fellow of St. *John*'s-College, and the Publick Orator.
Mr. *Iſaac Newton*, Fellow of *Trinity*-College, and Mathematical Profeſſor.
Mr. *James Smith*, Fellow of *Queen*'s-College.
Mr. *George Stanhope*, Fellow of *King*'s-College.

THURSDAY, *April* the 21*ſt*, 1687.

Council-Chamber. *Commiſſioners preſent.*

L. Chancellor *Jefferys*. L. Biſhop of *Durham*.
L. Preſident *Sunderland*. L. Biſhop of *Rocheſter*.
L. *Mulgrave*. L. Ch. Juſtice *Herbert*.
Earl of *Huntington*.

L. Chanc. IS Mr. Vice-Chancellor here?——Which is he?

He ſtandeth over againſt the Lord Chancellor, bowed and ſhewed himſelf.

L. Chanc. Is there any one come from the Senate to attend him?

Mr. Stanhope. Yes, my Lord, we are eight of us here deputed by the Senate to anſwer what ſhall be objected againſt them, according to your Lordſhips Summons.

The Noiſe and Crowd being great. Mr. Bridgman *the Regiſter was forced to repeat that again to the Lord Chancellor.*

L. Chanc. Read the Summons. [*Which was done.*

L. Chanc. Now, Mr. Vice-Chancellor, what have you to ſay, why you did not obey his Majeſty's Command, in Behalf of the Gentleman mentioned there?

Vice-Chanc. My Lord, you enquire of me why I did not admit Mr. *Francis*, according to the King's Letters?

L. Chanc. Yes, that's the Queſtion I aſk you.

Vice-Chanc. Is this the only Queſtion your Lordſhip is pleaſed to aſk me?

L. Chanc. Nay, Mr. Vice-Chancellor, we will not capitulate in the very Beginning: Pray anſwer the firſt, and then you ſhall know what we have to ſay more.

Vice-Chanc. It is but a little while ſince we met in Town, and this is a Queſtion of great Concern; I am not prepared to anſwer it on a ſudden.

L. Chanc. Why, Mr. Vice-Chancellor, my Lords ſpecified it in their Summons what would be queſtioned, on Purpoſe you ſhould not come unprepared; but it may be Mr. Vice-Chancellor did not attend ſufficiently to that Part of the Summons, therefore let it be read to him once more.

Which was done.

L. Chanc. Now, Sir, you hear it is for refuſing to comply with the King's Commands.

Vice-Chanc. My Lords, I beg Time to anſwer you. My Lords, I am a plain Man, not uſed to appear before ſuch an honourable Aſſembly, and if I ſhould anſwer haſtily, it may be I might ſpeak ſomething indecent or unſafe, which I ſhould be afterwards ſorry for; therefore I beg Leave, my Lords, to have Time allowed us for giving in ſuch Anſwer, as may be both for our Safety, and your Lordſhips Honour.

L. Chanc. [*Smiling.*] Why, Mr. Vice-Chancellor, as for your own Safety, my Lords are willing you ſhould take all the Care you can; but for what concerns our Honour, do you not trouble yourſelf; we are able to conſult that, without any Interpoſition of your's.

Vice-Chanc. My Lords, I beg your Pardon if I have ſaid any thing unbecoming; I mean only the Honour that is due to your Lordſhip's Quality, my Lord; and therefore being to anſwer before Perſons of Quality, I beg leave to do it with Counſel, and in Writing.

L. Chanc. Well, withdraw a little, and my Lords will conſider of your Requeſt.

Then all the Company withdrew, and about three Quarters of an Hour after the Vice-Chancellor was ſent for into the Anti-Chamber, where Mr. *Bridgman* told him, the Lords Commiſſioners had given him Time till *Wedneſday* next, till Four in the Afternoon, and Leave to put his Anſwer in Writing, and with Counſel, and by what Counſel he would.

When the Counſel had heard the Commiſſioners had granted it, they were ſomething ſurprized, and loth to move in the Thing without a Rule of Court; therefore on *Friday* Morning Dr. *Eachard* and Mr. *Stanhope* went to Mr. *Bridgman*'s Office, to deſire ſuch an Order, or at leaſt a Copy of what had been ſaid to the Vice-Chancellor; but he told them he had no Power to give either; only he repeated the Words over again for the Satisfaction of them and the Counſel, which was the ſame the Vice-Chancellor had related from his Mouth before.

WEDNESDAY, *April* 27, 1687.

In the Council-Chamber. Commiſſioners preſent as before.

ABOUT a Quarter of an Hour before the Lords met, Mr. *Bridgman* came to the Vice-Chancellor, and deſired to know of him, whether he gave his Anſwer in Writing only, or whether any Counſel would appear to argue it? To which the Vice-Chancellor anſwered, That his Anſwer was drawing out in Writing, and that he did not expect any Counſel there that Day. Mr. *Bridgman* replied, The Lords had commanded him to aſk theſe Queſtions, and would expect to know ſo much before they began to proceed. When the Delegates were called in, the Lord Chancellor ſaid,

L. Chanc. Mr. Vice-Chancellor, the laſt Time you were here you deſired Time to put in your Anſwer in Writing: My Lords have indulged you ſo far, now where is your Anſwer?

Vice-Chanc. My Lord, here it is——

And gave it to Mr. Bridgman, *who, after a Whiſper put it round the Table.*

L. Chanc. Read it.—— [*To Mr.* Bridgman.]

The Anſwer of the Univerſity and Senate of Cambridge, *to the Queſtion, Why they did not admit* Alban Francis *to the Degree of Maſter of Arts in the ſame Univerſity, according to his Majeſty's Mandatory Letters under his Signet Manual? The Vice-Chancellor and Senate of* Cambridge, *for, and in Behalf of themſelves, and the ſaid Univerſity, ſay,*

'THAT by the Statute made *primo Eliz.* and entituled, *An Act to reſtore to the Crown the antient Juriſdictions over the State Eccleſiaſtical and Spiritual, and abeliſhing Foreign Power repugnant to the ſame*; it is 'enacted, amongſt other Things, That every Perſon that ſhall be promoted to any Degree of Learning in any Univerſity within this Kingdom, 'before he ſhall receive or take any ſuch Degree, ſhall, before the Chancellor or Vice-Chancellor of the Univerſity, take the Oath in the 'Statute mentioned and appointed; purporting, that he doth thereby 'teſtify and declare in his Conſcience, that his Majeſty is the only ſupreme Governor of this Realm, as well in all Spiritual and Eccleſiaſtical Things and Cauſes, as Temporal: that no Foreign State or Potentate hath, or ought to have, any Juriſdiction, Superiority or Authority, 'Eccleſiaſtical or Spiritual, within this Realm; and that therefore he doth 'renounce and forſake all Foreign Juriſdiction and Authority, and promiſe to bear Faith and true Allegiance to the King, his Heirs and 'Succeſſors, and to his Power aſſiſt and defend all Juriſdictions and Authorities granted, united or annexed to his Majeſty's Imperial Crown 'of *England*. That by the Statute made *quinto Eliz.* entituled, *An Act for the Aſſurance of the Queen's Royal Prerogative over all the Eſtates and Subjects within her Dominions*, it is likewiſe enacted, That every 'Perſon

'Perſon that ſhall be admitted to any Degree of Learning in any of the 'Univerſities, before he ſhall be allowed or ſuffered to take upon him 'ſuch Degree, ſhall take the afore-mention'd Oath before ſuch Perſon or 'Perſons as ſhall have Authority, by common Uſe, to admit him to ſuch 'Degrees.

'That by the Statute made by his Majeſty's Royal Grandfather, King '*James* the Firſt, in the third Year of his Reign, entitled, *An Act for the* '*better Diſcovering and Repreſſing of Popiſh Recuſants*, another Oath is com-'monly preſcribed, the Oath of Obedience; by which Oath, is the Per-'ſon that takes it, among other things, enjoined to ſwear, That his Ma-'jeſty is lawful and rightful King of this Realm, and all other his Domi-'nions and Countries; and that the Pope neither of himſelf, or by any 'other Means, hath Power or Authority to depoſe his Majeſty, or diſpoſe 'of him, his Kingdoms or Dominions; or to authoriſe any Foreign Prince 'to invade him or them, or to diſcharge his Subjects from their Obedi-'ence or Allegiance to his Majeſty, or to give Leave to bear Arms againſt 'him; and that he, with true Faith and Allegiance to his Majeſty, will 'defend him to the utmoſt of his Power. And afterwards, in the Sta-'tute made in the ninth Year of his Majeſty's ſaid Royal Grandfather, 'entitled, *An Act for adminiſtring the Oath of Allegiance*, in it is enacted, 'That the ſaid laſt mentioned Oath ſhall be taken by the Vice-Chancel-'lor and Principals of Houſes in the Univerſity, in the Convocation be-'fore the Senior Maſters, and by every other Perſon that ſhall be permit-'ted or promoted to any Degree in Schools, before the Vice-Chancellor 'for the Time being, in the Congregation-Houſe.

'That the Vice-Chancellor, and every Member of the Senate, have 'taken the ſaid Oath, and the Vice-Chancellor and Senate are entruſted 'to put them in Execution in the ſaid Univerſity.

'That the Vice-Chancellor, by his Oath of Office, has alſo ſworn du-'ly to execute his Office, according to the Laws, and cannot admit to 'any Degree without the Senate.

'That the ſaid Statutes were made for the Preſervation of Doctrine and 'Religion, profeſſed by the Church of *England*, and eſtabliſhed by the 'Laws of this Realm, and of the Prerogative and rightful Power of his 'Majeſty; that upon the Receipt of his Majeſty's Royal Letters Manda-'tory, the ſame were by the Vice-Chancellor communicated to the Se-'nate; and in order to the admitting the ſaid *Alban Francis* to the Degree 'of Maſter of Arts, the ſaid Oaths were offered to be adminiſtred to the 'ſaid *Alban Francis*, if he would take the ſame; but he refuſed.

'That the admitting him without the ſaid Oaths had been contrary to 'the ſaid Statutes, and a Breach of the Truſt in the Vice-Chancellor and 'Senate repoſed, and a Violation of their Oaths; and therefore they could 'not admit him to the ſaid Degree of Maſter of Arts: And by humble 'Application to his ſacred Majeſty, did, and now again do, humbly de-'ſire your Lordſhips to repreſent this their Caſe to his Majeſty, that they 'may not lie under his Majeſty's Diſpleaſure upon any Miſapprehenſion 'thereof. But whether your Lordſhips will, as a Court, take Cognizance 'of this Matter, they humbly pray your Lordſhip's Conſideration, ſince 'that the taking a Degree of Maſter of Arts in the Univerſity, or the ad-'mitting and refuſing to ſuch a Degree, is not any Cauſe or Matter Ec-'cleſiaſtical or Spiritual, but of Lay and Temporal Cognizance.

'And they further offer to your Lordſhips, that in the Statute made in 'the ſixteenth of the Reign of his Majeſty's moſt Royal Father King '*Charles* the Firſt, entitled, *An Act for repealing of the Branch of a Statute*, 'Primo Eliz. *concerning Commiſſioners for Cauſes Eccleſiaſtical*; and whereby 'the ſaid Branch is repealed, it is enacted, "That no new Court ſhall "be erected, ordained, or appointed within this Realm, which ſhall or "may have like Power, Juriſdiction, or Authority, as the High Com-"miſſion Court then had, or pretended to have; but that all and every "ſuch Commiſſions and Grants, and all Powers and Authority granted, "or pretended to be granted thereby, ſhall be void and of none Effect, as "in and by the ſaid Statutes more fully appears."

Which being read, my Lord Chancellor ſaid, Is it ſign'd?

Mr. *Bridgman*. Yes, my Lord.

Lord Chanc. Read their Names.——— [*Which was done.*

Lord Chanc. Well, have you any more to ſay?

Mr. *Vice-Chanc.* No, my Lord, not at this Time.

Lord Chanc. Then withdraw.

All the Company withdrew, and about an Hour and a half after the Court roſe; and afterwards Mr. *Bridgman* deſired to ſpeak with the Vice-Chancellor and Delegates in the Council-Chamber, to whom he ſaid, That their Lordſhips had commanded him to tell them, they put off all further Conſideration of this Matter till *Saturday* come Seven-night, and then they expected their Attendance again. Mr. Vice-Chancellor aſked him, If Counſel would be expected to plead on their Anſwer? He replied, Their Lordſhips had given him no Commiſſion to ſay any thing to that. So they all withdrew.

SATURDAY, *May* 27, 1687.

THIS Day it was publickly diſcourſed thro' the Town, that the Lords had received a new Commiſſion; and immediately Lawyers were conſulted, whether it were proper to urge that at this Appearance. What could be gathered thereupon, was to this Effect: That it were a good Plea, if it could be well proved; for in receiving a new Commiſſion in the Midſt of Proceſs, eſpecially if there be any Alteration in it as to the Extent of their Power, would at leaſt be a good Pretence to begin the whole Cauſe again, and gain Time; but that it was by no Means ſafe to alledge the Thing, for a flying Report is no Evidence; and if that Report were falſe, it might be a great Prejudice to them and their Cauſe.

Council-Chamber. Commiſſioners preſent as before.

Lord Chanc. Mr. Vice-Chancellor, the laſt Time you were here, you gave in a Paper to my Lords, ſigned by yourſelf, and ſeveral others coming from the Univerſity, which conſiſts of ſeveral Parts; but there is one thing I muſt crave Leave of my Lords to diſcourſe you on, which concerns yourſelf. The Lords took Notice, that you alledge an Oath: That Oath, it ſeems, hindred you from obeying the King's Mandate.——Pray what was the Oath?

Vice-Chanc. My Lord, this is a new Queſtion which you were pleaſed not to put before, and I beg Leave and Time to anſwer it.

L. Chanc. Why, Mr. Vice-Chancellor, this requires no Time. My Lords, I tell you, took Notice of an Oath you pleaded for yourſelf, and now they deſire to know what the Oath is?

Vice-Chanc. I beg I may not anſwer haſtily, but that your Lordſhips would let me know what Queſtions you would aſk me, and let me anſwer them in Writing, and by Counſel.

L. Chanc. Why did you not conſult Counſel when you took your Oath? I am really concerned for the Univerſity of *Cambridge*, whereof I myſelf was once a Member, that the Vice-Chancellor, who is the Head, and the Repreſentative of ſo learned a Body, ſhould come here before the King's Commiſſioners, and not be able to give an Account of the Oath by which he acted all this time, but deſires Counſel and Time to tell what the Oath is.

Dr. *Cook.* My Lord, if your Lordſhip pleaſes, I think I remember the Words of the Oath.

L. Chanc. Nay, good Doctor, how came you, who never were Vice-Chancellor, and ſo never took this Oath, to know it better than one that is Vice-Chancellor, and hath taken it?

Vice-Chanc. I cannot call to Mind the very Words of the Oath, but the Subſtance of it is this, *That I ſhould well and faithfully, præſtare*, or *adminiſtrare munus*, or *Officium Procancellarii.*

L. Chanc. Ay, *Munus*, or *Officium*: Well, what then?

Vice-Chanc. And, my Lord, this Office I take to be ſtated by the Statutes of the Univerſity, and the Laws of the Land.

L. Chanc. Well, and how long has this been the Vice-Chancellor's Oath?—*Vice-Chanc.* Indeed, my Lord, I am not able to tell you exactly.

L. Chanc. How long do you think? I will not tie you to any Time.

Vice-Chanc. Ever ſince I knew what belonged to it; ever ſince I was Head of a College.

L. Chanc. How long have you been Head of a College?

Vice-Chanc. Six or ſeven Years, my Lord.

L. Chanc. Have not other Vice-Chancellors admitted to Degrees without Oaths, who have taken the Obligatory Oath as you have done?

Vice-Chanc. Indeed, my Lord, I cannot tell; I cannot remember every particular Thing that has been done.

L. Chanc. Well, becauſe we will keep cloſe to the Queſtion, don't you remember any Maſter of Arts made without Oaths?

Dr. *Cook.* Not under the Quality of an Univerſity Nobleman, my Lord.

L. Chanc. Nay, good Doctor, you never were Vice-Chancellor yet: When you are, we may conſider you.

Vice-Chanc. The Anſwer to your Queſtion will depend upon our Univerſity Book and Records; and if you'll allow us Time to conſult them, we can give your Lordſhip an Account.

L. Chanc. Nay, look you, Mr. Vice-Chancellor, you have given in an Anſwer in Writing already, and becauſe there is ſomething in that my Lords would be further ſatisfied in, they have left it to me to aſk you ſome Queſtions. I aſk you, therefore, If you remember any Maſter of Arts who hath been admitted heretofore without theſe Oaths?

Vice-Chanc. I cannot ſay, I remember any, my Lord.

L. Chanc. Did you never hear of one Dr. *Lightfoot?*

Vice-Chanc. I think, my Lord, I have heard of ſuch a one.

Dr. *Cook.* My Lord, I beg leave to ſpeak a few Words.

L. Chanc. Well, Doctor, what is it you have to ſay?

Dr. *Cook.* My Lord, Dr. *Lightfoot* did ſubſcribe.

L. Chanc. What Subſcription do you mean?

Dr. *Cook.* To the XXXIX Articles; and the Firſt of them is the King's Supremacy.

L. Chanc. Is Subſcribing Swearing, Doctor? But Mr. Vice-Chancellor, how many have you admitted by Mandate?

Vice-Chanc. Never but one, my Lord, and he took the Oaths.

L. Chanc. Do you never admit without Oaths them who have ſuch particular Letters Patent from the King?—Mr. *Stanhope.* Never, my Lord.

And as for Dr. *Lightfoot*, they were aware before of this particular Perſon's being objected, and therefore had provided an Anſwer to it.

Mr. *Stanhope* undertook it, becauſe the Books and Univerſity Papers had been committed to his Inſpection and Care. In anſwer, had he been permitted to ſpeak, he had this to offer, *That the Regiſter of Subſcribers was then in Court, and had a Paper ready in his Hands to be produced, where* Dr. Lightfoot *ſubſcribed with his own Hands to the XXXIX Articles, the firſt whereof is the King's Supremacy; and that he could not refuſe the Oath upon a Principle, becauſe the ſame muſt have hindred his Subſcription.* And as a farther Proof, he did offer, they were ready to ſwear this, *That two Gentlemen*, Roman Catholicks, *Servants to the Queen-Dowager, did by Virtue of the ſame Letters from the King, at the Time of his coming to* Cambridge, *deſire their Maſter of Arts Degree.* Their Names were *Perara* and *Stephens.* Theſe Gentlemen were propoſed and granted, but upon Refuſal to ſwear, were not admitted. Of this they could have produced, *Firſt*, A Teſtimony upon Oath of a Gentleman then in Court; and beſides that, the Univerſity Papers and Graces, which ſhew theſe Gentlemen's Names, among the Perſons paſſed in the Houſe, but wanting in the Liſt of Subſcribers and Commencers. After which they would have referred it to the Court, whether it was probable that the Univerſity ſhould admit one of the Queen's Servants without Oaths, and yet refuſe two more who had the ſame Title every way, becauſe they would not take the Oaths? But the Lord Chancellor would not hear him.

L. Chanc. Nay, look you now, that young Gentleman expects to be Vice-Chancellor too; when you are, Sir, you may ſpeak, but till then it will become you to forbear. Mr. Vice-Chancellor, When was it pray, that you received the King's Letters? the firſt I mean.

Vice-Chanc. I do not perfectly remember, my Lord; I can't call to Mind the Day of the Month.

L. Chanc. When were they dated, do you know?

To Mr. Bridgman, *my Lord pauſing.*

Vice-

Vice-Chanc. My Lord, I remember it was *Aſh-Wedneſday*.

Lord Chanc. And when was it theſe Letters were publiſhed in the Senate?

Vice-Chanc. It was the Seven-night after, my Lord.

Lord Chanc. What's the Meaning of the Delay, Mr. Vice-Chancellor? The King's Buſineſs uſed to have a quicker Diſpatch.

Vice-Chanc. It was a novel thing, and I was willing to give myſelf and others Time to conſider on it.

Lord Chanc. But when you had read the Letters, why was not the Gentleman admitted?

Vice-Chanc. My Lord, the Senate ſent to me, to deſire me, that I would forbear admitting Mr. *Francis*, till I had petitioned the King to revoke the Mandate.

Lord Chanc. Why, does the King's Mandate uſe to be diſputed? Did you ever ſee a Mandate voted in the Houſe, whether it ſhould be obeyed or not?

Vice-Chanc. No, my Lord, uſually they are not; but the Houſe ſent to me to forbear, for they have not had any of this Nature before.

Lord Chanc. Did you ever know any Mandates of the King's refuſed by the Univerſity before?

Vice-Chanc. After ſome Pauſe--------Yes, my Lord, ſeveral.

Lord Chanc. Pray, give us one Inſtance.

Vice Chanc. My Lord, one *Tatnell*.

Lord Chanc. When, pray? How long was that ago?

Vice-Chanc. I cannot recollect juſt the Time, but it was in his late Majeſty's Reign; I believe, about fourteen or ſixteen Years ago.

Lord Chanc. How was that?

Vice-Chanc. My Lord, the Mandate was given to one *Tatnell*, a Nonconformiſt Miniſter, and he refuſed to ſubſcribe and take the Oaths; whereupon, my Lord, the Univerſity petitioned the King, and repreſented the Matter to him, and the King was pleaſed to recal his Mandate.

Lord Chanc. Mr. Vice-Chancellor, had not you a Mandate for another Gentleman at the ſame Time with this, which you refuſed?

Vice-Chanc. Yes, my Lord, it was to make a Gentleman Doctor of Phyſick.

Lord Chanc. And he was admitted upon it, was he not?

Vice-Chanc. Yes, my Lord.

Lord Chanc. Did the Senate vote his Mandate?

Vice-Chanc. No, my Lord, they did not.

Lord Chanc. Why ſhould they interpoſe in the one, and not in the other?

Vice-Chanc. That had no Diſpenſation, my Lord, for the Oath in it.

Lord Chanc. But however, if they did not vote it, nor do any others of the King's Letters, how do you know their Conſent?

Vice-Chanc. My Lord, it is preſumed upon their being ſilent, and offering nothing to the contrary.

Lord Chanc. Ay, we have a Proverb, Mr. Vice-Chancellor, *Silence gives Conſent*; but it ſeems he was admitted immediately, was he not, before you could know whether they conſented to it or no?

Vice-Chanc. No, my Lord, he was not admitted till the Houſe deſired me to forbear in Mr. *Francis*'s Caſe.

Lord Chanc. But, as to this Buſineſs of the Senate deſiring you (my Lords) I hope you will indulge me to ſpeak a little of that; for having been formerly a Member of that Univerſity myſelf, I think I have ſome ſmall Remembrance of the Manner of the Proceedings there: Pray, Mr. Vice-Chancellor, how was it that you knew their Minds in this Buſineſs?

Vice-Chanc. My Lord, the Houſe ſent up their Opinions.

Lord Chanc. How, pray? By whom?

Vice-Chanc. The Non-Regents by Dr. *Smeult* the firſt Day; and Mr. *Billers* the Orator, and Mr. *Newton* the Mathematical Profeſſor, my Lord, the ſecond Day.

Lord Chanc. By whom do you ſay the firſt Day?

Vice-Chanc. By Dr. *Smoult*, my Lord, from the Non-Regent Houſe, and Mr. *Norris* from the Regent Houſe.

Lord Chanc. Well: What ſaid theſe two to you?----*Vice-Chanc.* My Lord, I don't know the very Words, but it was to this Effect, That I ſhould forbear admitting Mr. *Francis* till the King was petitioned.

Lord Chanc. Is that Dr. *Smoult* in Court?

Vice-Chanc. Yes, my Lord, he is here------

Then he ſhewed himſelf.

Lord Chanc. Come, Sir, What was it, I pray you, that you told the Vice-Chancellor?

Dr. *Smoult.* I have forgot, my Lord, the Words, but it was to the ſame Purpoſe the Vice-Chancellor told you juſt now, that the Houſe deſired me to acquaint him they were petitioning, that the Mandate might be recalled.

Lord Chanc. And pray, Sir, who are you, that you ſhould be thought fit to repreſent a whole Houſe? Why ſhould they chooſe you rather than any Body elſe?

Dr. *Smoult.* My Lord, I ſuppoſe becauſe I was one of the Seniors.

Lord Chanc. One of the Seniors! If you come to that, why was not the very Senior choſen?

Dr. *Smoult.* I cannot tell, my Lord, they came to me.

Vice-Chanc. My Lord, he is one of our Profeſſors.

Lord Chanc. Nay, when I aſk you Queſtions, they prompt you, and now you prompt them; but I muſt tell you, Mr. Vice-Chancellor, you ought to take an Account of what is done in the Houſe yourſelf, and not from others.

Vice-Chanc. My Place is at a great Diſtance from the Non-Regent Houſe, and I could not ſee what was done there.

Lord Chanc. But ſhould you take the Senſe of a whole Houſe from one Man?

Vice-Chanc. He came and told me, my Lord, the Houſe was of that Opinion, and I thought I had no reaſon to queſtion what he ſaid.

Lord Chanc. How loud did he ſpeak when he told you this?

Vice Chanc. Pretty loud, my Lord.

Lord Chanc. Was it ſo loud, that all the Houſe might hear it?

Vice-Chanc. No, my Lord.

Lord Chanc. Did you ſend afterwards to enquire whether he had told you their Opinions true or not?

Vice-Chanc. No, my Lord, I confeſs I did not.

Lord Chanc. But how came this new Way of giving Opinions; are not the Proctors uſually the Men that bring the Senſe of the Houſe to the Vice-Chancellor?

Vice-Chanc. Not the Non-Regent, my Lord, they are not admitted into that Houſe, nor have at all to do there.

Lord Chanc. Have you any thing elſe to offer to my Lords?

Dr. *Cook.* My Lord, if the Anſwer that we gave in the laſt Day be not ſatisfactory, we deſire to have Time allowed us to make a farther Defence, and to do it with Counſel.

Lord Chanc. Have you nothing to ſay beſides?

Dr. *Cook.* No, my Lord.

Lord Chanc. Nor you Gentlemen?——then withdraw.

After the Vice-Chancellor, and three or four of the Delegates were gone off, and the Crowd was retiring, Mr. Billers, *being a Perſon engaged in carrying up the Senſe of the Houſe, would have informed the Court (who ſeemed under a Miſtake) more particularly of the Senate's Proceedings; and how it came to paſs that the uſual Way of Suffrages was impracticable at that Time.*

Mr. *Billers.* My Lords, I beg Leave to ſpeak one Word.

Lord Chanc. Who are you?

Mr. *Billers.* My Name is *Billers*, my Lord.

Mr. *Bridgman.* My Lord, he is one of the Gentlemen that ſigned the Paper in which was the Anſwer.

Mr. *Billers.* I am one of the Perſons, my Lord, that ſigned the Paper in which was the Anſwer.

Lord Chanc. Nay, hold Mr. *Billers*, give me leave to compare your Memory with Mr. Vice-Chancellor's a little; Mr. Vice-Chancellor tells me, Mr. *Billers* and Dr. *Smoult* went up both of a Day; then comes Mr. *Billers*, and ſays, that Dr. *Smoult* and he went up two ſeveral Days.

Mr. *Billers.* My Lord, I could not poſſibly go up from the Houſe; I do not belong to the Regent-Houſe.

Lord Chanc. Indeed he ſaid ſo, Sir; indeed he did, my Lords——Did he not? [*To Mr.* Bridgman.

Mr. *Bridgman.* Yes, my Lord.

Mr. *Stanhope, behind the Biſhop of* Rocheſter. My Lord, under Favour, my Lord Chancellor is miſtaken; the Perſon Mr. Vice-Chancellor told your Lordſhip went up from the Regent-Houſe the ſame Day with Dr. *Smoult*, was Mr. *Norris*.

Biſhop of Rocheſter. My Lord, I think your Lordſhip forgets; it was Mr. *Norris* that went up from the Houſe the ſame Day with Dr. *Smoult*.

Lord Chanc. Well, Sir, was this that you would ſay?

Mr. *Billers.* I was only juſt acquainting your Lordſhip what was done, and there was no other Way——

The Thing Mr. Billers *intended to urge, was, That the uſual Way of Suffrage could not be practiſed at that Time; ſo the other was taken.*

Earl of Sunderland. We heard that before.

Lord Chanc. Ay, Sir, we took both what was done, and what was not done; therefore withdraw.

Then all the Company retired, and after an Hour and a Half's Attendance, they were called in again, and the Lord Chancellor pronounced the Sentence upon Mr. Vice-Chancellor in the following Manner.

Lord Chanc. Mr. Vice-Chancellor, the Lords have commanded me to tell you, that they have taken ſome Time to conſider your Anſwer, and are at laſt come to a Reſolution upon it: My Buſineſs is to tell you what the Reſolution is, Mr. Vice-Chancellor. My Lords conſider you have been guilty of an Act of great Diſobedience to the King's Commands, and other Crimes and Contempts, and ſuch, that now you appear before us, you have little to ſay in Excuſe of it; therefore as a Mark of his Majeſty's and their Lordſhips Diſpleaſure, they have thought fit to appoint, that you be henceforth deprived of the Office of Vice-Chancellor of *Cambridge*. They likewiſe order, that you don't preſume, at any Time hereafter, to meddle with any of the publick Buſineſs of the Univerſity. Likewiſe, Mr. Vice-Chancellor, their Lordſhips conſider you have a Headſhip of a College; and becauſe the Example of ſo ill a Man may be a pernicious Conſequence to all under your Government, they have likewiſe thought fit that you be deprived of it, during his Majeſty's Pleaſure: But becauſe they have a Tenderneſs for the College, for which all along you have ſhewed little Regard, my Lords are pleaſed to appoint, that the Revenues of your Headſhip ſhall go to the Benefit of the Society. This is their Lordſhips Pleaſure, and to this they require your Obedience. There are likewiſe ſome other Gentlemen that have ſigned a Paper here, but my Lords expect their Attendance when they ſit next, which will be on *Thurſday* next; then we ſhall take them into Conſideration.

On *Monday*, Dr. *Peachell* wrote by an Eſquire-Beadle, who attended him, to deſire a Copy of the Sentence; but Anſwer was returned, The Sentence as yet was not committed to Writing, but verbal only, and ſo he could not have a Copy; but he repeated the Heads only with this Alteration, That he was ſuſpended his Maſterſhip, and not deprived; which was an Error in the Lord Chancellor's delivering it.

The Beginning of the next Week was employed in making Enquiries after the new Commiſſion; the Hannaper Six Clerks, and the riding Six Clerks Office knew nothing of it, nor any Court of Record could be directed to. Mr. *Bridgman* did own there was ſuch a Thing, but did not inſtruct them how to come to the Sight of it. Thoſe that ſpoke beſt of the Commiſſioners, urged the Removal of the Lord Chief Juſtice of the King's Bench to the Common Pleas, as a Thing that made a new Commiſſion neceſſary for rectifying his Title: But a Gentleman, who pretended to have read it, gave them private Intimations that there were very large Additions, and very conſiderable Alterations in it at my Lord Chancellor's own Houſe. The Servants brought Word, that my Lord would ſpeak with the Perſon himſelf that deſired to ſee it, and appointed him a Time; the Sollicitor went at the Hour, but did not gain Acceſs to my Lord, and ſo they could not ſee it at all, for it was *Wedneſday* Night, or *Thurſday* Morning.

THURSDAY, *May* 12th, 1688.

Council-Chamber. Commiſſioners preſent as before, the Delegates appear with Dr. *Peachell*.

Lord Chanc. THE laſt Time you appeared here before us, my Lords thought fit to ſet a Mark of their juſt Diſpleaſure upon the Vice-Chancellor. Gentlemen, you cannot but be ſenſible, and ſo muſt

muſt all the World, how pernicious and obſtinate the Univerſity has ſhewn themſelves in refuſing the King's Commands, and ſuch Commands, I muſt tell you, that ought to be obey'd.

There was a Time, you may remember Inſtances, if you do not, I'll turn you to one in the Year 1667, when the Letters were ſo far from being diſputed, that they paſſed for a Law among you, and do this Day ſtand recorded among the ſolemn Acts, and publick Statutes of the Univerſity. Gentlemen, my Lords conſider there is a Difference between the Vice-Chancellor's Caſe and yours, and therefore did not conclude you, who repreſent the Senate, with him, but have required your Attendance at this Time: They impute the Miſcarriage of the Body to the Head Diſeaſe chiefly; though neither are you without Fault, for being ſo much as uneaſy under the King's Commands. Gentlemen, I muſt tell you, my Lords underſtand very well the ſly Inſinuations in your Paper, and have commanded me to tell you, That they know upon what Grounds they go, though they do not think fit to deſcend to Particulars: They know too how far that Authority extends, not only to you of the Univerſity, but to the Societies within this Kingdom. Gentlemen, your beſt Courſe will be by a ready Obedience to his Majeſty's Command for the future, and by giving a good Example to others, to make Amends for the ill Example that has been given you. Therefore I ſhall ſay to you what the Scripture ſays, and rather becauſe moſt of you are Divines; *Go your way, and ſin no more, leſt a worſe thing come unto you.*

The late King's Letters, mentioned by my Lord Chancellor, *Anno* 1667, concern the regulating ſome of the Publick Exerciſes in the Univerſity; the Meaning whereof is this: The King is their Viſitor, and whenever there is any thing belonging to the local Statutes and Cuſtoms which they think ought to be altered, or any Abuſe which ſhould be rectified and redreſs'd, their way is to beg the King's Royal Injunction in the Caſe, which they keep upon Record, and obey as a Statute. How good an Argument is this againſt them, for not obeying a private Mandate, contrary to four known Laws of the Land; and how parallel the Caſe, is eaſy diſcern'd.

As they were drawing off, he call'd them again; and ſaid,

Lord Chanc. Hold, Gentlemen, I know ſomething more to ſay to you. My Lords require, as a Teſtimony of your Obedience, that you, who repreſent the Senate, ſhould take Care they have the Univerſity Statutes brought to lie before them here.

Dr. *Cook.* My Lord, we do no longer repreſent the Senate; our Delegation is determined with the Vice-Chancellor's Deprivation, my Lord.

Lord Chanc. Well, if your Commiſſion be expired, we will give you a new one; we are able to give you a Commiſſion: We ſuppoſe you had ſufficient Authority for appearing here.

Dr. *Cook.* Does your Lordſhip expect that we ſhould attend with the Statutes ourſelves?

Lord Chanc. No, no, ſend them up by a proper Officer: You are only to carry a Meſſage from us to the Senate, and tell them what we expect.

Dr. *Eachard.* In what Time does your Lordſhip expect them?

Lord Chanc. In a convenient Time; we will not tie you up; but if you be tardy, my Lords will take care to quicken you by an Intimation; I mean only a Copy, not original Statutes. You are now diſcharged from any farther Attendance here.

The Delegates, upon the Vice-Chancellor's Deprivation, being no longer capable of acting as Publick Perſons, and conſequently of deriving any ill Conſequence upon the Body they have repreſented, thought they might venture their own Perſons more boldly: Therefore, in order to ſatisfy the World, they were mighty deſirous to bring about a ſecond Hearing of the ſame Points, which, before the Vice-Chancellor's Sentence, they were not ſuffered to ſpeak to, and which, when the Vice-Chancellor was aſking, they had not an Opportunity of anſwering ſo very particular as they could have wiſh'd, confining themſelves to ſuch Queſtions, all the while, as did not concern the Vice-Chancellor ſolely and perſonally, but affected the whole Senate jointly with him: Which Order they had likewiſe obſerved in interpoſing at the Trial. This Anſwer they had ready to offer in Writing, if that could be admitted; but if not, reſolved to argue it by Word of Mouth: The Subſtance of it may be reduced to two Heads:

Firſt, The Buſineſs of admitting others, and particularly Dr. *Lightfoot*, without Oaths. As to *Lightfoot*'s Caſe, what they intended to have urged in Court, you have ſeen already; but as to others,

I. 'That Peers are by the very Act of Parliament 5 *Eliz.* exempted 'from the Oath.

II. 'That all ſuch as the Univerſity calls Noblemen, have Time out 'of Mind enjoyed the Privilege of Peers.

III. 'That under that Quality they never admit any without Oaths.

IV. 'That if at any time, upon the entertaining of a Prince, or any 'ſuch Solemnity, any one has ſlipped out in the Crowd, which they are 'not conſcious of, this is to be imputed to Hurry and Inadvertency, and 'cannot be parallel to this Caſe, where the Senate acted with Leiſure and 'Deliberation.

V. 'That even theſe Degrees, given to Noblemen and Strangers, are 'Honorary and Complimental, and ſo different from what the Statute 'calls Degrees of Learning, and Men uſe, exerciſe and make a Gain of 'their Profeſſion.

VI. 'That ſuppoſing never ſo many to be admitted without Oaths, 'this they acknowledged to be irregular, and the Breach of a Law in one 'can be no Precedent for another to follow.

VII. 'That however, they are very fully and particularly aſſured, no 'Man was ever admitted, who poſitively refuſed the Oaths, which this 'Mr. *Francis* did.'

I. 'That every Man who is a Member of that, or any other Senate, 'hath ſuch a Right to propoſe, debate, and adviſe, as Occaſion ſhall re'quire, and proteſt againſt any irregular Proceedings in it.

II. 'That in a Matter contrary to the Laws, and ſo highly concern'ing their Univerſity and Religion, as the opening ſuch a Gap for the 'Men of any Perſwaſion to become Members of their Body and Senate '(which every Reſident Maſter of Art is), it had been the greateſt Infidelity 'and Negligence to have ſat ſtill.

III. 'That their Suffrage not being aſked by the common Way, ought 'not to have been a Bar, becauſe every Man in his Matriculation Oath, 'obligeth himſelf to be aſſiſting to the Chancellor and Vice-Chancellor, 'and to defend the State, Honour, and Dignity of the Univerſity, ac'cording to his Power and Capacity; and this to do *Suffragio & Concilio, 'rogatus & non rogatus.*

IV. 'That repreſenting the whole Houſes Opinions by a few, is a 'Practice common to all numerous Congregations, and uſual in this, for 'any ſingle Man, voluntarily to go and addreſs the Vice-Chancellor in 'Behalf of his whole College, or otherwiſe.

V. 'That the late King commanded, by his Royal Letters, that all 'Addreſs to the Vice-Chancellor ſhould be made in the moſt quiet, de'cent, and reſpectful Manner: And this way was thought more conform'able to that Command, than the Hurry of every Man applying himſelf 'Perſonally.

VI. 'To give the better Reputation to the Thing, and make it unex'ceptionable, the Perſons ſent from the Senate to the Vice-Chancellor, 'were all Men either of Publick Character in the Body, or the Seniors of 'their Houſes, or ſome way eminently known in the Univerſity; but 'they being admitted, as you have ſeen, on *Thurſday*, there was no Op'portunity at all of offering a Diſpute:

Animadverſions on WEDNESDAY, *April* 27.

THIS Day the Plea was given in, and the only Thing needful to be remark'd, is, the uſual way of demurring to the Court's Juriſdiction; which is commonly either the only, or firſt Plea, in ſuch Caſes: But the Delegates look'd upon themſelves as obliged not only to defend their Cauſe, but to ſatisfy the World; therefore they were deſirous that all People ſhould be ſatisfied upon what Reaſons they acted; and to this Purpoſe they firſt inſiſted upon them, which they did not at all doubt but it would be patiently heard; whereas, if the Court's Juriſdiction had come firſt, that would, in all Probability, have occaſioned the whole Plea to be ſtifled and over-ruled.

SATURDAY, *May* 14, 1687.

MR. *Atterbury* came to *Cambridge*, with two Orders under the Commiſſioners Seal; one to the Proctors to proceed in the Choice of a new Vice-Chancellor, and the other to *Magdalen*-College Fellows: To each of which was annexed a Copy of the Sentence to be fixed upon the School Doors, and *Magdalen* College Gates: And on *Thurſday*, *May* the 17th, Dr. *Balderſon*, Maſter of *Emanuel* College, ſucceeded in the Office of Vice-Chancellor.

A Copy of Dr. Peachell's *Sentence, as it was fix'd on the Publick School-Doors, and* Magdalen *College-Gates.*

By his Majeſty's Commiſſioners for Eccleſiaſtical Cauſes, and the Viſitation of the Univerſity, and of every Collegiate and Cathedral Churches, Colleges, Grammar-Schools, Hoſpitals, and other the like Incorporations, or Foundations, or Societies.

'WHEREAS *John Peachell*, Doctor of Divinity, Vice-Chan'cellor of *Cambridge*, Maſter of *Magdalen* College, in the ſaid 'Univerſity, has been conven'd before us, for his Diſobedience to his 'Majeſty's Royal Letters Mandatory, and other his Contempts; and the 'ſaid Dr. *John Peachell* having been fully heard thereupon, we have 'thought fit, after mature conſideration of the Matter, to Declare, De'cree and Pronounce: That the ſaid Dr. *John Peachell* ſhall, for the ſaid 'Diſobedience and Contempts, be deprived from being Vice-Chancellor 'of the ſaid Univerſity, and from all Power of acting in the ſame: And 'alſo, that he be Suſpended *ab Officio & Beneficio* of his Maſterſhip of the 'ſaid College, during his Majeſty's Pleaſure; and accordingly we do by 'theſe Preſents deprive him, the ſaid Dr. *John Peachell*, from being Vice-'Chancellor of the ſaid Univerſity, and from all Power of acting in the 'ſame: And we alſo Suſpend him *ab Officio & Beneficio* of his Maſterſhip 'of the ſaid College, peremptorily admoniſhing and requiring him hereby, 'to abſtain from the Function of Maſter of the ſaid College, during the 'ſaid Suſpenſion, under Pain of Deprivation from his Maſterſhip. And 'we alſo farther Order and Decree, that the Profits and Perquiſites be'longing to his ſaid Maſterſhip, ſhall, during the ſame Suſpenſion, be ap'plied to the Uſe and Benefit of the ſaid College.

Given under Our Seal, the 7th of *May*, 1687.

CXLII. *Proceedings againſt St.* Mary-Magdalen *College in* Oxon, *for not Electing* ANTHONY FARMER *Preſident of the ſaid College*, June, &c. 1687, 3 Jac. II. *

A Narrative of the Election of Dr. Hough, *Preſident to St.* Mary-Magdalen *College*, Oxon, 1687.

THE Preſidentſhip of St. *Mary-Magdalen* College, in the Univerſity of *Oxon*, being void by the Death of Dr. *Henry Clark*, late Preſident of the ſame, the Vice-Preſident, Dr. *Aldworth*, gave notice to all the Fellows preſent in the Chapel, on *Thurſday* the 31ſt of *March*, 1687; where it was unanimouſly agreed to proceed to the Election of a Preſident on *Wedneſday* the 13th of *April* following, at Nine o'Clock in the Morning, in the Chapel: And in order thereto, the Vice-Preſident cauſed a Citation to be fix'd on the Chapel-Door of the ſaid College, ſignifying the Vacancy, Time and Place of the Election, according to the Direction of the Statutes. But before the Day of Election, being credibly informed that

* *Burn.* Hiſt. Own Times, Vol. I. p. 699.

his Majeſty had been pleaſed to grant his Letters Mandatory in Behalf of Mr. *Anthony Farmer*, they moſt humbly repreſented to his Sacred Majeſty, in their Petition bearing Date *April* the 9th, That the ſaid Mr. *Farmer* was uncapable, by their Statutes, of being Preſident; and therefore did moſt humbly pray his Majeſty to leave them to a free Election, or recommend ſuch a Perſon to them as was capable by their Statutes. *Monday April* the 11th, his Majeſty's Letters Mandatory were delivered by the Hands of Mr. *Robert Charnock* *, Maſter of Arts, and Fellow of the ſaid College, directed to the Vice-Preſident and Fellows of *Magdalen*-College in *Oxon*, requiring them forthwith to Elect the ſaid Mr. *Farmer*, and admit him Preſident: Which Letter the Vice-Preſident read in the Chapel of the ſaid College, between the Hours of four and five o'Clock in the ſame Day, after Evening Service, before the Fellows of the College, there preſent, and aſked them, Whether they, in Obedience to his Majeſty's Letters, would forthwith elect and admit Mr. *Farmer* Preſident? Who all agreed, in Conſideration to Mr. *Farmer*'s not being qualified, and the Danger of Expulſion to any of the Fellows that ſhould be abſent from the Election, and that the Time of Election, according to the Citation, was ſo near, to defer their Anſwer till *Wedneſday* following: Whereupon the Vice-Preſident required all the Fellows to be preſent in the Chapel the ſaid *Wedneſday* Morning at nine o'Clock. All the Fellows being then met, the Vice-Preſident read the Statute *De Electione Preſidentis*; and the Statute 5 *Eliz.* againſt corrupt Elections was read alſo: After which the Vice-Preſident read the King's Letter in Behalf of Mr. *Farmer*, and the ſecond Time demanded an Anſwer of the Fellows thereto. Their Anſwer was to this Effect: That having a Petition now lying before his Majeſty, they ought not to proceed to Election, till they had received his Majeſty's Anſwer to the ſame: And thereupon they all agreed (except Mr. *Charnock*) that the Election ſhould be deferred; which was accordingly done, until the next Morning nine o'Clock.

Thurſday April the 14th, at nine o'Clock in the Morning, all the Fellows being met, the Vice-Preſident told them, That the Election of a Preſident had been deferred upon account of their Petition to his Majeſty; in anſwer to which, they had not then received his Majeſty's Pleaſure; that the next Day was the utmoſt Time they could defer the Election by the Statutes, and therefore it was neceſſary they ſhould come to ſome Reſolution. He told them farther, That the King had commanded them to elect Mr. *Farmer*, and aſked their Senſe therein: Which was unanimous (except Mr. *Charnock*) that the Election ſhould be deferred till the next Morning eight o'Clock; and in order thereunto, the Sacrament to be adminiſtred firſt; and accordingly it was adjourned.

Friday, *April* the 15th, at nine o'Clock in the Morning, the Vice-Preſident and Fellows being met, Dr. *Thomas Smith* and Captain *Bagſhaw*, two of the Fellows, acquainted the reſt, from my Lord-Preſident of the Council, That in Anſwer to their Petition, his Majeſty had ſent his Letter to the College, *that he expected to be obeyed.* After which, the Vice-Preſident read again the King's Letter to them, and aſk'd, whether, in Obedience thereunto, they would elect and admit Mr. *Farmer* Preſident? They anſwered, That they deſired they might proceed to an Election. Then the Vice-Preſident having propoſed, whether having received his Majeſty's Pleaſure in Anſwer to their Petition, they would make any further Addreſs? the Vice-Preſident, Dr. *Fairfax* †, Dr. *Pudſay*, and Dr. *Thomas Smith*, were for a ſecond Addreſs; but all the reſt declared immediately for proceeding to the Election.

Then the Vice-Preſident propoſed, whether they would go to an Election *viva voce*, or by Scrutiny? The Vice-Preſident, Mr. *Thompſon*, and Mr. *Charnock*, were for proceeding to an Election *viva voce*; all the reſt were for going to an Election by Scrutiny except Dr. *Thomas Smith*, who was not for going to Election, until the King ſhould again be petitioned.

This therefore being the Senſe of the Majority, That they ought to proceed to the Election of a Preſident, according to the Statutes, and this the laſt Day limited for Election; in order thereunto, the Holy Sacrament was ſolemnly taken by all except Mr. *Charnock*. Then the Statute *De Electione Præſidentis*, and 5 *Eliz.* againſt corrupt Elections, was read by the Vice-Preſident. Every one took the Oath preſcribed in the Statutes to be taken, in order to the Nomination of a Preſident (except Mr. *Thompſon* and Mr. *Charnock*, who refuſed it): And the two Senior Fellows were ſworn Scrutators in the Scrutiny of the whole Society. For the Nomination of a Preſident, Mr. *Hough* § and Mr. *Maynard* had each of them the major Part of all the Voices; and were accordingly pronounced by the Senior Scrutator, *Nominati in Ordine ad Electionem Præſidentis.* Then the thirteen Senior Fellows being met to elect one of theſe two Preſident; and every one of them ſworn according to the Statute; eleven of them elected Mr. *Hough*, who was accordingly pronounced Preſident of St. *Mary-Magdalen* College in *Oxon*, by the Senior Scrutator, in the Preſence of all the Fellows: And Mr. *Maynard* was appointed by the thirteen Senior Fellows to preſent the ſaid Preſident Elect to the Viſitor, in order to his Admiſſion. After this, Mr. *Thompſon* and Mr. *Charnock* declared *viva voce* for Mr. *Farmer*, according to his Majeſty's Letter.

Saturday, *April* 16th, Mr. *Hough*, Preſident elect, was preſented to the Viſitor ‖ by Mr. *Maynard*, who at the ſame Time delivered to his Lordſhip an Inſtrument under the College-Seal, containing the Proceedings of the Election: After a Sight whereof, Mr. *Hough* was ſworn and admitted Preſident by his Lordſhip, according to the Statutes.

Sunday, *April* the 17th, Mr. *Hough*, at his return to the College, took the ſame Oath again before the Society, and afterwards as Preſident took his Seat in the Chapel, at four o'Clock Prayers in the Afternoon.

A Copy of the King's Mandate to the Fellows of Magdalen-*College.*

JAMES R.

TRuſty and Well-beloved, We greet you well. Whereas we are well ſatisfied of the Piety, Loyalty, and Learning, of our Truſty and Well-beloved *Anthony Farmer*, Maſter of Arts, of that your College of St. *Mary-Magdalen*, We have thought fit hereby effectually to recommend him to you for the Place of Preſident of our ſaid College, now void by the Death of Dr. *Clark*, late Preſident thereof; willing and requiring you forthwith, upon Receipt hereof, to elect and admit him, the ſaid *Anthony Farmer*, into the ſaid Place of Preſident, with all and ſingular the Rights and Privileges, Emoluments and Advantages thereunto belonging, any Statute, Cuſtom, or Conſtitution, to the contrary notwithſtanding, wherewith We are graciouſly pleaſed to diſpenſe with in this Behalf. And ſo, not doubting of your Compliance herein, We bid you Farewel.

Given at our Court at Whitehall, *the fifth Day of* April, 1687, *in the third Year of our Reign.*

A Copy of Magdalen-*College's Petition.*

To the King's moſt Excellent Majeſty,

The Humble Petition of the Vice-Preſident and Fellows of St. Mary-Magdalen-*College in* Oxon:

Moſt humbly Sheweth,

WE have been credibly informed, That Mr. *Anthony Farmer*, who was not of our Foundation, has obtained your moſt excellent Majeſty's Recommendation to be Preſident of your Majeſty's College, in the room of Dr. *Henry Clark*, deceaſed.

We therefore, with all Submiſſion, as becomes your moſt dutiful and loyal Subjects, moſt humbly repreſent to your Sacred Majeſty, That the ſaid Mr. *Farmer* is a Perſon in ſeveral Reſpects uncapable of that Character, according to our Founder's Statutes: And do moſt earneſtly beſeech your Majeſty, as your Majeſty ſhall judge fitteſt in your moſt Princely Wiſdom, either to leave us to the Diſcharge of our Duty and Conſciences, according to your Majeſty's late moſt gracious Toleration, and our Founder's Statutes, or to recommend ſuch a Perſon who may be more ſerviceable to your Majeſty, and to this your Majeſty's College.

A Copy of the Lord Sunderland's *Letter to the Fellows.*

Gentlemen,

THE King being given to underſtand, That notwithſtanding his late *Mandate* ſent to you, for electing Mr. *Farmer* to be Preſident of your College, you have made Choice of another Perſon; his Majeſty commands me to tell you, He is much ſurprized at theſe Proceedings, and expects you ſhould ſend me an Account of what paſſed on that Occaſion, and whether you did receive his Majeſty's ſaid *Letters Mandate*, before you choſe Dr. *Hough*. I am,

Gentlemen,

Your Affectionate and Humble Servant,

SUNDERLAND.

The Caſe of the Vice-Preſident and Fellows of St. Mary-Magdalen-*College in* Oxon, *in their late Election of a Preſident.*

UPON Notice of the Death of Dr. *Henry Clark*, late Preſident of St. *Mary-Magdalen*-College in *Oxon*, the Vice-Preſident called a Meeting of the Fellows, in order to appoint a Day for the Election of a new Preſident. The 13th of *April* was the Day prefixed with Power to prorogue the Election to the 15th, as they ſhould ſee Cauſe, beyond which time it was not in their Power to defer the ſame. This being agreed, a Citation or Premonition was fixed upon the Chapel-Door of the College, ſignifying the ſame; and ſummoning all the abſent Fellows to repair home to the enſuing Election, as the Statute in that Caſe directs. After this, upon the 11th of *April*, they received his Majeſty's Letter in Behalf of Mr. *Farmer*, requiring them to elect and admit him Preſident: But he having never been Fellow of that College, nor *New*-College, in which are the only Perſons capable of being choſen by the Statutes; and wanting likewiſe ſuch perſonal Qualifications as are required in the Character of a Preſident, they did not imagine it was, or could be his Majeſty's Pleaſure, that they ſhould act ſo directly contrary to the expreſs Words of their Statutes, to which they are ſtrictly and poſitively ſworn: But did humbly conceive they were bound in Duty to believe, that his Majeſty had been miſinformed in the Character and Capacity of Mr. *Farmer*. And therefore on the 15th of *April*, the laſt of thoſe Days within which they were confined to finiſh the Election, they proceeded to a Choice; and having firſt received the bleſſed Euchariſt, and taken an Oath, as the Founder enjoins, to chooſe a Perſon ſo qualified, as is there ſpecified, they did elect the Reverend Mr. *John Hough*, Batchelor in Divinity, who is a Perſon every way qualified by the Statutes of the ſaid College: And if it ſhall be objected that his Majeſty did in his Letter for Mr. *Farmer* graciouſly diſpenſe with all the Statutes that rendered him uncapable of being elected; and that therefore they might have obeyed without Breach of their Oaths: They humbly beg leave to repreſent, that there is an expreſs Clauſe in that Oath, which every Man takes when he is admitted Fellow of the College, wherein he ſwears, not to procure, accept, or make uſe of, any Diſpenſation from his Oath, or any Part thereof, by whomſoever procured, or by what Authority ſoever granted. As to their former Practice, when they have elected in Obedience to the King's Letter heretofore, it has been always in ſuch Caſes where the Perſons recommended have been every way qualified for the Office by their Statutes: In which Caſes they always have been, and ever will be, ready to comply with his Majeſty's Pleaſure; it not being without unſpeakable Regret, that they diſobey the leaſt of his Commands. They know how entirely their Welfare depends upon the Countenance of their Prince; nor doth any thing more deeply affect and grieve their Souls, than when they find themſelves reduced to this unfortunate Neceſſity, of either diſobeying his Will, or violating their Conſciences by notorious Perjuries.

A Copy of a Letter to the Duke of Ormond, April *the* 18*th*, 1687.

May it pleaſe your Grace,

WE the Preſident, and Fellows of *Magdalen*-College in *Oxon*, ſenſible of the Benefits and Honour we enjoy under your Grace's Patronage, and how much it imports us to have your Advice in all the Difficulties wherewith we are preſſed; having, as we fear, diſpleaſed

his

* *He was afterwards executed for being concerned in the Aſſaſſination-Plot againſt King* William.

† *Afterwards Dean of* Norwich.

§ *Afterwards Biſhop of* Litchfield *and* Coventry, *now Biſhop of* Worceſter.

‖ *The Biſhop of* Wincheſter.

his Majesty in our Election of a President; do humbly beg Leave to represent to your Grace a true State of our Case, and hope you will please to inform the King how uncapable we were to perform his Commands.

His Majesty was pleased, on the Death of Dr. *Henry Clark*, President of St. *Mary-Magdalen* College, to command us, by his Letter, to elect and admit Mr. *Anthony Farmer* in that Office, a Person utterly uncapable of it by our Statutes, as we are ready to make appear in many Particulars; and since we have taken a positive Oath of Obedience to them, and that exclusive to all Dispensations whatsoever; we humbly conceive we could not obey that Command in Favour of Mr. *Farmer*, unless he had brought those Qualifications with him, which our Founder requires in the Person of the President; and being confined as to the Time of Election, we have been forced to proceed to the Choice of one, who has approved his Loyalty in the whole Course of his Life, and whom we think suitably qualified for the Place.——

May it therefore please your Grace to interpose with his most Sacred Majesty for us, that we may not lie under the Weight of his Displeasure, for not being in a Capacity for obeying his Commands. We know him to be a Prince of eminent Justice and Integrity, and cannot think he will value any Instance of Duty to himself, which manifestly breaks in upon the Obligation of our Consciences. And your Grace's extraordinary unblemished Loyalty to the Crown; and that Regard which, we assure ourselves, our most honoured Lord and Chancellor has to the Peace and Welfare of this Place, induceth us to presume your Grace will omit no Endeavours to set before his Majesty the true Reason and Necessity of our Proceedings. That God Almighty protect your Grace, shall be the daily Prayers of,

May it please your Grace, &c.

The Bishop of Winton*'s Letter to the Lord President of the Council.*

My Honoured Lord,

THE Obligation I have upon me as Visitor of St. *Mary-Magdalen* College in *Oxon*, occasions this Address: For I am inform'd that great Endeavours are used with his Majesty to recommend one Mr. *Farmer*, who is not at present, nor ever was Fellow of the College, to be President of it; which is directly contrary to the Statutes of the Founder (as I am confident some, who promote Mr. *Farmer*'s Interest, cannot be ignorant of). And were there not many Persons now actually Fellows, and several who have been (in particular the Bishop of *Man*, and Dr. *Jessop*) very eminent for Learning and Loyalty, and every way qualified according to the Statutes, I should not press your Lordship to lay the Concern of the College (which hath upon all Occasions express'd its Zeal and Forwardness in Defence of the Crown, and, as I particularly know, in the great Affairs of the Succession) before his Majesty; who, I hope, will leave them to their Rules, as the Statutes, which have hitherto (excepting in the Times of Rebellion) been conscientiously observ'd, and which will be the highest Satisfaction to the truly Loyal University, and promote his Majesty's Service; which has always been the Endeavour of

Your Lordship's most Humble Servant.

A Copy of the Citation to the Vice-President and Fellows, for to appear at Whitehall, June *the 6th*, 1687.

By his Majesty's Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all and every Cathedral and Collegiate Churches, Colleges, &c.

COmplaint having been made unto Us, that the Vice-President and Fellows of St. *Mary-Magdalen* College in *Oxon*, have refused to comply with his Majesty's Letters Mandatory, for electing and admitting Mr. *Anthony Farmer* President of the same College, in the room of Dr. *Clark* deceased, and that, notwithstanding his Majesty's Letters, they have elected Mr. *John Hough* President of the said College: You, and either of you, are hereby required to cite and summon the said Vice-President and Fellows, requiring them, or such of the said Fellows as they shall depute in their Behalf, to appear before Us in the Council-Chamber at *White-Hall*, upon *Monday* the 6th of the next Month of *June*, at Four in the Afternoon, to answer to such Matters as shall be objected against them, concerning the Premises; and of the due Execution thereof, you are to certify Us then and there.

Given under Our Seal the 28th of May, 1687.

To Thomas Atterbury,
and
Robert Eldows;
Or to either of them.

The Answer of the Vice-President, and other Fellows, of Magdalen *College in* Oxon, *who were deputed by the said College, to the Question propounded by the Right Honourable and Right Reverend the Lords Commissioners for Ecclesiastical Affairs*, viz.

Why they did not obey his Majesty's Letter, requiring them to elect and admit Mr. *Anthony Farmer* President of the said College?

THE said Vice-President, and other deputed Fellows, answered and said, That the said College of St. *Mary Magdalen* in *Oxon*, is a Body Corporate, governed by local Statutes, granted and confirmed to them by his Majesty's Royal Predecessor, King *Henry* VI. for him and his Heirs and Successors, under the Great Seal of *England*; which are also since confirmed by several other Patents of others of his Majesty's Royal Predecessors, under the Great Seal of *England*. That by the said Statutes of the College (to the Observation of which each Fellow is sworn) it is ordered, that the Person elected President thereof, shall be a Man of good Life and Reputation, of approved Understanding and good Temper, discreet, provident, and circumspect, both in Spiritual and Temporal Affairs. And at the Time of Election of a President, the said Fellows are bound by the said Statutes to take an Oath, that they shall nominate none to that Office, but such as are, or have been Fellows of the said College, or of *New-College* in *Oxon*, or if they are not actually Fellows at that Time of Election, that they be such as have left their Fellowships in their respective Colleges upon credible Accounts. And when two qualified Persons shall be nominated at the Time of Election, by the greater Number of all the Fellows, to the said Office of President, the thirteen Seniors also swear that they will elect one of them, whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for the Place; without any Regard to Love, Hatred, Favour, or Fear. And every Fellow, when he is first admitted into his Fellowship in the said College, swears that he will inviolably keep and observe all the Statutes and Ordinances of the College, and every thing therein contained, so far as does or may concern him, according to the plain, literal, and grammatical Sense and Meaning thereof, and, as much as in him lies, will cause the same to be kept and observed by others; and that he will not procure any Dispensation contrary to his aforesaid Oath, or any Part thereof, nor contrary to the Statutes and Ordinances to which it relates, or any of them; nor will he endeavour that such Dispensation shall be procured by any other, or others, publickly or privately, directly or indirectly. And if it shall happen that any Dispensation of this sort, of whatsoever Authority it shall be, whether in general or particular, or under what Form of Words soever it be granted, that he will neither make use of it, nor in any sort consent thereunto. That upon Notice of the Death of Dr. *Clark*, late President of the said College, the Vice-President called a Meeting of the said Fellows, in order to the appointing a Day for the Election of a new President, and the 13th of *April* was the Time prefixed, with power to prorogue the same, as they should see Cause, till the 15th, beyond which Time they could not statutably defer their Election; and in Pursuance thereof a Citation or Premonition was fixed upon the Chapel-door of the said College, signifying the same; and by which the Absent Fellows were summoned to repair Home, as the Statute in the Case requires. And the said Vice-President and other deputed Fellows farther say, that on the 11th of *April* aforesaid, they received his Majesty's Letters Mandatory, to elect and admit the said Mr. *Anthony Farmer* President of the said College: But forasmuch as the said Vice-President and Fellows apprehended the Right of Election to be in them, and believed his Majesty never intended to dispossess them of their Rights: And forasmuch as the said Mr. *Farmer* had never been Fellow either of *Magdalen* or *New College* in *Oxon*, and had not those Qualifications, which in and by the said Statutes of the College are required in the Character of a President, as they in their Consciences did, or do verily believe; and in regard that they could not comply with his Majesty's Letter, without the Violation of their Oaths, and Hazard of their legal Interest and Property, wherewith they are by their Statutes possessed, and which by their Oaths they are bound to maintain, they represented the same by their humble Petition to his Majesty. And having deferred their Election of a President to the last Day limited by their Statutes, then they proceeded to Election, and having first received the Eucharist, and taken the said Oaths, as the Statutes enjoin, to choose a Person so qualified as before expressed, they did elect the Reverend Mr. *John Hough*, B. D. and one of the Fellows of their College, a Person every way qualified to be President, who has been since confirmed by the Bishop of *Winton*, their Visitor, as the Statutes of the said College direct.

And that they might not lie under his Majesty's Displeasure by their Proceedings, they did, on the 18th of *April*, make an humble Representation thereof to his Majesty, by his Grace the Duke of *Ormond*, Chancellor of the University of *Oxon*, setting forth their indispensable Obligations to observe their Founder's Statutes.

All which Matters the Vice-President, and other deputed Fellows, do humbly offer to your Lordships, and pray to be dismissed with your Lordships Favour.

This Answer was signed but by five of the deputed Fellows, Dr. *Fairfax* not consenting to it, who desired their Lordships to hear him apart, and take his Reasons, why he could not subscribe. After the reading of the Answer, the Lord Chancellor *Jeffereys* being in Hopes he would submit, gave him Leave to speak, saying, *Ay, this looks like a Man of Sense, and a good Subject; let's hear what he will say.* But finding his Mistake, and that Dr. *Fairfax* chiefly insisted, "That in Ecclesiastical Courts "there should be a Libel given to the Party appealed, that he might "know what he is accused of; that he desir'd that Libel, and did not "know what he was called there for; and that the Matter did not lie "in that Court, but in *Westminster-Hall*;" the Chancellor endeavoured to baffle his Plea, by telling him, *He was Doctor of Divinity, but not of Law.* To this the Doctor replied, *That he desired to know by what Commission and Authority they sat:* Which put *Jeffereys* into such an excessive Passion, as made him cry out, *Pray what Commission have you to be so impudent in Court? This Man ought to be kept in a dark Room. Why do you suffer him without a Guardian? Why did not you bring him to me to beg him? Pray let the Officers seize him.*

Then the Fellows were ordered to withdraw, and after an whole Hour's Debate, the Vice-President was called in alone, and ordered to attend the Court, with the rest of the deputed Fellows, on Wednesday *the* 23d *of the same Month. On the appointed Day the Fellows attended, and gave in the following Reasons against Mr.* Farmer.

WHereas the Vice-President, and other deputed Fellows of St. *Mary-Magdalen* College in *Oxon*, have, in their Answer to your Lordships, set forth, that by the Statutes of the said College it is ordered, That the Person to be elected President thereof should be a Man of good Life and Reputation, and of good Manners and Temper; and likewise, that Mr. *Anthony Farmer* hath not those Qualifications, which in and by the said Statutes are required in the Character of a President, as they in their Consciences did and do verily before believe: They humbly crave Leave to represent to your Lordships some of those Reasons which induced them to such Belief; *viz.*

That Mr. *Farmer* did misbehave himself in *Trinity* College in *Cambridge*: That he received Admonition from the Master of the College, in order to his Expulsion; which remains in the Register of the said College, under his own Hand.

That having left *Cambridge*, he taught School at *Chippenham* in *Wiltshire*, under a Nonconformist Minister, without Licence.

That in *September*, 1683, the said Mr. *Farmer* was entred into St. *Mary-Magdalen* Hall in *Oxon*, where such frequent Complaints were brought against

againſt him to the Principal, for his troubleſome Humour and unquiet Temper, that, to preſerve the Peace of the Society, he was deſired to leave the ſaid Hall.

That after his leaving *Magdalen* Hall, he was admitted into *Magdalen* College; where diſcourſing about Religion, he declared, That there was no Proteſtant but would cut the King's Throat. Notwithſtanding which, at other Times, he declared to ſome of the Fellows of the ſaid College, That whatſoever he pretended, he was really a Member of the Church of *England*; and that he made an Intereſt with ſome *Roman* Catholicks, only to get Preferment by their Means, and for that Reaſon was willing to be thought of their Religion.

That at the very Time when his Majeſty's Letter came to the College in his Behalf, the ſaid Mr. *Farmer* was at *Abington* in very ill Company, where he continued drinking to Exceſs two or three Days and Nights together; and amongſt other Diſorders, was one of thoſe that then in the Night-Time threw the Town-Stocks into the River: And that in general, the ſaid Mr. *Farmer* hath had the Unhappineſs to lie under an ill Fame, as to his Life and Converſation, as by ſeveral Letters and Certificates, ready to be produced, will more largely appear.

Copies of Letters and Certificates delivered to the Lords Commiſſioners for Eccleſiaſtical Affairs, June 27, 1687.

I. I *Anthony Farmer*, Batchelor of Arts, and Scholar of this College, do confeſs, That I have behaved myſelf very unlike a Member of this College, and even a Chriſtian, at the Dancing-School: For which I humbly aſk Pardon, and do acknowledge before the Seniority, that I have deſervedly received of the Maſter my firſt Admonition in order to Expulſion.

Trin. Col. Camb. *June* 11, 1678. ANTHONY FARMER.

This is a true Copy of *Anthony Farmer*'s Admonition, atteſted by us, whoſe Names are hereunto under-written.

Humph. Babington,
John Hawkins,
Benj. Pulleyn,
John Laughton,
} Vice Magiſt. Deput.

II. THESE are to certify, that Mr. *Anthony Farmer* was Uſher to Mr. *Benjamin Flower*, a Nonconformiſt Preacher in the Town of *Chippenham* in the County of *Wilts*, for the Space of Half a Year or upwards, the ſaid Mr. *Flower* keeping School without Licence from the Biſhop, and the ſaid Mr. *Farmer* continuing his Uſher for the Time mentioned, without any Licence alſo. Witneſs our Hands,

Will. Lake,
Will. Loude,
Will. Gale,
} Vicar.

III. MR. *Anthony Farmer* was entred of St. *Mary-Magdalen* Hall in *Oxford*, *September*, 1683. Where, after he had been ſome Time, frequent Complaints were brought to me by ſome of the Maſters that he raiſed Quarrels and Differences among them; that he often occaſioned Diſturbances, and was of a troubleſome and unpeaceable Humour. Whereupon that Love and Friendſhip might be preſerved and continued in the Society, as it is uſed to be, I adviſed the ſaid Mr. *Farmer* to make Trial if he could live more eaſily and quietly in ſome other Houſe. Accordingly he did voluntarily leave the Hall, *July* 13th, 1685, and got himſelf admitted into *Magdalen* College.

WILLIAM LEVET, Principal.

IV. I Do certify, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen*-Hall, *Oxon*, did ſay, that Mr. *Anthony Farmer*, Maſter of Arts, did entice him from his Studies in the Univerſity to go to *London*, where he the ſaid Mr. *Farmer* did attempt to draw the ſaid Mr. *Bambrigg* into ſeveral Debaucheries, both at Taverns and Bawdy-houſes. Witneſs my Hand,

JOHN RYLAND, Maſter of Arts of *Magd.* Hall.

V. I Do certify, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen* Hall, did ſay, That Mr. *Anthony Farmer*, Maſter of Arts of the ſaid Hall, did receive Money of him and other Gentlemen, publickly to expoſe unto him a naked Woman, which he accordingly did. Witneſs my Hand,

RICHARD CLERK, Maſter of Arts of *Magd.* Hall.

June 9, 1687.

VI. I Am very willing to juſtify any thing I have formerly ſaid, relating to ſo ſerious a Matter as this is you enquire after.

Mr. *Farmer*, one Night in the Cloiſter, aſked me why I did not get a Commiſſion? I told him truly, I had not Friends to do it for me. He then aſked me, what I would do for one? I told him, I would fight for my King, and whatſoever he ſhould command me. He then aſked me, if I would fight for the King's Religion? I told him, there would be no Occaſion for that, nor would it ever be required of me. He aſked me of what Religion I was? I told him a Proteſtant. And then he ſaid, there was no Proteſtant but would cut the King's Throat; and that he ſhould loſe three Thouſand Pounds for being of that Religion he intended to be of; which he ſaid was a Papiſt. This, to the beſt of my Remembrance, is the full of what he ſaid. If I have omitted any thing, it is my Care not to write more than I would honeſtly and juſtly ſwear to. I am,

SIR,

Your moſt obliged, and moſt humble Servant,

JOHN BRABOURN.

VII. IN or about *January* laſt, 1687, Mr. *Anthony Farmer* declared before us, That the Report of his being a Papiſt was falſe; but that he was willing to be thought ſo, becauſe it might do him a Kindneſs: That the Reaſon of his Acquaintance with Mr. *Brent* and Mr. *Walker*, was to get Preferment by their Intereſt: That he had not forſaken the Proteſtant Religion; adding, we ſhould call him a Rogue, if ever he did: That he would not make any publick Declaration of this, but would declare it amongſt Friends, when and where he pleaſed.

HENRY DOBSON,
JA. FAYRER,
THO. GOODWIN.

VIII. I Do hereby certify, That *Robert Gardiner*, Porter of St. *Mary-Magdalen* College, did tell me, that Mr. *Farmer* did very often come into the College late at Night, ſo much in Drink, that he could ſcarce go or ſpeak. Witneſs my Hand, this 9th Day of *June*, 1687.

GEORGE FULHAM.

IX. UPON *Monday*, *April* the third, Mr. *Farmer* came to the *Lobſter* in *Abington* with Mr. *Clerk*, Mr. *Gravener*, and Mr. *Jennyfar*, about eight in the Morning, and ſtaid ſome time in the Houſe, and went from thence to the Tavern; returned again about eleven at Night, and ſat up till one in the Morning: The next Day they went to the *Buſh* Tavern, and ſent for a Quarter of Lamb for their Supper, and there Mr. *Farmer*, Mr. *Clerk*, Mr. *Gravener*, and two Troopers and others, continued till paſt eleven at Night, and ſo returned to the aforeſaid Place, and ſat up till paſt three in the Morning. This I do aſſert, was the Company that the ſaid Mr. *Anthony Farmer* kept, and theſe were the unſeaſonable Hours. In witneſs whereof I am ready to ſwear, whenever a *Subpœna* ſhall be ſent to me.

GEORGE MORTIMER.

X. MRS. *Mortimer* is ready to aſſert, That when Mr. *Anthony Farmer* returned to the *Lobſter* about eleven at Night, he came much concerned in Drink, and was for kiſſing the ſaid Mrs. *Mortimer*, which, he being a Stranger, ſhe permitted him to do; but in doing of it, he the ſaid Mr. *Anthony Farmer* put his Tongue in her Mouth, which was ſuch a Rudeneſs, that ſhe immediately went out of his Company, and would not come nigh him any more.

MARTHA MORTIMER.

XI. BEING in Company with *William Hopkins* of *Abington*, the 12th of *June* laſt, 1687, I heard him declare, That himſelf, with one Mr. *Farmer* of the Univerſity of *Oxon*, and ſome others, did in a Frolick, at an unſeaſonable Time of Night, take away the Town Stocks from the Place where they conſtantly ſtood, and carried them in a Cart a conſiderable Way, and threw them into a Pool, commony call'd Mad *Hall*'s Pool. Witneſs my Hand, the Day and Year above written.

CHARLES PEACOCK.

Some Clauſes of particular Statutes to which the Caſe relates.

IN their Statutes concerning their Election of a Preſident, his Character is thus deſcribed; That he muſt be a Man of good Reputation, and good Life, and circumſpect both in ſpiritual and temporal Affairs.

In the ſame Statutes the Oath which every Fellow is obliged to take before he can give his Vote in the Nomination of a Preſident, is this: *viz.*

That he will name one or two of St. *Mary-Magdalen*-College, or of thoſe, who have been Fellows there, or have left their Places upon a legal and credible Account: Or that he will name one or two of the Fellows of St. *Mary-Wincheſter* College, commonly called *New* College in *Oxon*, or of thoſe who have been formerly Fellows there, and have left their Places upon a credible Account. After this, the thirteen Senior Fellows ſwear, That out of the two thus nominated, they will, with all Speed, elect one to exerciſe the Office of a Preſident, whom in their Conſciences they think moſt proper and ſufficient, moſt diſcreet, moſt uſeful, and beſt qualified for it, either without any regard to Love, Hatred, Favour, Fear, &c. as in the fore-mentioned Statute is more largely expreſſed.

Part of the OATH *which every Fellow takes when admitted.*

Item. I Do ſwear, that I will not procure any Diſpenſation contrary to my aforeſaid Oath, or to any Part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any one of them; nor will I endeavour that ſuch Diſpenſations be procured by any other or others, publickly or privately, directly or indirectly: And if it ſhall happen that any Diſpenſation of this Sort ſhall be procured, or freely granted or obtained, of what Authority ſoever it be, whether in general or particular, under what Form of Words ſoever it be granted, I will neither make uſe of it, nor in any Sort conſent thereto.

So help me GOD.

A Copy of Dr. Hough's *Deprivation, by his Majeſty's Commiſſioners for Eccleſiaſtical Affairs*, &c.

WHEREAS it appears to us, that Mr. *John Hough*, B. D. hath been unduly elected Preſident of St. *Mary-Magdalen* College, in the Univerſity of *Oxon*: We have thought fit, upon mature Conſideration thereof, that the ſaid Election be declared void, and the ſaid Mr. *John Hough* be amoved from the ſaid Preſidentſhip; and accordingly we do hereby declare and decree, that the ſaid Election is void; and do amove the ſaid Mr. *John Hough* from the Place of Preſident of the ſaid College.

Given under our Seal this 22*d Day of* June, 1687.

A Copy of Dr. Aldworth's *and Dr.* Fairfax's *Suſpenſion.*

WHEREAS *Charles Aldworth*, Doctor of Laws, Vice-Preſident of St. *Mary-Magdalen* College, *Oxon*, and the Deputies, Fellows of the ſame Houſe, have been conven'd before us, for their Contempt in not obliging his Majeſty's Letters Mandatory for Electing and Admitting Mr. *Anthony Farmer* Preſident of the ſaid College; and the ſaid Dr. *Aldworth* and Deputies having been heard thereupon, We have thought fit to declare, pronounce, and decree, That the ſaid Dr. *Aldworth* ſhall for the ſaid Contempt be ſuſpended from being Vice-Preſident of the ſaid College: And that *Henry Fairfax* Doctor of Divinity, one of the Fellows of the ſaid College, ſhall for the ſaid Contempt be ſuſpended from his Fellowſhip; and accordingly We do hereby ſuſpend Dr. *Charles Aldworth* from being Vice-Preſident of the ſaid College, and the ſaid Dr. *Henry Fairfax* from his Fellowſhip in the ſaid College.

Given under our Seal the 22*d Day of* June, 1687.

A Copy

A Copy of the King's Inhibition to Magdalen-*College.*

JAMES R.

TRUSTY and Well-beloved, We Greet you well: Whereas We are informed, That a Sentence or Decree lately made by Our Commissioners for Ecclesiastical Affairs, touching an Election in that our College, hath not been obeyed, Our Will and Pleasure is, no Election or Admission be made of any Person or Persons whatsoever, into any Fellowship, Demyship, or other Place or Office in Our said College, till We shall signify Our further Pleasure, any Statute, Custom, or Constitution to the contrary notwithstanding. And so, expecting Obedience herein, We bid you farewel.

Given at Our Court at Windsor, *the Eighteenth of* July 1687, *in the Third Year of our Reign.*

By his Majesty's Command, SUNDERLAND.

A Copy of his Majesty's Mandate for the Bishop of Oxon *to be President.*

JAMES R.

TRUSTY and Well-beloved, We Greet you well. Whereas the Place of President of Our College of St. *Mary-Magdalen* is now void, Our Will and Pleasure is, and We do hereby authorise and require you forthwith, upon Receipt hereof, to admit the Right Reverend Father in God, *Samuel* Lord Bishop of *Oxon* into the said Place of President, to hold and enjoy the same, with all the Rights, Privileges and Profits, Emoluments and Advantages thereunto belonging, any Statute or Statutes, Custom or Constitution, to the contrary, in any wise, notwithstanding, wherewith We are graciously pleased, and do accordingly hereby dispense in his Behalf: And so expecting your ready Obedience herein, We bid you Farewel.

Given at our Court at Windsor, August 14*th*, 1687, *in the Third Year of our Reign.*

By his Majesty's Command, SUNDERLAND.

A Copy of the Lord Sunderland's *Letter to the Senior Fellow, Dr.* Pudsey, *of St.* Mary-Magdalen *College in the University of* Oxon, *or in his Absence, to the Senior Fellow residing there.*

THE King having been pleased by his Letters Mandatory, to require the Fellows of St. *Mary-Magdalen* College, to admit the Lord Bishop of *Oxon* President of that College; his Majesty commands me to let you know, That immediately upon the Receipt hereof, he would have you assemble the Fellows, and communicate to them his Majesty's said Letters: And I am further commanded to tell you, That his Majesty expects a ready Obedience to be paid to his Pleasure herein. I desire you would send me an Account of your Proceedings as soon as you can, that I may acquaint his Majesty therewith. I am,

Yours,

SUNDERLAND.

A Copy of the Bishop of Oxon's *Letter to the Senior Fellow of St* Mary-Magdalen *College in* Oxon, *or, in his Absence, to the Senior Fellow residing there.*

SIR,

YOU will receive herewith his Majesty's Mandate to admit me President of your College of St. *Mary-Magdalen* in *Oxon*, together with a Letter of my Lord *Sunderland's*, pursuant to his Majesty's Commands. I am indisposed, as I have been for some Time, and not in a Condition as yet to travel; and therefore my Request to you is, That upon Receipt of the King's Pleasure, you would do me the Favour to admit me by Proxy (*i. e.*) either the next Senior Fellow under yourself, Resident, or either of my Chaplains, Mr. *William Wickens* or Mr. *Thomas Collins*, whom I depute in my stead, which is as valid in Law, as if I were present myself; and is the most usual and customary Practice. And by so doing, you will oblige *Your very loving Friend, and Brother,*

SAMUEL OXON.

OXON, *September 4th*, 1687.

The Lord *Sunderland* sent an Order to the Fellows of St. *Mary-Magdalen* College to attend the King at *Christ-Church*, at Three in the Afternoon. They attended accordingly.

King. WHAT's your Name? Are you Dr. *Pudsey?*

Dr. *Pudf.* Yes, may it please your Majesty.

King. Did you receive my Letter?—Dr. *Pudf.* Yes, Sir, we did.

King. Then you have not dealt with me like Gentlemen; you have done very uncivilly by me, and undutifully.——

Here they all kneeled, and Dr. Pudsey *offered a Petition, which his Majesty refused to receive; and said,*

King. Ye have been a stubborn turbulent College; I have known you to be so these six and twenty Years. You have affronted me in this. Is this your Church of *England* Loyalty? One would wonder to find so many Church of *England* Men in such a Business! Go Home, and shew yourselves good Members of the Church of *England*. Get you gone; know I am your King. I will be obey'd, and I command you to be gone. Go and admit the Bishop of *Oxon* Head, Principal, what d'ye call it, of the College—— [*One who stood by, said* President] I mean President of the College. Let them that refuse it look to it; they shall feel the Weight of their Sovereign's Displeasure.

The Fellows going out of the Lodgings, were called back.

King. I hear you have admitted a Fellow of the College, since you received my Inhibition. Is this true? Have you not admitted Mr. *Hold.n* Fellow?

Dr. *Pudf.* I think he was admitted Fellow. But we conceive——

Mr. *Cra.* May it please your Majesty, there was no new Election, or Admission, since your Majesty's Inhibition, but only the Consummation of a former Election. They always elect to one Year's Probation, then the Person elected is received or rejected for ever.

King. The Consummation of a former Election! 'twas downright Disobedience; and 'tis a fresh Aggravation. Get you gone Home, I say again; go, get you gone, and immediately repair to your Chapel, and elect the Bishop of *Oxon*, or else you must expect to feel the Weight of my Hand——

The Fellows offered again their Petition on their Knees.

King. Get you gone, I will receive nothing from you till you have obey'd me, and admitted the Bishop of *Oxon.*

Upon which they went immediately to their Chapel. Dr. Pudsey *proposing, Whether they would obey the King, and elect the Bishop of* Oxon? *They answered in their Turns,* They were as ready to obey his Majesty in all Things that lay in their Power, as any of the rest of his Subjects. But the electing the Bishop of *Oxon* being directly contrary to their Statutes, and the positive Oaths they had taken, they could not apprehend it in their Power to obey him in this Matter.

A Copy of the Petition offered at Oxford, *September 4th*, 1687.

To the King's most Excellent Majesty, &c.

Humbly sheweth,

THAT upon the 27th of *August* we received your Majesty's Letters Mandatory, dated *August* 14th, requiring us to admit the Right Reverend Father in God *Samuel* Lord Bishop of *Oxon* to be our President; and dispensing with all Statutes and Constitutions to the contrary. It is an unexpressible Affliction to us, to find ourselves reduced to such an Extremity, that either we must disobey your Majesty's Royal Command, contrary to our own Inclinations, and that constant Course of Loyalty which we have shew'd in all Instances hitherto upon all Occasions whatsoever, or else break our Founder's Statutes, and deliberately perjure ourselves.

For our Founder hath obliged us under Oath, when we came in Fellows, inviolably to observe his Statutes; and one Clause therein enjoins us never to admit or make use of a Dispensation granted by any Authority whatsoever, whereby we may be absolved from the same. In this Statute for the Election of a President, he commands us upon Oath to elect such a Person into the Place of President within fifteen Days after the Vacancy, who either is, or has been Fellow of our own, or *New* College: Which we represented to your Majesty in our humble Petition, signed *April* 9th, wherein we offered ourselves ready to elect any Person capable of the same, who your Majesty should be pleased to recommend; and having waited the utmost Time limited by our Statutes, and receiv'd no Answer to that Effect, we did then, according to the Exigence of our Statutes (having first taken the Holy *Eucharist*, and our several Oaths to that Purpose) nominate and elect such a Person as we in our Consciences did believe to be every way qualified for the Place. By which Act of ours we have conveyed all that Right to him which our Founder hath entruited us with, and it does not lie in our Power to admit any other. Our Founder in another Statute obligeth us, under the Pain of Perjury, a dreadful Anathema, and eternal Damnation, not to suffer any of his Statutes to be altered, infringed, or dispensed with, and commands us under the same sacred Obligations, not to execute any Orders or Decree whatsoever, contrary or repugnant to the said Statutes; by which said Statutes and Oaths, we are utterly incapacitated to admit the said Reverend Father in God to be our President.

May it please your sacred Majesty, to give us Leave to lay this our Case, and ourselves, with all Submission, at your Royal Feet, most earnestly beseeching your sacred Majesty, to extend to us your humble Petitioners, that Grace and Tenderness which your Majesty hath vouchsafed to all your other Subjects, and not to believe us guilty of any Obstinacy or Undutifulness, Crimes which our Souls abhor; but to receive us into your Majesty's Grace and Favour, the greatest Temporal Blessing which our Hearts can wish.

And your humble Petitioners shall always (as in Duty bound) pray to Almighty God, to bless your Majesty with a long and happy Reign over us, and afterwards to receive you to an immortal Crown of Glory.

A Copy of the Address which the Fellows of St. Mary-Magdalen *College gave to the Lord President of the Council,* Sept. 6, 1687; *and which was delivered his Majesty at* Bath.

WE your Majesty's most humble and most dutiful Subjects, the Fellows of St. *Mary-Magdalen* College in *Oxon*, being deeply afflicted with the late Sense of your Majesty's heavy Displeasure, grounded, as we in all Reason humbly presume, upon a most unkind Misrepresentation of our Actions, in relation to an Election of a President into your Majesty's said College; do humbly beg Leave to prostrate ourselves at your Royal Feet, offering all real Testimonies of Duty and Loyalty. And as we have never fail'd to evidence both our Principles and Practices to be truly loyal, in Obedience to the Commands of your Royal Brother, and your sacred Self, in Matters of the like Nature; so whatsoever way your Majesty shall be pleased to try our Readiness to obey your Royal Pleasure in any Instance that does not interfere with, and violate our Consciences, which your Majesty is studious to preserve, we shall most gladly and effectually comply therewith; a stubborn and a groundless Resistance of your Royal Will and Pleasure, in the present, and all other Cases, being that which our Souls eternally abhor, as becomes

Your Majesty's most Loyal and most Obedient Subjects, &c.

A Copy of a Letter directed to Dr. Bayly, *Fellow of* Magdalen *College,* Oxon, *supposed to be writ by Mr.* William Penn.

SIR,

UPON an Inquiry made of your present Fellows of *Magdalen* College, I am informed that you are a Person eminent in that learned Body, for your Temper, Prudence, and good Conduct in Affairs; and therefore very fit to be addressed to by me, who do not send you this to trepan you and your Brethren, but out of a passionate Concern for your Interest, to persuade you either to a Compliance with his Majesty's Letters Mandatory, or to think among yourselves of some Expedient to prevent the Ruin of your College, and yourselves: And to offer it to his Majesty's Royal Consideration,

tion, that the Order for the *Quo Warranto* againſt the College may be recall'd, before it be too late; for you cannot but be ſenſible how highly his Majeſty is incens'd againſt you, neither can you give one Inſtance whether ever that Sort of Proceeding was judged againſt the Crown. Your Cauſe muſt think it very hard; but you are not in Prudence to rely on the Goodneſs of your Cauſe; but to do what the preſent Inſtant of Affairs will permit, and in Patience to expect a Seaſon that will be more auſpicious to Perſons of your Character. Every Mechanick knows the Temper of his preſent Majeſty, who never will receive a Baffle in any thing that he heartily eſpouſeth; and that he doth this, yourſelves have had too late and manifeſt an Inſtance, to doubt of his Zeal in the Affair.

Where there are ſo many Statutes to be obſerved, 'tis impoſſible but ſome muſt be broken at one time or another; and I am informed by the Learned of the Law, that a Failure in any one Point, forfeits your Grant, and lays your College open to the Royal Diſpoſal.

I could give many other prudent Arguments that might poſſibly incline you to a ſpeedy Endeavour of putting an end to your Troubles, almoſt at any rate; but I ſhall ſuggeſt this one thing to you, that your fatal Overthrow would be a fair Beginning of ſo much aimed-at Reformation, firſt of the Univerſity, then of the Church, and adminiſter ſuch an Opportunity to the Enemy, as may not perhaps occur in his Majeſty's Reign.

Your affectionate Servant, &c.

The Anſwer to the afore-mentioned written Letter, dated October 3, 1687.

THE enclоſed Paper is a Copy of a Letter, which, by the charitable Purpoſe of it, ſeems to be writ by you, who have been already ſo kind as to appear on our Behalf, and are reported by all that know you to employ much of your Time in doing good to Mankind, and uſing your Credit with his Majeſty, to undeceive him in any wrong Impreſſions given him of his conſcientious Subjects, and where his Juſtice and Goodneſs have been thereby abuſed, to reconcile the Perſons injured to his Majeſty's Favour, and ſecure them by it from Oppreſſion and Prejudice. In this Confidence, I preſume to make this Application to you, deſiring your Excuſe for not ſubſcribing it: For if you did write the Letter, you know to whom it was directed; and if you did not, I hope your Charity will induce you to make ſuch uſe of your Light you have by it into the Affairs of our College, as to mediate for us with his Majeſty, to be reſtored to his good Opinion, as the only thing which is deſired by us, who are zealous, above all earthly Things, for his Felicity and Glory.

We are not conſcious of ever giving his Majeſty any juſt Offence, as it will appear with you, when you ſhall have peruſed the encloſed Papers; and have therefore no reaſon to fear the iſſuing out of a *Quo Warranto* againſt us. And though you are pleaſed to apprehend it, no Inſtance can be given of a Judgment againſt the Crown, upon the Proceſs of that Writ: The Learned in the Law tell me, there is nothing more common, and whereof many Caſes are reported by *Kellaway*, from *Page* 128, to *Page* 152, of his Book of Reports: And I think I have heard of a Caſe in *Coke's* ninth Report of the Abbeſs of *Prata Marcella*, which evinces the ſame; wherein alſo there is a Recital of Judgment given againſt *Roger Mortimer* for the King, upon a *Quo Warranto* in Court of *Eyre*, revers'd for Error in the *King's-Bench*. We hope, though we have many Statutes, it will be found that we have not wilfully tranſgreſs'd any of them; for all our preſent Troubles are derived to us from our Adherence to them, and our Fear to offend God, and blemiſh our Conſciences, by departing from them.

His Majeſty is intentionally righteous and juſt in all his Proceedings; he will never knowingly invade any Man's Property, as he was ſolemnly pleaſed to declare in his excellent Speech made in Council, on the 6th of *February*, 1684, at his Acceſſion to the Government; which is again repeated in his gracious Declaration for Liberty of Conſcience, of the 4th of *April* laſt paſt. It is upon his ſacred, inviolable, and Royal Word and Promiſe, we muſt depend; not doubting but when his Majeſty ſhall be rightly inform'd of our Caſe, in reference to both his Mandatory Letters to our College, his Anger towards us will be totally extinguiſhed. Our Compliance to the firſt (which was Mr. *Farmer's* Election) would have involved us in the Guilt of manifeſt Perjury, and the wilful Violation of our Statutes: And we are confident his Majeſty would never have granted the ſecond on the Behalf of my Lord Biſhop of *Oxon*, if he had known we were then poſſeſſed of a Preſident duly elected according to our Statutes, and confirmed by the Biſhop of *Winton*, our Viſitor (as the Statutes require); and if he is thereby inveſted with a Lay-Freehold under the Protection of his Majeſty's Laws, which we cannot undo, or attempt to invade, without ſubjecting ourſelves to Suits at Law, and doing an apparent Injury to the Preſident, who doth not conceive himſelf to be affected with the Sentence of the Lords Commiſſioners (to which he was no Party) whereby his Place is declared void, without any Citations, Summons, or hearing of him.

I believe no Inſtance can be given of a *Quo Warranto* brought againſt a College or Hall in the Univerſities, from the firſt Foundation of them to this Day, or any other Eccleſiaſtical Corporation: For the Abuſes of ſome Conſtitutions of Franchiſes in them, and the Miſdemeanors of particular Perſons, will not deſtroy a College: And if the Corporation of a College ſhould be diſſolv'd, the Revenues thereof will return to the Founder's Heirs, and not devolve to the Crown. And if our College muſt be the firſt Example of that kind, we ſhall be better juſtified by the ſtrict Obſervation of our Statutes (at leaſt to God and our own Conſciences) than we could have been by a voluntary and deliberate Breach of them.

It was Loyalty and Conſcience, that, in the Reign of King *Charles* I. made thirty-four of our forty Fellows, and moſt of the Scholars of our Foundation, rather quit their Places, and embrace Miſery and Ruin, than to ſubmit to the Government of the Uſurpers of the Crown. And in *Monmouth's* Rebellion, the ſame Inducements prevailed on us to raiſe a Company at our own Charges, under the Command of one of our Fellows, to engage againſt him. And we hope that theſe, and many other the like Inſtances, which may be given of the Loyalty and Zeal of our Society to the Royal Family, will be received as Evidences thereof, and that our good and gracious Sovereign will not exclude us from that Liberty of Conſcience which he was pleas'd to extend to all his Subjects.

SIR, I am your moſt affectionate Servant.

Some QUERIES *ſent to the Fellows of* Magdalen *College from* Windſor, September 15, 1687.

Firſt, WHether, waving your Election of the Biſhop of *Oxon*, you cannot, without Violence to your Conſcience, ſignify to his Majeſty, or the above Reverend Biſhop, your Willingneſs to admit the Lord Biſhop Preſident of your College?

Secondly, Whether it be not more Intereſt to the Proteſtant Religion, to have a ſuſpected Popiſh Preſident, than to have all the Places of the College refilled by the King's ſole Authority, with Popiſh Novices and Prieſts?

Thirdly, Whether you are not under a Miſtake, in thinking you ſhould render yourſelves more acceptable to the Proteſtant Nobility and Gentry, by your being turned out of your Fellowſhips by Injuſtice and Violence, as you conceive; or rather will they be not very cautious how they receive you into their Families, for fear of giving Offence?

Fourthly, Whether his Majeſty, as ſupream Viſitor of the Univerſity, cannot place or diſplace there *ad libitum?* or whether you have a right Notion of the Proceedings which have been practiſed againſt you? Whether you ſuppoſe that the Lords Commiſſioners proceeded againſt you as Lords Commiſſioners, or Viſitors? Which Notion, I am ſure, will overthrow ſome body's Plea and Exception againſt their Authority.

Fifthly, Whether you acted like Men ſkilled in Buſineſs, when you refuſed Mr. *Penn's* Mediation, who you may be ſure had good Authority for what he did? You could not but know that Man, and therefore muſt needs be fore-armed againſt any Wiles that could be offered to you. Whether an unanimous Subſcription for an Expedient (which indeed I think you ought not to refuſe in good Manners, ſince the King was pleaſed to propoſe it) preſented to his Majeſty by Mr. *Penn*, or another Favourite, would prevent the Deſtruction of the beſt Foundation in *Europe?*

Laſtly, Whether you be not drawn beyond your Knowledge by ſome hot-headed Adviſers, which never conſider the preſent State of his Majeſty's Court of Juſtice?

An Anſwer to ſeveral QUERIES *to the Vice-Preſident and Fellows of* Magdalen *College in* Oxon, *ſent from* Windſor, *dated the 25th of* September, 1687.

To the Firſt, WE cannot, without Violence to our Conſciences, and deliberate Perjury, admit any Perſon to be Preſident of our College, that is not elected thereunto, and qualified according to our Statutes; whereby the Biſhop of *Oxon* is in no ſort capable; nor is there any Memorial in all our Regiſter of any Admiſſion of a Preſident without Election, but of one Dr. *Nicholas Bond*, whoſe Caſe was as followeth; *viz.* Upon the Death of Dr. *Lawrence Humphreys*, about the 30th or 32d of Queen *Elizabeth's* Reign, the Queen recommended Dr. *Bond* (being a Fellow of our College) to be elected Preſident. Many of the Fellows inclin'd in their Judgment to elect one *Smith*, (another of the Fellows) and at their meeting for Election, the Contention was ſo great, that they roſe without Electing, and the Obſtinacy continued till the Place became laps'd: And there being no Proviſion in our Statutes to direct us what to do in ſuch a Caſe, the Queen, by her Letters Patents, conſtituted the ſaid Dr. *Bond* to be Preſident; and therein declared, That her Majeſty being inform'd that the Fellows had neglected to make Election of a Preſident in due time (as their Statutes required) and thoſe Statutes having made no Proviſion for ſuch an Omiſſion, ſhe, out of her Princely Care for the Place, and Indulgence for thoſe Perſons who had been guilty of that Neglect, did, by Advice of the Biſhop of *Winton*, their Viſitor, conſtitute Dr. *Bond* their Preſident; with Proteſtation nevertheleſs, that ſhe did not thereby pretend to ſuperſede their Statutes, or invade their Right of Election, which was thereby inveſted in them, but took this Courſe as the only means left to ſupply their Defect of Election.

To the Second. We muſt not make ourſelves guilty of deliberate Perjury, for any Conſiderations whatſoever, both in reſpect to our Conſciences, and that we may not, by ſuch a Breach upon our Statutes, expoſe our Conſtitution to a Forfeiture, nor do Evil that Good may come on it.

To the Third. We conceive we ſhall be more acceptable to all good Men, for acting honeſtly according to our Conſciences, than for voluntarily and unjuſtly departing from our Right.

To the Fourth. We pretend not to make it a Queſtion, whether his Majeſty, by his Authority Royal, as ſupream Viſitor, can grant a Commiſſion for Viſitation of any College that has a local Viſitor by their Statutes, and are not Royal Foundations: But we are adviſed, that no Commiſſion can be granted under the Great-Seal to Viſitors, to place and diſplace Members of Colleges (whoſe places are Freeholds) *ad libitum*, or *diſcretum*; but they muſt proceed according to legal Diſcretion, that is, by the Laws and Statutes of the Land, and the local Statutes of the College: And Places concern'd for the Headſhips and Fellowſhips of Colleges, are temporal Poſſeſſions, and cannot be impeach'd by ſummary Proceedings. One Dr. *Thomas Levency*, Preſident of our College, was deprived in Queen *Elizabeth's* Time, by the Biſhop of *Winton*, the legal Viſitor thereof, eſtabliſhed by Royal Authority, and he appeal'd to the Queen: But by the Advice of all the Judges, it was held, that the Queen, by her Authority, as ſupream Viſitor, could not meddle in it, but he muſt bring *Weſtminſter-hall*, becauſe Deprivation was a Cauſe meerly Temporal. The King has a great Authority Spiritual as well as Temporal; but no Commiſſioners can be authorized by the Crown to proceed in any Commiſſion under the Great Seal or otherwiſe, but according to Law; in Spiritual Cauſes by the Canon Law, in Temporal; by the other Laws and Statutes of the Land. And wherein the Proceedings in ſome Commiſſions are directed to be *ſummarie & de plano*, &c. thoſe Words are to be applied to ſhorten the Forms of Proceſs, and not for Matter of Judgment: For *Magna Charta* provides for our Spiritual Liberties, as well as our Temporal.

An

An Account of the Viſitation of St. Mary-Magdalen *College in* Oxon.

ON *October* 19, Mr. *Atterbury*, the King's Meſſenger, fixed a Citation on the College and Chapel-Doors, requiring the pretended Preſident and Fellows, and other Members of the College, to appear before the Lords Commiſſioners, Biſhop of *Cheſter*, Lord Chief Juſtice *Wright*, and Mr. Baron *Jenner*, in the Chapel, at Nine of the Clock on *Friday* Morning, *November* 21.

On *Thurſday* the Lords Commiſſioners came to *Oxon*, attended with three Troops of Horſe, which quarter there.

On *Friday* Morning at Nine they went into the Chapel: The Preſident and Fellows thinking they had deſigned to ſit in the Choir, made no Preparation of Seats in the outward Chapel: Upon which their Lordſhips adjourned to the Hall, where their Commiſſion was then read, which, in general, was the ſame with the former: Theſe three being added to the other Lords Commiſſioners, and particularly impowered to viſit *Magdalen*-College only.

This done, the Names of the Preſident and Fellows were called over, Dr. *Hough* being firſt called. All in Town appeared (except Dr. *Fairfax*) and Excuſes were made for the abſent.

Then a Speech was made by the Biſhop of *Cheſter*, and in it his Lordſhip was ſevere againſt Diſloyalty and Diſobedience. He urged, that the Church of *England* taught an unconditionate and unlimited Obedience: He ſpake of the King's gracious Promiſes to Archbiſhops and Biſhops, *&c.* which had deſerved thanks on bended Knees, notwithſtanding the *Oxon* Reaſons to the contrary, which they knew beſt who was the Author thereof. He told them, that it could not be expected, but that the King would give all Encouragement to thoſe of his own Religion, which could be done without Severity and Cruelty, which his Majeſty abhorred, and without injuring the Church of *England*, which was at preſent eſtabliſhed by Law; He told them, that this Corporation, as well as others, were the Creatures of the Crown; and that it was Inſolence in their local Statutes to ſpurn againſt their Maker.

That their Diſtempers had brought this Viſitation upon them, the Conſequences of which might be ill to the Church and Univerſities: That however they might eſcape in this World, theſe Sins were to be accounted for above their other Sins in the next. He exhorted them by the Bowels of Chriſt to conſider theſe Things: He told them, that the Eyes of the World were upon them, and they ought to take Care that their Practices might not influence their deluded Admirers. In ſhort, the whole Deſign of the Speech ſeemed to be Promiſes and Threats, to aim at the inducing them to a Compliance.

The Court was then adjourned till Two in the Afternoon.

In the Afternoon were called over the Names of the Demies, Chaplains, Clerks, Choriſters, and College Servants. The Preſident then interpoſed, deſiring Leave to ſpeak before they proceeded any further; which being granted, he told their Lordſhips, That,

Preſident. THE Time betwixt your Citation and Appearance was ſo ſhort, that the Society had not Time to adviſe with Counſel how to behave themſelves on this Occaſion; therefore deſired of your Lordſhips a Copy of the Commiſſion, and Time to conſider of it.

Biſh. *Ch.* 'Tis upon Record; you may have it above.

Pref. Is it the ſame the other Lords Commiſſioners had?

Biſh. *Ch.* Yes, for the moſt Part it is.

Pref. Then, my Lord, I do aſſure you (and will make Oath, if you pleaſe) that I have often endeavoured to get a Copy of it, and could not procure it.

L. C. J. Have you not heard it read, or will you hear it again?

Pref. I am not capable of making a Judgment of it myſelf; but it is poſſible there may be Errors and Defects in it, ſuch as the Society may make uſe of to their own Advantage; and I am confident, it is neither his Majeſty's Intention, nor your Lordſhip's, we ſhould be debarred from it.

A Copy was then denied.

Biſh. *Ch.* Dr. *Hough*, will you ſubmit to this Viſitation?

Pref. My Lords, I do declare here in the Name of myſelf, and the greater Part of the Fellows, that we ſubmit to the Viſitation, as far as it is conſiſtent with the Laws of the Land, and the Statutes of the College, and no further. I deſire your Lordſhips that it may be recorded.

This was twice repeated.

L. C. J. You cannot imagine that we act contrary to the Laws of the Land; and as to the Statutes, the King has diſpenſed with them: Do you think we come here to act againſt Laws?

Pref. It does not become me, my Lords, to ſay ſo; but I will be plain with your Lordſhips. I find that your Commiſſion gives you Authority to change and alter the Statutes, and make new ones as you think fit: Now, my Lords, we have an Oath, not only to obſerve theſe Statutes [*laying his Hand on the Book*] but to admit of no new ones, or Alterations in theſe: This muſt be my Behaviour here; I muſt admit of no Alteration from it, and by the Grace of God never will.

Biſh. *Ch.* Do you obſerve all theſe Statutes?

Pref. Yes, my Lord, I hope we do.

Biſh. *Ch.* You have a Statute there for Maſs, why don't you read Maſs?

Pref. My Lord, the Matter of this Oath is unlawful; and in ſuch a Caſe no Man is obliged to obſerve an Oath: Beſides, the Statute is taken away by the Laws of the Land.

Biſh. *Ch.* By what Law?

Dr. *Stafford.* By that which obliges to ſay Common-Prayer.

Biſh. *Ch.* What, the Act of Uniformity? I have often conſidered it, and don't remember one Word of Maſs in it.

Dr. *Staff.* But that obliges us to uſe the Liturgy of the Church of *England* in all Collegiate Churches and Chapels. And, I hope, my Lords, you do not imagine that we can ſay Common-Prayer and Maſs together.

Biſh. *Ch.* Do you allow that Act of Parliament can free you from the Obligation of a Statute?

Pref. I do not ſay but that his Majeſty may alter our Statutes, nor do I know but a Parliament may do the ſame; I diſpute not their Power; only this, My Lord, I ſay, that I, who already have taken an Oath to obſerve theſe Statutes as they now ſtand, and am ſworn not to admit of any Change or Alteration by any Authority whatſoever [*And then turning to the Oath, where they were to obſerve thoſe Statutes and no other, according to the Literal and Grammatical Senſe, &c. and reading it to their Lordſhips*] can obey none: But then thoſe who come after ſuch Limitations and Reſtrictions are made, are not obliged to obſerve them; and that, my Lords, is our Caſe, as to the Statutes of the Maſs.

Then the Decree of the 22d of *June* was read, declaring the Preſident's Election null and void.

Biſh. *Ch.* Did you know of this Commiſſion, *&c.*?

Pref. Yes, my Lord, I have heard of it.

Biſh. *Ch.* Why then did you not obey it?

Pref. I was never cited before their Lordſhips, nor was either heard by them in Perſon or Proxy; and I think I am the only Inſtance that is extant, of any Man that was ever deprived of a Freehold, wherein he was legally inveſted, and of which he was quietly poſſeſſed, without being ſummoned or heard.

Here Mention was made of Dr. *Fairfax*'s Suſpenſion.

Pref. My Lord, he is abſent, and if your Lordſhips give me leave, I have ſomewhat to ſay on his Account. Your Lordſhips may pleaſe to obſerve in that Decree, that the Reaſon given why Dr. *Fairfax* was ſuſpended from his Fellowſhip, was, becauſe he had not obeyed his Majeſty's Command, in not electing Mr. *Anthony Farmer* Preſident of the College: Now the Charge of Immorality given in againſt Mr. *Farmer* by the College-Delegates was made out, and their Lordſhips fully ſatisfied in it, on the 29th of *July*; notwithſtanding which, this Decree for Suſpenſion of Dr. *Fairfax* was fixed on the College-Gates *Auguſt* 2d.

Biſh. *Ch.* The King hath for the moſt part recommended to the Preſidentſhip of this College.

Pref. I am the twentieth Preſident, and only four of that Number have been recommended by the Kings and Queens of *England*, whereof three were every way qualified for that Office.

Biſh. *Ch.* Who were thoſe?

Pref. My Lord, there was one in the Time of *Edward* VI. one in Queen *Elizabeth*'s, and two in the late King's Reign.

Biſh. *Ch.* Was there never a one in King *Charles* the Firſt's Reign?

Pref. Not that we know of.

Biſh. *Ch.* What think you of Dr. *Oliver*?

Pref. It doth not appear to us, my Lord, that he ever had a Mandate.

Biſh. *Ch.* But it appears to us, and that I will bring you one to ſwear, that he had a Mandate.

Pref. The Truth is, we have loſt the Regiſter of Dr. *Oliver*'s Election and Admiſſion; the Regiſter betwixt the Year 1640, or thereabouts, and ſixty, being taken away by thoſe who were turned out of the College at that Time; but I believe, my Lord, we are able to prove that he was elected and admitted according to the Statute.

Biſh. *Ch.* Was Dr. *Clark* a Statutable Perſon?—*Pref.* Yes, my Lord.

Biſh. *Ch.* Do not the Statutes require that he ſhould be in Orders? Was he in Orders?

Pref. My Lord, the Statutes only require that he ſhould be Doctor of Divinity, Phyſick, Law, or Maſter of Arts. There is indeed one Statute, which ſays, The Preſident or Senior-Fellow ſhould read Prayers upon ſuch certain Days; from whence we conclude, that the Founder ſuppoſed we might have a Preſident that might not be in Orders; and in ſuch a Caſe he takes Care that the Senior-Fellow ſhould do his Duty.

Mr. *Char.* My Lord, will you be pleaſed to aſk Dr. *Hough*, whether Dr. *Clark* was married, or not?—*Pref.* No, Sir, he was a Widower.

Then a Petition was read from the Society to his Majeſty, ſigned the 9th of *April*, and preſented the 10th to the Earl of *Sunderland*, by the Hands of Dr. *Thomas Smith*, and Captain *Bagſhaw*, wherein 'twas ſet forth, that having heard that his Majeſty would recommend Mr. *Farmer* to them, a Perſon uncapable, they did humbly beſeech him, either to leave them to a free Election, or to recommend a qualified Perſon.

Biſh. *Ch.* Was this the Petition?—*Anſwer.* Yes.

Biſh. *Ch.* Why then did you not ſtay for his Majeſty's Anſwer?

Pref. My Lord, We did till the very laſt Day wherein we are limited to finiſh the Election; and my Lord *Sunderland* returned in the King's Name this Anſwer, That his Majeſty expected to be obeyed. Now, my Lord, we did no longer defer the Election, becauſe our Statutes enjoin us within ſuch a Time, and we ſtaid to the utmoſt: Nor could we chooſe the Perſon his Majeſty did recommend, knowing him to be ſo unfit, as we afterwards made him appear to be. The Society was therefore to proceed to the Election of another Perſon, and did agree on ſuch as you ſee.

Biſh. *Ch.* A Mandate always implies an Inhibition.

Pref. My Lord, I cannot conceive that.

Biſh. *Ch.* But I can; and if you queſtion it, here's the King's Counſel ready to argue it.

Pref. My Lord, whilſt the Perſon his Majeſty recommends appears duly qualified for the Place, it ſeems indeed to imply that we ſhould not proceed to the Election of another; but when he is known to be utterly uncapable, it ſeems to be the ſame as if there were no Letter at all.

Some other Things and Queſtions leſs material were put, and then the Court was adjourned to *Saturday* the 22d, at Nine in the Morning, to the Common Room, the Hall being, as they ſaid, too publick and incommodious.

SATURDAY, *October* 22, 1687.

As ſoon as their Lordſhips met in the Common Room, and the Society before them, the firſt Word was, Withdraw; and after a little Time, the Preſident was called in alone.

Biſh. *Ch.* DO you ſubmit to the Decree of the Commiſſioners, whereby the Election is declared Null?

Pref. As to that Decree of the Lords above, it is a Nullity in itſelf from the Beginning to the End, as it relates to me, I never having been cited, nor having ever appeared before them, either in Perſon or Proxy. Beſides, my Cauſe itſelf was never before them; their Lordſhips never enquiring

or

or aſking one Queſtion concerning the Legality or Statutableneſs of my Election; for which Reaſons (as I am informed) that Decree was of no Validity againſt me, according to Methods in the Civil Law: But if it were, I am poſſeſſed of a Freehold, according to the Laws of *England*, and the Statutes of the Society, having been elected as unanimouſly, and with as much Formality as any one of my Predeceſſors, Preſidents of this College, and afterwards admitted by the Lord Biſhop of *Winton.* our Viſitor, as the Statutes of the College require; and therefore I cannot ſubmit to that Sentence, becauſe I think I cannot be deprived of my Freehold, but by Courſe of Law in *Weſtminſter-Hall*, or by being ſome ways incapacitated by the Founder's Statutes.

Biſh. *Ch.* Will you deliver up the Keys of the Preſident's Office, and Lodgings, to the Uſe of that Perſon whom the King has appointed your Preſident, as the Statutes require?

Preſ. I will immediately do it, if that appears.

Biſh. *Ch.* Turn to that Part of the Preſident's Oath, where he promiſeth to ſubmit quietly if he ſhall be expelled, either for his own Fault, *vel ob aliam Cauſam.*

Preſ. My Lord, that Statute only concerns me, if I am expelled for any Fault committed by me.

Biſh. *Ch. Vel ob aliam Cauſam?*

Preſ. Then, my Lord, to be ſhort, here is no Cauſe at all.

Biſh. *Ch.* I aſk you again, Will you deliver up the Keys to the Preſident whom his Majeſty hath appointed?

Preſ. There neither is, nor can be a Preſident ſo long as I live, and obey the Statutes of the College; and therefore I do not think fit to give up my Right, the Keys and Lodgings.

Biſh. *Ch.* We may demand them of you as Viſitors.

Preſ. My Lords, we never deliver up the Keys to the Biſhop of *Winton.* and we own no greater Viſitatorial Power than his; he hath the King's Authority. 'Tis by Virtue of a Royal Charter that we live together, and enjoy the Benefit of this Place, that empowered our Founder to give us a Rule, and obliged us by Oath to act ſuitable unto it: And the Biſhop of *Winton.* is hereby conſtituted to be our Viſitor; and all this we own from the King's Authority. The Biſhop of *Winton.* is our ordinary Viſitor; the King (I preſume) our extraordinary. But your Lordſhips know it hath been controverted, Whether the King can viſit a private College or not? The Authority of the Preſident is made by delivering up the Statute-Book, and Keys; and therefore I look upon them as an eſſential Badge of my Office.

But I humbly beg that I may aſk your Lordſhip one Queſtion.

Your Lordſhip is pleaſed to demand of me to give up theſe Things; Does your Lordſhip own my Right? For if not, What is it your Lordſhips would have me give up?

Biſh. *Ch.* No, we look upon you as an Intruder.

Preſ. If I am an Intruder, the Biſhop of *Winton.* made me one; and I thank God for it. My Lords, the Time we have been allowed for this Appearance has been very ſhort; but one Day betwixt it and the Citation. We are Men ignorant in the Laws, and I muſt confeſs it of myſelf in particular, that I have endeavoured to give your Lordſhips a plain ſatisfactory Reply to ſuch Queſtions as your Lordſhips have been pleaſed to put to me. It is very probable, that through Ignorance and Inadvertency, I may expreſs myſelf unwarily. If ſo, I beſeech your Lordſhip let no Advantage be taken of it; my Intention has been always to expreſs myſelf with all imaginable Duty to the King, and Reſpects to your Lordſhips. If I have done otherwiſe, I beſeech your Lordſhips Candour in a favourable Interpretation of what I ſaid, that nothing may be taken amiſs, where all was dutifully intended. And now, my Lords, thus far have I appeared before you as Judges; I now addreſs to you as Men of Honour, and Gentlemen; I beſeech you to repreſent me as dutiful to his Majeſty to the laſt Degree, as I always will be, ſo far as my Conſcience permits me, to the laſt Moment of my Life; and when I am diſpoſſeſſed here, I hope your Lordſhips will intercede that I may no longer lie under his Majeſty's Diſpleaſure, or be frown'd upon by my Prince, which is the greateſt Affliction can befal me.

Upon this the Preſident was ordered to withdraw, and after a little Time, he and the Fellows were called in again. Then the Biſhop repeated this Queſtion.

Biſh. *Ch.* Dr. *Hough*, Will you deliver up the Keys, and quiet Poſſeſſion of the Lodgings, to the Perſon whom his Majeſty has appointed Preſident? [*To which no Anſwer was returned.*] *The Biſhop repeated a ſecond Time.*

Preſ. My Lords, I have neither ſeen nor heard any thing to induce me to it.

Biſh. *Ch.* Dr. *Hough*, Will you deliver up the Keys, and quiet Poſſeſſion of the Lodgings, to the Perſon whom his Majeſty has appointed Preſident?

Whereupon the King's Proctor ſtood up and accuſed Dr. Hough *of Contumacy. Then the Biſhop of* Chester *admoniſh'd him in theſe Words, three Times.*

Biſh. *Ch.* Dr. *Hough*, I admoniſh you to depart peaceably out of the Lodgings, and to act no longer as Preſident, or pretended Preſident of this College.

Which being ſo done, they ſtruck his Name out of the Book, and admoniſhed the Fellows, and others of the Society, that they ſhould no longer ſubmit to his Authority.

SATURDAY, *October* 22, 1687.

OXON.

Dr. *Fairfax*'s Caſe before the Commiſſioners.

AT the firſt Seſſions Dr. *Fairfax* purpoſely abſented himſelf; but Mr. *Atterbury* making Affidavit he was in Town, and that he adviſed him to appear, the Doctor accordingly did ſo the next Day. The Doctor being called in alone, and the Doors immediately ſhut, he begged of their Lordſhips ſome Company might be let in, becauſe, as all had obſerved, the Biſhop in his Speech, at the opening their Commiſſion, promiſed to tranſact every thing in the Face of the World. The Biſhop complained of the Crowd. The Doctor then deſired to fetch in but two or three, at length but one, and him at the Door, *viz.* the College-Steward, a Publick Notary.

Bar. Jen. You muſt not think to preſcribe to the Court.

Biſh. *Ch.* What's the Cauſe of your Contempt, in not appearing at either Seſſions Yeſterday?

Dr. *Fairf.* No Contempt, my Lord, but for theſe enſuing Reaſons. Firſt, I thought my Suſpenſion above had eaſed me of that Trouble. [*The Doctor tendring a Copy of it, which was read by the Commiſſioners.*] The Doctor inſiſted very much on the Reaſons their Lordſhips at *White-Hall* gave for this Suſpenſion; *viz.* for not obeying his Majeſty in electing Mr. *Farmer*, he tendring a Copy of Articles made good againſt him; and yet their Lordſhips ordered his Suſpenſion to be fix'd on the College-Gates five Days after that famous Hearing. Second Reaſon for his Non-appearance, That upon the firſt Day of the enſuing Term, he intended to meet the Lord Chief Juſtice, at his Court of *King's-Bench*, for Relief againſt the Sentence, his Fellowſhip being a Freehold; witneſs *Coveny*'s Caſe.

Biſh. *Ch.* You will find but little Favour there.

Dr. *Fairf.* My Lord, in Courts of Judicature, I only expect Juſtice (*and turning to the Lord Chief Juſtice*] I have myſelf, ſaid he, been above four Years in all the Courts of *Weſtminſter-Hall*, and found excellent Juſtice, and I will ſee how it is now.

L. C. J. You ſhall have Juſtice.

Dr. *Fairf.* But your Lordſhip may ſave me the Labour of two Journies and my Charges, by improving your Lordſhip's deſerved Intereſt with my Lords Commiſſioners there, and get them now to take off my Suſpenſion: It is ill travelling at this time of Year; and beſides I am not rich.

Bar. Jen. To ſue in *Weſtminſter-Hall* requires a Purſe.

Dr. *Fairf.* My Lord, I did not ſay I was poor.

L. C. J. You muſt make your Supplication and Submiſſion to the King.

Dr. *Fairf.* My Lord, they tell me, that this Buſineſs lies in your Lordſhip's Court, and only there. Beſides the Trouble I am otherwiſe to give your Lordſhip, what a noiſe will the Cauſe make, that Dr. *Fairfax* is ſuſpended for this very Reaſon? *viz.* not obeying the King, in electing *Anthony Farmer*, ſuch a Virtuoſo! And under Correction, your Lordſhips are obliged to take off my Suſpenſion, to take off the ſhame from that Body, whoſe Number by a common Adjunct you yourſelves have lately increaſed.

Bar. Jen. We muſt not endure theſe Reflections on the Court.

Biſh. *Ch.* But will you ſubmit to this Viſitation?

Then Dr. Fairfax *read a Paper, ſubſcribed by him, dated* October *the* 22d, *in theſe Words:* "*My Lords, I have been ſummoned, and appeared in this Cauſe before the Lords Eccleſiaſtical at* White-Hall, "*with whom your Lordſhips are now joined in Commiſſion; and then gave in my Anſwer: I have nothing to add to it, and find no Reaſon to retract it.*"

HENRY FAIRFAX.

Biſh. *Ch.* Will you admit of the Biſhop of *Oxford?*

Dr. *Fairf.* I am ſuſpended.

Biſh. *Ch.* Have you done no Collegiate Act ſince your Suſpenſion?

Dr. *Fairf.* My Lord, I have gone into the Hall, and laid in my Chamber: I did not think their Lordſhips, when they ſuſpended me, ever intended that I ſhould not eat, drink, or ſleep.

Biſh. *Ch.* If your Suſpenſion was off, would you ſubmit to the Biſhop of *Oxford?*

Dr. *Fairf.* Truly, my Lord, I cannot do it.

Then all the Fellows were called into Court.

The Preſident being withdrawn, the Biſhop put the Queſtion to all the Fellows; *viz.* Whether they would aſſiſt at the Admiſſion of the Biſhop of *Oxford* to be inſtalled Preſident, by Virtue of the King's Mandate? To which was anſwered by all the Fellows, to this Effect (except Dr. *Pudſey*, and Dr. *Thomas Smith*, who anſwered doubtfully, and *Charnock*, that he would aſſiſt) That they were under Oaths to the contrary, and therefore could not do it.

Then all were ordered to withdraw; and Dr. Pudſey *being called in alone, they aſked him concerning the Manner and Form of Inſtalling a Preſident; which he inſtructed them in.*

The Court adjourn'd till two in the Afternoon.

AS ſoon as they met, a Letter from the Earl of *Sunderland* to Dr. *Pudſey* was read, dated the 2d of *Auguſt*, ſignifying, that the Society in Anſwer to his Majeſty's Letter, commanding them to admit the Biſhop of *Oxford*, agreed unanimouſly in this Anſwer, That the Place was full. Their Lordſhips were pleaſed to aſk the Fellows ſingly, whether that was their Anſwer? And as many as were there, owned that it was.

During this Examination, the Preſident came into Court, and having waited until it was ended, and their Lordſhips at a Pauſe, he made his Application to them: 'My Lords, if your Lordſhips pleaſe to give me 'leave, I would gladly ſpeak a few Words.' They were all pleaſed to put off their Hats, and ſay he might. Whereupon he ſaid, 'My Lords, 'you were pleaſed this Morning, in Purſuance to a Decree of the Lords 'Commiſſioners at *London*, to deprive me of my Place of Preſident of this 'College, and to ſtrike my Name out of the *Buttery-book*: I do hereby 'proteſt againſt all your Proceedings, and againſt all that you have done, 'or hereafter ſhall do, in Prejudice of me and my Right, as illegal, un-'juſt, and null; and therefore I appeal to my Sovereign Lord the King 'in his Courts of Juſtice.' Upon which, the Strangers and young Scholars in the Room gave a *Hum*; which ſo much incenſed their Lordſhips, that notwithſtanding all the Proteſtations the Preſident and Fellows could make, the Preſident in particular offering to purge himſelf by Oath, that he was no way acceſſary to, or abetting of it, and declared that he was heartily aſhamed and troubled at it; yet the Lord Chief Juſtice was not to be pacified, but charging it upon the Preſident, bound him in a Bond of 1000*l.* and Security to the like Value, to make his Appearance, at the *King's-bench* Bar, the 12th of *November*. At the ſame time Baron *Jenner* took Occaſion to pun on the Preſident (*Hough*'s) Name, ſaying to him, *Sir, you muſt not think to huff us.*

After this, was read the Anſwer the Fellows returned to his Majeſty upon his Command to them, upon the 4th of *September*, to elect the Biſhop of *Oxford:* The Anſwer was under the Hand of a Publick Notary, ſubſcribed by all the Fellows then preſent, except Mr. *Charnock*. The Biſhop of *Cheſter* was pleaſed to charge the Fellows

lows of Unmannerlineſs, for ſending ſuch an Anſwer to their Prince after ſuch a Manner.

So they adjourn'd till Tueſday *the 25th, at Eight in the Morning.*

TUESDAY, *October the 25th*, 1687.

WHEN the Court met, Dr. *Stafford* offered a Paper in Anſwer to what was objected on *Friday*, that a Mandate implied an Inhibition; which their Lordſhips having peruſed, would not ſuffer to be read publickly, but aſked the Fellows whether they would ſign it, bidding them do it at their Peril.

Then the Fellows had Leave to withdraw into the Hall, and not being ſatisfied that it was neceſſary to ſign a Plea, which their Lordſhips refuſed to have argued, they returned the Paper into the Court, ſubſcribed only by Dr. *Fairfax* and Dr. *Stafford*. The latter, after ſome Debate, deſired to withdraw, but Dr. *Fairfax* ſtood to it.

A Copy of Dr. Stafford's *and Dr.* Fairfax's *Plea.*

To the Right Reverend and Right Honourable his Majeſty's Commiſſioners for the viſiting St. Mary Magdalen-*College in* Oxon.

May it pleaſe your Lordſhips,

ON *Friday* laſt in the Afternoon you ſeem'd to inſiſt very much on this; *viz.* That his Majeſty in commanding the Fellows of the ſaid College to elect Mr. *Farmer* Preſident, did thereby inhibit them to elect any other Perſon whatſoever; which has not yet been made appear to be Law either out of the Books of Civil, Canon or Common Law: Neither is it agreeable to Reaſon, that a Command to elect a Perſon uncapable, ſhould include in it an Obligation not to elect a Perſon capable, that being a kind of Contradiction *in terminis.* Yet this being granted, it cannot in the leaſt affect the ſaid Fellows, or invalidate their Election of Dr. *Hough*, notwithſtanding his Majeſty's Mandate in Behalf of Mr. *Farmer*, who being incapable of the Place, the Fellows cannot be ſaid to be guilty of any Diſobedience or Diſloyalty, in proceeding to the Election of another Perſon who was qualified according to the Statute, being forced to make an Election. For they are obliged by the Statutes of their College (when call'd together) to elect a Preſident, or any Officer, under Pain of perpetual Expulſion from the College, to meet and make an Election; which Puniſhment they incur *ipſo facto*, who either refuſe to meet when ſo call'd, or being met, to nominate or elect a Perſon into the Office void, as appears by the Statutes of the ſaid College: *Titulo de numero Scholarium & electione Præſidentis.* Now according to the Founder's Direction in the ſaid Statute, on the 15th of *April* laſt, the Fellows were called together by the Vice-Preſident to elect a Preſident in the Place of Dr. *Clark* deceaſed, and the Oath deſired to be taken, before the Election was adminiſtered by the Vice-Preſident to them, whereby they are oblig'd to nominate and elect a Perſon that either is, or has been Fellow of *Magdalen*-College, or *New*-College in *Oxon.* Which Oath, when the Fellows had taken, it was not in their Power to elect Mr. *Farmer*; and yet they were then oblig'd to make an Election, under Pain of perpetual Amotion from the College; as appears by the forecited Statute. And it cannot be imagined, that his moſt Sacred Majeſty did expect that the Fellows ſhould be either perjur'd, or forfeit their Right to their Fellowſhips, rather than diſobey his Command; his Majeſty having moſt graciouſly declared, that Conſcience ought not to be forced, and that none of his Subjects ſhould be moleſted in the Enjoyment of their Rights and Privileges, *&c.* Now, that our Proceedings at the Election cannot lay any Imputation of our Diſobedience or Diſloyalty upon us, will thus be made appear. Either we had the Power to elect a Preſident, or we had not: If we had not, to what End or Purpoſe did his Majeſty command us to elect one? If we had, our Power was either reſtrain'd to Perſons ſo and ſo qualified, or we were at Liberty to chooſe whom we pleas'd: but we could not do the latter, as appears by our Statutes; and therefore we could not elect Mr. *Farmer*, being not inveſted with any Power to elect a Perſon unqualified. And if we had ſo done, our Election would have been null and void in itſelf, and the Perſon elected liable to be turn'd out by our Viſitor.

As for the Decree of his Majeſty's Commiſſioners (in Purſuance of which your Lordſhips have admoniſh'd Dr. *Hough* to recede from the Place of Preſident, and quietly to reſign the Keys of his Office, and have his Name ſtruck out of the College-Book) we humbly conceive it to be null and void in itſelf, to all Intents and Purpoſes, Dr. *Hough* being thereby depriv'd of Freehold for Life (of which he was duly and legally poſſeſs'd) without ever being called to defend his Right, or any Miſdemeanor objected againſt him. Wherefore we humbly beg leave of your Lordſhips, that Dr. *Hough* may be permitted to defend his Right and Title to the Preſidentſhip at Common-Law, before any other Perſon is put in Poſſeſſion of the Place.

THOMAS STAFFORD,
HEN. FAIRFAX.

After this, Mr. *Wiggins*, Chaplain to the Biſhop of *Oxford*, was called in, who delivered a Paper, impowering him, as Proxy, to be inſtalled Preſident for his Lord; which being read, together with the King's Mandate for the Biſhop of *Oxon*, the Queſtion was put to two or three of the Seniors, Whether they would aſſiſt at this Inſtalment? Which they refuſing, the Court adjourned to the Chapel, where the Biſhop of *Cheſter* put Mr. *Wiggins* into the Preſident's Stall, where he took the Oath which the Statutes enjoin the Preſident at his Admiſſion, and the Oaths of Allegiance and Supremacy; the latter of which he was ordered to take upon his Knees, which he accordingly did. Then their Lordſhips conducted him to the Door of the Preſident's Lodgings, where knocking three times, and the Door not being opened, they returned to the Common Room, and commiſſion'd *Atterbury*, and a Tipſtaff, to fetch a Smith to force it open; which was done, their Lordſhips being preſent all this while: None of the Fellows, except Mr. *Charnock*, aſſiſting, or being ſo much as preſent at either of theſe Performances. Then the Commiſſioners being returned to the common Room, Dr. *Fairfax* deſired Leave, at their Leiſures, to ſpeak; which was granted.

Dr. *Fairf.* My Lords, your Lordſhips have been doing of what I can by no Means conſent to.

Biſh. *Ch.* You are big to be delivered of your own Deſtruction. Will you ſubmit to the Biſhop of *Oxon*, as now inſtalled Preſident, by Virtue of the King's Mandate?

Dr. *Fairf.* I will not; I cannot; becauſe we have a ſtatutable and legal Preſident already.

Then the ſame Queſtion was put to the Society, which being a Buſineſs of Moment, they deſired Time till the Afternoon to conſider it.

Then the Court adjourned till Three o'Clock; at which Time the Anſwer was given in by the Society (except Dr. *Fairfax*, who had given his in the Morning) *That whereas his Majeſty hath been pleaſed, by his Royal Authority, to cauſe the Right Reverend Father in God* Samuel *Biſhop of* Oxon, *to be inſtalled Preſident; we whoſe Names are hereunto ſubſcribed, do ſubmit, as far as is lawful and agreeable to the Statutes of the College, and no way prejudicial to the Right and Title of Dr.* Hough.

This Anſwer was accepted, except the laſt Clauſe, which the Lord Chief Juſtice, and Baron *Jenner* declared, as Judges, to be inſignificant, ſince nothing they could do, could any way invalidate Dr. *Hough*'s Title; but left them ſtill at Liberty to be Witneſſes for him, or any other way be ſerviceable to him in the Recovery of his Right. Upon this Aſſurance, the Society was prevailed with to leave out the laſt Clauſe.

Then all were commanded to withdraw: And Dr. *Fairfax* being called in, the Biſhop aſked him what he meant by his Paper above-mentioned, dated *October* the 22d, and whether he did ſubmit to the Authority of the Court?

Dr. *Fairf.* As I have denied it above, ſo I do here.

Then the Court was opened, and the Doctor complained before them all, that he was twice cloſeted; and being aſked, Whether he would obey the Court, and Biſhop of *Oxon?* he plainly denied both. Upon which the Buttery-Book was called for, and the Biſhop of *Cheſter* commanded his Name to be ſtruck out, and this Sentence paſſed; *viz.*

FOraſmuch as you have denied the Authority of the Court, and refuſed to obey the Biſhop of Oxon, *whom the King hath made your Preſident, and taken Commons after your Suſpenſion; We declare your Place void, and command you quietly to depart the College within fourteen Days.*

Dr. *Fairf.* My Lords, all the huge Calamities that have befallen me, are on the ſole Account of a religious and conſcientious Obſervation of our pious Founder's Statutes, whoſe Bread I have eaten almoſt theſe thirty Years.

L. C. J. No Speeches: beſides, if you have any Papers, inſtead of reading them, leave them in the Court.

Then, with much ado, the Doctor prevailed with them to let him read his Proteſtation, which he left in the Court.

I Henry Fairfax, *Fellow of St.* Mary-Magdalen-College, *do under my former Anſwer heretofore made, and to the Intent it may appear that I have not conſented, nor agreed to any thing done againſt me, and to my Prejudice, I proteſt that your Sentence given here againſt me, is* Lex nulla, *and ſo far as it ſhall appear to be* aliqua; *I do ſay it is* iniqua & injuſta; *and that therefore I do from it, as* iniqua & injuſta, *appeal to our Sovereign Lord the King, in his Courts of Juſtice, as the Laws, Statutes, and Ordinances of the Land will permit in that Behalf. Subſcribed,*

October 25th, 1687. HENRY FAIRFAX.

This Proteſtation was over-ruled, and a Copy of the Sentence denied, though moſt earneſtly deſired at the Inſtance of Dr. *Hedges*, and Mr. Vice-Chancellor, two Days after.

At the Cloſe of the Seſſions, their Lordſhips declared, that they were very well ſatisfied with the Anſwer the Society had given them; and though before they had laid a Libel to their Charge, yet that Night they declared, they had met with nothing from them but Civility, and that they ſhould receive the ſame from them; that they had ſhewn themſelves Men of excellent Tempers this Day and before; and that they would repreſent it faithfully Above to their Advantage, and that if it any way lay in their Power to ſerve them, they ſhould be very ready to do it.

Then they adjourned till *Wedneſday* Morning, ordering them to bring in their Anſwer to the following Queſtions.

I. *What Gifts and Proviſions have you for Entertainment of Strangers?*
II. *What is the Value of it?*
III. *How is it applied?*
IV. *And where is the Place of Entertainment?*

WEDNESDAY, *October 26th*, 1687.

IN the Morning they made it appear to their Lordſhips very ſatisfactorily, that they were obliged to give in Charity-Money, 2 *l.* 3 *s.* 4 *d.* and that beſides that, they gave, *communibus annis*, almoſt 100 *l.* as appeared by a Paper they then delivered in. Upon this their Lordſhips were pleaſed to expatiate upon their generous Bounty and Liberality, ſaying the Complaint of this Account was groundleſs, and that it would induce the King to a better Belief of them in all other Matters.

Then a Petition of Dr. *Rogers*, late Organiſt, was given in, deſiring to be reſtored, which was read; but ſeveral Miſdemeanors being proved againſt him, it was thrown out, and he adviſed to reſt ſatisfied with 30 *l. per Ann.* which the College had beſtowed on him, when they turn'd him out of his Place.

THURSDAY, *October 27th*, 1687.

THIS Morning they received a Liſt of Leaſes, *&c.* which had been renew'd two Years laſt paſt. Mr. *Charnock*, the new Convert, aſked their Lordſhips, whether thoſe Leaſes ſtood good, which had been ſealed ſince Dr. *Hough*'s Election? The Lord Chief Juſtice anſwered, Yes; for Corporations always ſtick by their Seals. Then their Lordſhips peruſed the College-Regiſters, and finding nothing in them to object againſt, they were returned, and the Court adjourned till the Afternoon. At which Time their Lordſhips told them, That having received no Expreſs from Above, as they,

they expected, they would adjourn till *Friday* at Eight in the Morning.

FRIDAY, *October* 28*th*, 1687.

THE Commissioners being seated, all were commanded to withdraw: Then only the Fellows were called in, and the Bishop of *Chester* said, they had represented them fairly to the King, but his Majesty expected some farther Submission, which they advised them to make, by acknowledging their Contempt to his sacred Majesty in Person, and to his Letters; and that they should promise to behave themselves Loyal for the future; and that they should some Ways own the Proceeding and Legality of the Court, and implore his Majesty's Pardon, and lay themselves at his Feet.

The Fellows making a little Pause, the Bishop of *Chester* told them, they might Word it themselves; or, if they thought fit, Mr. *Tucker* should assist them in a Form. Then all the Fellows withdrew into the Hall, and drew up the following Answer.

May it please your Lordships,

WE have endeavoured in all our Actions, to express our Duty in all Humility to his Majesty; and being conscious to our selves, that in the whole Conduct in the Business before your Lordships, we have done nothing but what our Oaths and Statutes indispensably oblige us to, we cannot make any Declaration, whereby we acknowledge that we have done any thing amiss, having acted according to the Principles of Loyalty and Obedience, so far as we could, without doing Violence to our Consciences, or Prejudice to our Rights (one of which we humbly conceive the Electing a President to be) from which we are sworn upon no Account whatsoever to depart. We therefore humbly beg your Lordship to represent this favourably, with our utmost Duty to his Majesty, whom God grant long and happily to reign.

Upon their Lordships perusing of the Answer, they expressed their Dislike of it, saying, 'It did not come up to the Address sent to his Majesty at *Bath*, which was read. To this it was replied, That they hoped their Behaviour since had been every way answerable to what they had therein promised. Then their Lordships said, That it did not come up to what they delivered in on *Tuesday*.

Dr. *Bayly*. My Lords, we have acted conformable to ourselves; and truly, my Lords, I cannot possibly confess any Crime.

Bish. *Ch.* We do not expect of you to confess any capital Crime, only to make some acknowledgement.

Mr. *Fulham*. My Lord, we were ordered to address ourselves, as having acted in Contempt of his Majesty's Authority, which, my Lord, I look upon as so great a Crime, that on no Account I would be guilty of it. My Lord, we have endeavoured to obey his Majesty to the utmost of our Power, and seeing your Lordships were pleased to accept our Answer on *Tuesday*, I humbly conceive your Lordship's Honour is engaged, that nothing further be required of us.

Bish. *Ch.* You are a very forward Speaker, and abound in your own Sense.

Mr. *Fulh.* My Lord, I hope your Lordship will give me leave to speak, when our Fortunes are so considerably at Stake.——

Then Dr. *Bayly* desired of their Lordships to give him Leave to explain what he meant by the Word *submit*, in his Answer on *Tuesday*; because (saith he) I hear your Lordships understood more than was meant, and lest your Lordships should go away under a Mistake, by the Word *submit*, in the former Answer, I did not intend any future Obedience to the Bishop of *Oxford*; but meant it in Reference to the King's Authority, inasmuch as I did not oppose or resist the Bishop of *Oxford*'s Instalment.

Upon this, a fresh Question was put to the Fellows, Whether they would obey the Bishop of *Oxford*, as their President, *in licitis & honestis*? To which all, except one or two, answered, they could not obey the Bishop of *Oxford* as their President.

Then Mr. *Fulham* was particularly asked the Question.

Mr. *Fulh.* Dr. *Hough* being duly elected and admitted President, doth thereby obtain a Right, which I am not satisfied he hath any Way forfeited, and therefore can obey no other Person as President.

Bish. *Ch.* Will you obey the Bishop of *Oxford* as in Possession?

Mr. *Fulh.* I cannot, because the Bishop hath not lawful Possession.

Then he was asked, wherein?

Mr. *Fulh.* He had not Possession in due Form of Law, nor by proper Officers. I am informed that the proper Officers to give Possession of a Freehold, is the Sheriff with a *Posse Comitatus*.

L. C. J. Pray, who's the best Lawyer, you or I? Your *Oxford* Law is no better than your *Oxford* Divinity. If you have a Mind to a *Posse Comitatus*, you may have one soon enough.

Mr. *Fulh.* My Lords, I intend nothing but Respect to your Lordships, and have endeavoured to speak and behave myself with due Reverence; and I hope your Lordships will put a favourable Construction on what I said.

Then all were commanded to withdraw, and the Buttery-Book was called for, and after that, Mr. *Fulham* was sent for in; and by the Bishop of *Chester* suspended as followeth.

Bish. Ch. *Mr.* George Fulham, *We have thought fit to suspend you from the Profits of your Fellowship during his Majesty's Pleasure, for your Contempt and opprobrious Language.*

Then they adjourned till *Wednesday* the 16th of *November*, ordering the absent Fellows to be sent for Home against that Time. So they immediately went for *London*.

WEDNESDAY, *November* 16*th*, 1687, *at Nine in the Morning.*

THE Lords Commissioners being sat, the first Thing they did, sent for the Buttery-Book; then called for Mr. *Joyner* and Mr. *Allibone*, and entred them actual Fellows: The former in the Room of Dr. *Fairfax*, whom they had expelled; the latter in Place of Mr. *Ludford*, lately deceased: All Oaths being dispensed with, besides that of a Fellow. That done, the Fellows being called, and the Reasons given in for those that were absent, the Bishop of *Chester* spoke a Speech to this effect.

GENTLEMEN,

YOUR many Contempts and wilful Disobedience have occasioned this Visitation, which will end at last in your Ruin. This Society of yours has been long exercised in the Methods of Quarrelling; has always been troubled with factious Spirits, and testy Mutineers, ever since the Restoration of the late King: You have encouraged Quarrels among yourselves; Quarrels between yourselves and President; Quarrels at length between yourselves and Visitor. For I have often heard your late Visitor complain, that this Society was ever stocked with an unquiet and turbulent Generation. By these Steps, from quarrelling with the President and Visitor, you have at last advanced to the highest Pitch of Insolence, to quarrel with your Prince, and affront his Sacred Majesty. I endeavour'd before, at the Opening our Commission, to make you sensible of the Scandal that your Disobedience will bring upon your Religion; how much you Stain and Dishonour your liberal and ingenuous Education in this Society.

You cannot but know his Majesty is your supreme Ordinary. You cannot but have read in Bracton, *who was twenty Years Lord Chief Justice under King* Henry III. Nemo presumat de factis ejus disquirere, ne dum contra factum ejus venire: *All Disobedience implies Pride: For no Man can disobey his Governor, but he who thinks himself wiser. The Reputation and Honour of a Prince at home, and his Respect abroad, are chief Standards of a Government. But these Pillars, as much as in you lies, you have endeavour'd to shake. And unless his Majesty's Honour and Right be vindicated by us, He can neither be feared at home, nor observed abroad. Your Punishment must be as publick as your Crime. It cannot be conceived but his Majesty, in Justice, in Honour, in Clemency, and in his Royal Tenderness, could have proceeded otherways than he has done. On the first of* April *it was published that Dr.* Clark *was dead: On the Eleventh a* Mandamus *was directed to you, for choosing Mr.* Farmer. *On the Ninth you presented a Petition to the Lord President; wherein you laid yourselves prostrate at his Majesty's Feet, representing to him the Incapacity of Mr.* Farmer, *desiring the Benefits of his gracious Declaration for preserving your Rights and Properties, and beseeching him to nominate another Person qualified according to your Statutes, in the Election of whom you would shew your ready Obedience. So said and so done, Gentlemen, had been very well.*

But immediately after the Delivery of the Petition, you, not waiting his Majesty's Answer, proceeded on April *the* 15*th to an Election of Dr.* Hough: *So that by this Act, which was plainly contrary to his Majesty's Authority, whose Mandate did certainly imply an Inhibition, you directly confronted your former Promises of ready Obedience, and were resolved to give the King nothing but good Words: When you had done this, as Men of ill Designs are always in haste, for a Confirmation of it, you immediately went and surprized your Visitor, and by that means persuaded him to confirm Dr.* Hough, *that very Day he received an Order from the Lord President to the contrary.*

Upon this News the King was much amazed, and required an Account of your Proceedings; therefore the Lords Commissioners issued out a Citation; and after hearing the Plea, upon mature Consultation with the Learned of both Laws, judged the pretended Election of Dr. Hough *to be void and null, and him to be removed, by an Instrument dated the which was affixed on the Gate. After this a Mandate was sent on the to you to elect the Bishop of* Oxon. *Upon which Terms his Majesty was graciously pleased to dispense with your Disobedience hitherto. But this being disobeyed, his Majesty in Person, on the 4th of* September, *sent for you to* Christ-Church, *and required you immediately to elect the Bishop of* Oxon, *President. You went strait to the Chapel, a Place one would think should have inspired more Devotion and Awe of his Sacred Majesty in you; and there contemptuously subscribed and signed a Paper, directly thwarting his Majesty's Command. The Ground of your Disobedience you pretend that you could not elect him, whereas you could not but know by a written Mandate, that lay by you, that Admission would have satisfied his Majesty. Conscience, the stale Topick of Rebellion, was here brought to vindicate your petulent and contumacious Behaviour. You pretended that you were obliged by Oaths, and I am sorry that at the same Time you forget that of Allegiance. And indeed there is not a greater Sign of Hypocrisy than partial Obedience. Had you any Respect to the Father of your Country, and your Mother the Church, you would have sacrificed your pretended Scruples, as a Peace-Offering to the King. The best of us, I am sure, have Reason to beg God and the King's Pardon. But you, as if his Majesty reigned by Courtesy, would have a King under you, but none over you. You urged the Observance of your Statutes, of which, as it hath appeared, you have not been so constant Observers; when your own Humour prompts you to a Dispensation, then you can readily embrace it; witness but that of being served* per Masculos, *by which great Scandals have come to this Society by reason of Bastards.*

But when the King interposed, in whose Power alone it is to dispense with them, then you presently act according to such Methods as these. None of these Pretences will case you with wise and sober Men.

This was the only Opposition his Majesty in his Progress receiv'd: Wherever his Sacred Majesty came, he worked a miraculous Conversion, except in Oxford; *and so far satisfied every one with the Equity of his Proceedings, that none went away discontented from his Presence, unless it was for this Reason, that they could not enjoy it any longer.*

October *the* 20*th, We came down, and upon opening our Commission, I took care to represent to you the Heinousness of your Offence, and to persuade you to a serious Repentance; but all in vain.*

For on Saturday *Morning we required you to admit and instal the Bishop of* Oxford; *which all, except three, refused: In the Afternoon Dr.* Hough *having been deprived, and by us commanded to depart the College, came to us without any leave, but not without great Attendance; Circumstances, I think, much unbefitting a Man pronounc'd expell'd; and there entered a Protestation against all that we had done, or hereafter should do, as illegal, unjust and null; which he delivered not in Writing, but by Word of Mouth; a Thing repugnant to the Nature of all Appeals: And which was worse, without the usual Salve to his Majesty's Supream Power. When he had spoken it, there followed such a tumultuous, seditious and insolent* HUM, *which if you your selves had not applauded, or at least consented to, it was impossible but that you would have discovered some of those Mutineers. However, since his Carriage and Language gave occasion to it, 'twas thought fit that he only should be examined; and accordingly he was bound over.*

On Tuesday *we our ſelves cauſed the Biſhop of* Oxon *to be inſtalled by his Proxy; after which we propoſed to you, whether being now inſtalled, you would ſubmit to him* in licitis & honeſtis? *To which you gave an Anſwer under your Hands in the Affirmative. You then alſo deſired of us to repreſent your Caſe favourably to his Majeſty, giving all Aſſurance of your Loyalty and Obedience. But this Aſſurance of Submiſſion laſted not long; for on* Thurſday, *being required of us to ſubſcribe ſuch a Submiſſion to his Majeſty as we thought agreeable to our Duty, you required Time to conſult of it; and after Deliberation ſigned ſuch a Paper, which ſeemed rather to be a Proteſtation againſt your former Submiſſion, than an Acknowledgment of your Crime. Upon this we might juſtly then have proceeded to an Expulſion: But we thought fit, in Compaſſion to you, to take a Journey to* London, *and acquaint his Majeſty with your Diſobedience and ungrateful Behaviour. His Majeſty was extremely amazed that his Clemency ſhould be deſpiſed; but yet, to your Comforts be it ſpoken, his Patience and Goodneſs extends as far as your Provocations can: But if you ſtill perſiſt in your Obſtinacy, thoſe that are too tall to ſtand, and too ſtubborn to bend, deſerve to be broken. And now, I think, I have ſaid enough to let you know, that the Fig-leaves you have ſo artificially ſtitched together, are not ſufficient to cover your Nakedneſs: I wiſh to God you had the ſame Tenderneſs for your Concern, as his Majeſty's Commiſſioners have for you. But if you ſtill perſiſt to oppoſe the Royal Power of the King, We, who are come to vindicate the Right and Honour of his Majeſty, reſolve to diſcharge our Conſciences and Duties to God and the King, without any Reſpect of Popularity; that's but the Paradiſe of Fools, and Scorn of wiſe Men: And therefore, as for us, we have no more Regard to People's Diſlike, than what they dream. By reaſon therefore of your late hypocritical Submiſſion, the Commiſſioners have thought fit, upon mature Conſideration, to draw up an Inſtrument, which ſhall be read to you, to which, if you ſhall immediately ſubſcribe, before you leave the Room, we ſhall leave you to his Majeſty's Pardon. And this we expect from you all, except Dr.* Tho. Smith, *and Mr.* Charnock, *with whoſe Behavior the King is ſo well ſatisfied, that he expects no more from them.*

Then all the Fellows being called in, their Lordſhips tendered a Form of Submiſſion to them to be ſigned: Which take as followeth:

To the King's moſt Excellent Majeſty.

The humble Petition and Submiſſion of the Fellows of St. *Mary-Magdalen*-College in the Univerſity of *Oxon*, whoſe Names are ſubſcribed.

WE Your Majeſty's moſt humble Petitioners, have a deep Senſe of being juſtly fallen under your Majeſty's Diſpleaſure, for our Diſobedience and Contempt to your Majeſty, and to the Authority of your Majeſty's Commiſſioners and Viſitors: We do in all Humility proſtrate ourſelves at your Majeſty's Feet, humbly begging your Pardon for our ſaid Offences, and promiſing that we will for the future behave ourſelves more dutifully; and, as a Teſtimony thereof, we do acknowledge the Authority of your Majeſty's ſaid Viſitors, and the Juſtice of their Proceedings; and we do declare our entire Submiſſion to the Lord Biſhop of Oxon, *as our Preſident.*

To which Paper all (except Dr. *Thomas Smith* and Mr. *Charnock*) refuſed to ſubſcribe.

Dr. *Aldworth*, as Vice-Preſident, was firſt called in to ſign the Paper which had been read to all the Fellows.

Vice-Preſ. My Lords, we deſire Time to conſider of it, and to give our Anſwer in Writing.

Biſh. *Ch.* No, you muſt every one ſign, or refuſe, as you are called.

Bar. *Jenn.* There is no Anſwer to be given, but ay or no.

They all moved again for Time, but it was refuſed.

Vice-Preſ. My Lords, this is the firſt Time of my Appearance before your Lordſhips ſince your ſitting here; and therefore I pray to be heard.

My Lords, I am as ready to comply with the King's Pleaſure as any Man living; neither do I know, that we have ever in this Place been diſobedient to the King, where it was in our Power to obey his Commands. Our Founder, in the firſt Clauſe of the Oath we take at this Election, has provided, that no one ſhall be Preſident of his College, but who was bred in it, or in the College where he himſelf was bred. Now for us who have elected Dr. *Hough*, a Perſon qualified according to our Statutes, who has been inſtalled, ſworn, confirmed, and approved of in all the Ways and Manner preſcribed in the Statutes; for us, my Lords, to accept and admit of a Stranger, and a Foreigner, in his Place, is, to the beſt of my Underſtanding, a giving up the Rights of the College to other Uſes than the Founder deſigned it.

Here he was interrupted.

Biſh. *Ch.* Your Statutes are over-ruled by the King's Authority.

Vice-Preſ. My Lords, your Lordſhips ſit here as the Viſitors; which implies, there are certain Laws and Statutes we are bid to obſerve, and by which we are to be governed; and if it ſhall appear to your Lordſhips, that we have acted conformably to theſe Statutes, I hope we ſhall neither incur the King's Diſpleaſure nor your Lordſhips. The whole Tenour of our Statutes run, that we ſhould inviolably maintain our Rights, and obſerve the Rules of our Founder; he has laid his Curſe upon us, if we vary from them. [Here he repeated the Words of the Founder. *Ordinamus ſub pœnâ Anathematis & indignationis Omnipotentis Dei*, &c. *Item ſub interminatione Divini Judicis interdicimus.*]

Biſh. *Ch.* Are you not to obey the King, as well as the Founder's Statutes?

Vice-Preſ. My Lord, I ever did obey the King, and ever will: Our Statutes, which we are ſworn to obſerve, are confirmed by ſeveral Kings and Queens before and ſince the Reformation, and as we keep them, are agreeable to the King's Laws both Eccleſiaſtical and Civil; and ſo long as we live up to them, we obey the King.

Biſh. *Ch.* Your Statutes were never confirmed by his preſent Majeſty.

Dr. *John Smith.* My Lord, neither have they been repealed by his Majeſty; and what is not repealed is confirmed.

Then their Lordſhips preſſing to ſign or refuſe, the *Vice-Preſident* ſaid:

Vice-Preſ. My Lords, I'll then deal plainly, in regard to my Oath and the Statutes, to the Right of all our Succeſſors and of Dr. *Hough*, whom I believe to have been as fairly elected, and as legally poſſeſſed as ever any ſince the Foundation of the College: I cannot ſubmit to the Biſhop of *Oxon* as Preſident.

So he was ordered to withdraw.

Then the ſame Queſtion was put to all the other Fellows ſingly, who all refuſed to ſign the Submiſſion, except Dr. *Tho. Smith* and Mr. *Charnock*, who were not preſs'd, for the Reaſon above.

Mr. Thompſon *being called in to ſign the Paper, ſaid*:

Mr. *Thompſon.* My Lords, I have been always obedient to his Majeſty's Commands; I was not concerned in the Election of Dr. *Hough*; I voted for Mr. *Farmer*, and am ready to ſubmit to the Biſhop of *Oxon*.

Biſh. *Ch.* Did you not put your Hand to this Petition? Is not this your Hand?—Read the Petition—[*It was read.*]—In which the Fellows deſired his Majeſty to nominate any qualified Perſon, and to retract his Mandate granted for Mr. *Farmer*.

Mr. *Thompſon.* My Lord, I conceive the Petition not to be diſobedient. We had not yet received the Mandate; as ſoon as it came, I humbled myſelf.

Bar. *Jen.* Then why can't you humble yourſelf again; is there any Hurt in it?

Mr. *Thompſon.* This Paper requires me to own my Diſobedience to his Majeſty: I am not conſcious of any, and therefore I cannot ſubſcribe.

After a ſhort Time, all who refuſed to ſign the Submiſſion were called in, and by Sentence of their Lordſhips, expelled the College for Contempt, &c. (except as before.) After Sentence, all that were expelled ſpoke to this Effect: 'My Lords, we profeſs all Duty to the King, and Reſpect 'to your Lordſhips, but muſt beg Leave to declare; That we think our 'ſelves injured in your Lordſhips Proceedings, and therefore proteſt 'againſt them, and ſhall uſe all juſt and legal Ways of being relieved.'

After a ſhort Time, an Inſtrument was fixed on the College-Gates, in theſe Words:

By his Majeſty's Commiſſioners for Eccleſiaſtical Cauſes, &c. *particularly authorized and impowered to viſit St.* Mary-Magdalen-College, *in the Univerſity of* Oxon.

WHEREAS, in our Viſitation of the ſaid College, it appeareth unto us, That Doctor *Charles Aldworth*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hamond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *John Yerbury*, Mr. *Robert Holden*, and Mr. *Stephen Wilks*, Fellows of the ſame College, have been ſeverally guilty of Diſobedience to his Majeſty's Commands, and obſtinately contemned his Royal Authority, and do ſtill perſiſt in the ſame: We have thought fit, upon mature Conſideration thereof, to Declare, Pronounce, and Decree, That the ſaid Dr. *Charles Aldworth*, &c. and every of them, be deprived and expelled from their reſpective Fellowſhips. And we do by this our Sentence and Decree, Deprive and Expel them of and from their ſaid ſeveral and reſpective Fellowſhips.

Given under our Seal, this 16th Day of November, 1687.

WHITE-HALL, *December* 10, 1687.

HIS Majeſty's Commiſſioners for Eccleſiaſtical Cauſes, and for viſiting all Cathedral and Collegiate Churches and Colleges, &c. met this Day; and taking into their Conſideration all that had paſſed in the Buſineſs of St. *Mary-Magdalen*-College in *Oxford*, and the contemptuous and diſobedient Behaviour of Dr. *John Hough*, and ſeveral of the Fellows of that College throughout the whole Proceeding, their Lordſhips declared, decreed, and pronounced, That Dr. *Hough*, Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hamond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *Edward Yerbury*, Mr. *Henry Holden*, and Mr. *Stephen Wilks*, ſhould be uncapable of receiving, or being admitted to any Eccleſiaſtical Dignity, Benefice, or Promotion: And ſuch of them who are not yet in Holy Orders, were adjudged uncapable of receiving or being admitted into the ſame. All Archbiſhops, Biſhops, and other Eccleſiaſtical Officers and Miniſters within the Kingdom of *England*, being required to take Notice of the ſaid Sentence and Decree, and to yield Obedience thereunto.

THE 17th of *January*, 1687, being the Day that the thirty Demies of *Magdalen*-College were, by Summons from the Biſhop of *Oxon*, the now Preſident, commanded to appear before him; and none appearing, Mr. *Charnock*, the new Vice-Preſident, called for the Buttery-Book, and ſtruck out the Names of Mr. *Holt*, Mr. *Adams*, Senior, Mr. *Veſey*, and Mr. *Brabourn*, Maſters of Art; Mr. *Hyde*, Mr. *Woodward*, Mr. *Fulham*, Mr. *Watkins*, Mr. *Stacy*, Mr. *Sherwin*, and Mr. *Kenton*, Batchelors of Art; Mr. *Croſs*, Mr. *Buſh*, and Mr. *Wells*, Under-Graduates; Which Fourteen were then reſident in the Univerſity, and three more, who eſcaped Expulſion at that Time.

Afterwards, when the King had certain Intelligence of the Prince of *Orange*'s Deſign, *viz. October* 12, 1688, he ordered the Biſhop of *Wincheſter*, Viſitor of *Magdalen*-College, to ſettle that Society regularly and ſtatutably; accordingly, *October* 16, the Biſhop of *Wincheſter* cauſed a Citation to be fixed on the Gate of the College, to recal Dr. *Hough*, and the former Fellows of this Society, by the Second of *November* following; but an Account coming that Poſt of the Prince of *Orange*'s Fleet being diſabled by a Storm, the Biſhop was recalled to *London*, and the Reſtoration of the College put off: But when it appeared that the Fleet was ready to ſail again, then the Buſineſs of the College was reſumed, and effected *November* 24.

CXLIII. *Trial of* Philip Standsfield, *Son to Sir* James Standsfield, *of* New-Milns *in* Scotland, *for the* Murder *of his Father, and other Crimes*, Feb. 6, 168⅞. 4 Jac. II.

CURIA Justiciaria *S. D. N.* Regis, tenta in prætorio *Burgi de Edinburgh*, Sexto die Mensis *Februarii* 168⅞, per Nobilem & Potentem Comitem *Georgium* Comitem de *Linlithgow*, Dominum *Livingstoun*, &c. Justiciarium Generalem totius Regni *Scotiæ*, & honorabiles viros Dominos *Johannem Lockhart* de *Castle-Hill*, *Davidem Balfour* de *Forret*, *Rogerum Hodge de Harcase*, & *Johannem Muray* de *Drumcairn*, Commissionarios Justiciariæ dicti *S. D. N.* Regis. *Curia legitime affirmata.*

INTRAN.

Philip Standsfield, eldest lawful Son to Umquhile Sir *James Standsfield* of *New-Milns*, Prisoner within the Tolbooth of *Edinburgh*, Indited and Accused at the Instance of Sir *John Dalrymple* Younger of *Stair*, his Majesty's Advocate for his Highness's Interest: That where notwithstanding by the Law of God, the Common Law, Law of Nations, Laws and Acts of Parliament of this Kingdom, and constant Practice thereof, the expressing of malicious and seditious Words to the Disdain of his Sacred Majesty's Person, and Contempt of his Royal Government, such as drinking or wishing Confusion to his Majesty, is High-Treason, particularly by the 2d *Act.* 2d. *Sess. Par.* 1st. King *Charles* II. of ever glorious Memory: The Plotting, Contriving or Intending Death or Destruction to the King's *Majesty*, or any bodily Harm, tending to Death or Destruction, or who shall by Writing, Printing, or other malicious Plotting, and advised Speaking, express and declare such their treasonable Intentions, after such Persons being legally convicted thereof, they shall be deemed, declared and adjudg'd Traitors: And the Cursing, Beating, Invading, or Assassinating of a Parent by a Child, above the Age of sixteen Years, who is not mad and furious, is punishable by Death and Confiscation of Moveables: And of all other Murders, Parricide is the most atrocious and unnatural; and Murder under Trust is punishable as Treason with Forfaulture of Life, Land and Goods, and particularly by the 20 *Act.* 1st *Sess.* 2d. *Par.* King *Charles* II. The King's Majesty and Estates of Parliament, considering how great and atrocious a Crime it is for Children to beat or curse their Parents, and how the Law of God hath pronounced just Sentence of Death against such as shall either of these Ways injure either of their Parents; therefore the King and Estates of Parliament did Statute and Ordain, *That whosoever, Son or Daughter, above the Age of sixteen Years, not being distracted, shall beat or curse either their Father or their Mother, shall be put to Death without Mercy.* And sicklike by the 51 *Act.* 11. *Par.* King *James* VI. It is Statuted and Ordained, *That the Murder or Slaughter of whatsomever of the Leidges, where the Party slain, under the Trust, Credit, Assurance, and Power of the Slayer, all such Murder or Slaughter to be committed in time coming, the same being lawfully tried, and the Person dilated found guilty by an Assise thereof, shall be Treason, and the Person found culpable shall forfault Life and Goods*; as in the said Laws and Acts of Parliament at more length is contained. Nevertheless it is of Verity, that the said *Philip Standsfield*, shaking off all Fear of God, the Bonds and Ties of Nature and Christianity, Regard and Obedience to the said Laws and Acts of Parliament, did dare and presume to commit the said horrid and detestable Crimes, in swa far as, upon the first, second, third, or one or other of the Days of the Months of *June*, *July*, *August*, or *September* last, by past, one or other of them, he did, within the House and Kitchen of *New Milns*, call for Ale to drink some Healths, and in the Presence of *John Robison*, then his Father's Servant, *Agnes Bruce*, likewise his Father's Servatrix, and several others, he did as a most villanous and avowed Traitor, presume and dare to begin a Health to the Confusion of his Sacred Majesty, his native Soveraign, and drink off the same, and caused others in his Company to do the like. And sicklike Sir *James Standsfield* of *New Milns* his Father, having caused Educat and bring him up Decentlie, and in Plenty conform to his Rank and Quality, and having left no means unessayed for his Literature, Education and Subsistence; yet he being a profligate and debauched Person, did commit, and was accessory to several notorious Villanies, for which, both at home and broad, he was apprehended and detained Prisoner, as in the *Marshalsea-Prison* in *Southwark*, in the publick Prisons of *Antwerp* and *Orleance*, and several other Places: And though his Father, out of his natural Compassion to him, did cause release him out of these Prisons, in which he was so justly confined, he no sooner had his Liberty, than he of new invented and went about his villanous Practices and Debauches: And his Father at last perceiving that nothing could reclaim him from these and the like Proceedings, having signified his Inclination to disherish him, and in order thereto, having disponed his Estate in Favours of *John Standsfield* his second Son; the said *Philip* did thereupon conceive, harbour and entertain ane hellish Malice and Prejudice against the said Sir *James Standsfield* his Father, and most barbarously did declare, threaten and vow at several Times, that he would cut his Throat: And particularly upon the first, second, or third, or remanent Days of the Months of the Year 1680, within the House of *James Smith* in *Nungate* or *Haddingtoun*, and upon the first, second, or third, or one or other of the Days of the Months of *January*, *February*, *March*, and remanent Months of the Year 1687, within the House of *James Baikbie* Fermorer in *New-Milns*; and within his Father's own House of *New-Milns*; and in the House of *William Scot* there; and upon the first, second, third, or one or other of the Days of the Months of *January*, *February*, *March*, and remanent Months of the Year of God 1683, 1684, and 1685 Years, when he was both in *Brussels* and *Breda*, and several other Places, both in *Holland* and *Flanders*, and in Prisons, within which he was detained in the City of *London* and *Southwark*, or upon one or other of the Days, of one or other of the Months of the said Years, or either of them, most wickedly, unnaturally, and bitterly rail upon, abuse and curse the said Sir *James Standsfield*, his natural and kindly Parent. And being transported with Rage and Malice, he did, contrary to the Light and Ties of Nature, nor once, but often and frequently curse his Father, by bidding, and praying the Devil to take him, and the Devil rive him, God damm him, and swear, if he had a Sword, he would run it through him, and if ever he came to *Scotland*, he would be avenged upon him. And particularly upon the — Day of *November* last, which was the last Time his Father went to *Edinburgh*, he did most impiously and unnaturally imprecate, God let him never return, and God let him never see his Face. And frequently when he saw his Father's Diet taken to him, he used to say, God grant he may choak upon it; and at other Occasions, when his Father refused to eat, he was in use to say, God let never more be in his Stomach than was in it then. And upon the first, second, or third, or one or other of the Days of the Months of *September*, *October*, or *November*, last by past, or one or other of them, his Mother being recovered out of a Swond, and having said to him, *Philip*, ye will shortly want your Mother, which will be a gentle Visitation to Sir *James* your Father. To which he did answer: By my Soul, my Father shall be dead before you, Mother; and about eight Days after, he upon the like Occasion did renew the same Words: As also he was in use to declare, that though at present he had neither Cloaths nor Money, yet shortly (and nobody did think how soon) he would be Laird of all, and then would use other Persons as they did him now: And at other Times declared, that before *Christmas* he would be Laird of all; which Curses and Imprecations, he the said *Philip Standsfield*, by a continual Habit used, and repeated these several Years by past; and lately some few Months or Weeks before his Father's Murder. And not satisfied therewith, the said *Philip* did proceed to that Degree of unnatural Cruelty, and malicious Spite and Enmity against his Father, that upon the first, second, third, or one or other of the Days of the Months of *January*, *February*, *March*, and remanent Months of the Years of God, 1680, 1681, 1682, 1683, and 1684 Years, or one or other of the Days of one or other of the Months, of one or other of the said Years, he did attempt to assassinate, and offered Violence to his Father's Person, and did chase and pursue him upon the King's Highway at *Lothian-burn*, and did fire Pistols upon his Father: And likewayes upon one or other of the Days of one or other of the Months of one or other of the Years of God above specified, he did attempt to assassinat his Father for his Life, at *Culterallors*; and did fire Pistols upon him: And his Father being afraid of his Life, and under the Apprehension of Violence, from the cruel and bloody Hands of the said *Philip*, his unnatural Son, he did to several Persons both of Quality and entire Reputation, declare, that the said *Philip*, his Son, had both attempted to assassinat and offered Violence to his Person, and that he was devising and contriving his Death. And the said Sir *James Standsfield* his Father, having upon the — Day of *November* last, gone from the City of *Edinburgh* to his own House of *New-Milns*, and about Ten o'Clock at Night, or thereby, having gone to his own Chamber, in order to his Rest, and being alone in the Room, under the Credit, Trust, and Assurance of the said *Philip* his Son, and his own Servants within his own Family; the said *Philip* did consult, and advise, and correspond with some other Persones, within and about the House for the Time, to assassinat and cruelly murder his said Father, and perticularly with *George Thomson* in *New Milns*, and *Helen Dickson* his Spouse, and *Janet Jonstoun* Spouse to *John Nicols*, there, in the House of the said *George Thomson* many Times, particularly the *Saturday*'s Night immediately preceeding the Murder, where he cursed his Father, and said he should shortly make an end of him, and be Master of all: And accordingly he and they did murder and strangle him in his Bed-Chamber, and in the dead Time of the Night, did carry and transport him from the said Room to the Water, near by the House, and laid his Body down upon the Water-side, and tied a Stone about his Neck to make him sink in the Water; and before he was thrown therein, he went back with his Accomplices to a little Kiln near by, and consulted and advised whether it was more fit to throw him in the Water with the Stone about his Neck, to make him sink, or to take away the Stone, least when he should be found, it might thereby appear that the Stone had been tied by some other Hand than his own; and at last resolved to take away the Stone, and throw his Body in the Water, which they returning, did accordingly: And some Persons being accidentally lying in the House at the Time, did hear a Noise of many Tongues and Voices, to their great Terror and Amazement; and the next Morning very early, some of the Servants in the House having come to the Room where his said Father did lie, and having missed him out of the Room, gave notice thereof to some others of the Servants. He declared that he had been seeking him about the Water-Pools; and a Noise and Cry having arisen, Search and Enquiry was made for his said Father (and by him seemingly amongst the rest): And after some Time his Body was found in the Water hard by his own House, and being dead, and his Neck broken before he was thrown in the Water, his Body did neither sink to the Ground nor receive Water (as all drowned Bodies are in use to do) and he knowing where his Father's Body had been put, went on the Sabbath-Morning directly to the Place where his Body was in the Water, and stood a considerable Space on the Water-side, directly opposite to the Body, with his Eyes fixed on the same, before his Body was found or knowen to any others than the Murtherers; and when *John Topping* (a Stranger) passing that Way, and ignorant of the whole Matter, or that Sir *James* was amissing, called to him, and asked, who that was in the Water? He made no Answer, but went away from that Place strait to *New-Milns*, and gave no Intimation to him, or any other Person what he had seen in the Water, but appeared surprized when his Body was found there by other Persons; and his Father's Body being taken out of the Water, the same was, by his Order, carried

to a dark Out-houſe; and though he was deſired by the Friends and Servants preſent, to ſuffer his Father's dead Body to be carried to his own Houſe, and kept therein, and not to be buried till his Friends in *Edinburgh*, and elſewhere, and Phyſicians in *Haddingtoun*, or near by, might ſee the ſame, yet he refuſed ſo to do, and cauſed bury the dead Body of his Father privately, and in haſte. And the Noiſe having ſpread abroad, that his Father had been barbarouſly murdered by him, and his Accomplices, Order was given by theſe in Authority, to cauſe open the Grave, that Phyſicians and expert Chirurgions might inſpect his Body, and make Report anent the Truth of the Matter: And accordingly, by the Report of the ſaids Chirurgions who inſpected the Body, it did appear, that his ſaid Father was cruelly ſtrangled and murdered, and not drowned, and that he had been caſt in the Water of Purpoſe to conceal the ſame. And when his Father's dead Body was ſighted and inſpected by Chirurgions, and the clear and evident Signs of the Murder had appeared, the Body was ſewed up, and moſt carefully cleaned, and his neareſt Relations and Friends were deſired to lift up his Body to the Coffin: And accordingly *James Row*, Merchand (who was in *Edinburgh* in the Time of the Murder) having lifted the Left-ſide of Sir *James* his Head and Shoulder, and the ſaid *Philip* the Right-ſide, his Father's Body though carefully cleaned, as ſaid is, ſo as the leaſt Blood was not on it, (did according to God's uſual Method of diſcovering Murders) blood afreſh upon him, and defiled all his Hands, which ſtruck him with ſuch a Terror, that he immediately let his Father's Head and Body fall with Violence, and fled from the Body, and in Conſternation and Confuſion, cryed, *Lord, have Mercy upon me!* and bowed himſelf down over a Seat in the Church (where the Corp were inſpected) wiping his Father's innocent Blood off his own murdering Hands upon his Cloaths. By all which it is manifeſt, that he did moſt traiterouſly expreſs his Hatred and Malice to his Majeſties ſacred Perſon, by wiſhing and drinking to his Confuſion, and cauſing others to do the ſame. And likewiſe, that he did not only unnaturally curſe, invade, attempt to aſſaſſinate or beat his ſaid Father, but under Truſt and Aſſurance, barbarouſly and treaſonably did ſtrangle, kill and murder him in manner forſaid, and is Actor, Art and Part of the forſaids Crimes, or one or other of them, which being found by an Aſſyſe, he ought to be puniſhed for the treaſonable Crimes above ſpecified, with forefaulture of Life, Land and Goods, and for the other Crimes abovementioned, Capitally, and with the Pains of Death and Confiſcation of Moveables, to the Terror and Example of others to commit the like hereafter.

PURSUERS.

Sir *John Dalrymple*, younger, of *Stair*, his Majeſty's Advocat.
Sir *George Mackenzie*, Advocat.

PROCURATORS *in Defence.*

Sir *David Thoirs*,
Sir *Patrick Hume*,
Mr. *William Moniepenny*.
Mr. *William Dundaſs*.

The Pannal's Procurators produced two Warrands of Privy Council, commanding them to compeir and plead the Pannal's Defence.

SIR *Patrick Hume* for the Pannal (always denying the Indytement, and whole Members and Qualifications thereof) alleadges, That as to the firſt Part of the Indytement, in relation to the drinking an Health to the Confuſion of his ſacred Majeſty, as it is moſt calumnious, ſo it is not to be ſuppoſed, that any Man in his right Wits would have been guilty of ſuch a Thing: And it is poſitively offered to be proven, that at, or about the time libel'd, and ſeveral Times before and after, the Defender did moſt heartily and chearfully in ſeveral Companies drink the King's Health, and upon all Occaſions he was ready to teſtify his Loyalty to the King, and particularly the Time of the Invaſion by the late Duke of *Monmouth* in *England*, where he did enter himſelf voluntarily a Souldier in the Earl of *Dumbarton*'s Regiment, and continued in the King's Army till the Rebels were defeat, and the Voluntiers diſmiſſed.

As to the ſecond Part of the Libel, in relation to the Pannal, his alledged committing, and being guilty of, and acceſſory to many notour Crimes abroad, and being detained Priſoner in *London*, *Antwerp*, *Orleance*, &c. and that he vented and entertained Malice againſt his Father, and that he declared many times that he would cut his Throat, and that he did rail againſt, and curſe his Father, by many Imprecations.

It is anſwered, *primo*, That it is abſolutely deny'd, that the Pannal was guilty of, or acceſſory to, any notorious Crime abroad, or put in Priſon upon that Account; nor is there ſo much as any Crime condeſcended upon.

2. The Defender could not conceive any Prejudice againſt his Father, upon the Account of diſponing his Eſtate to his ſecond Son; for he knew nothing thereof till after his Father's Deceaſe, that one *Alexander Ainſlie* told him that his Father had made ſuch a Diſpoſition.

3. As to the pretended Expreſſions, that the Defender ſhould have had of Railing, Curſing, and uſing Imprecations againſt his Father, in ſo far as the ſamen are libel'd to have been done Abroad, in *England*, *Holland*, or other Places, he cannot be lyable to the Puniſhment inflicted by the Law of this Kingdom, becauſe when a Party commits a Crime in another Nation, he is only to be puniſhed according to the Law of the Place where the Crime was committed, and not according to the Law of the Nation where he is a Subject, or has his Dwelling: As is clear by the Common Law, Authentick *Cod. Ubi de criminibus agi oportet. Qua in provincia quis delinquit, aut in qua pecuniarum aut criminum reus ſit, ſive de terra, ſive de terminis, ſive de poſſeſſione, ſive de proprietate, ſive de hypotheca, aut de alia qualibet occaſione, vel de qualibet re fuerit reus, illic jure ſubjaceat, quod jus eſt perpetuum.* In that Nation where any Perſon commits a Crime, or is liable to anſwer upon any account whatſomever, he is to be judged by the Law of that Place, which is eſtabliſhed as a perpetual Law; and *Mattheus de Criminibus*, in his Title, *De Pœnis*, is expreſs of the ſame Opinion.

4. As to all thoſe pretended Expreſſions of railing, curſing, and threatning, libel'd, that were before *March*, 1685, the Defender is ſecured by the Act of Indemnity, by which all Crimes are indemnified, preceeding that time, againſt the Government and Laws.

5. As to any pretended Expreſſions of railing and curſing ſince that Time, they being but Injuries alledged done to the Father, he might and did remit the ſamen, in ſo far he did not challenge and purſue the ſame in his own Time; and this is clear from the Common Law, *Carpzov. Part.* 2. *Queſt.* 65. *Actio autem injuriarum nec activè nec paſſivè in Hæredes tranſit, etiamſi mortuus illatas injurias ignoraverit. Inſtitut. lib.* 4. *tit.* 12 *par.* 1. *De perpetuis temporalibus action. Leg.* 10. *par.* 2. *ff. ſi quis cautionibus in judicio ſyſten.* And *leg.* 13. *ff. de injuriis, injuriarum actio neque hæredi neque in hæredem datur:* As alſo it is a Principle in Law, that *diſſimulatione tollitur injuria*; and if it could be made appear, that the Pannal had any ſuch Expreſſions, the Father did diſſimulat and paſs from the ſame, in ſo far as by a Letter, dated in *June* laſt, written by the Father to the Pannal, he orders him to take in his Chamberlain Accompts of the Rents of his Lands, and of any Money he had received from the Tenements, or for the Corns ſold, and that he expects he will do the ſame exactly, and recommends to him, to be careful of all his Affairs, and ſubſcribes himſelf to be his loving Father. By which it is evident, that all former Differences (if any were) betwixt them, were then taken away.

As to the third Part of the Indytement, in relation to the ſeveral Acts and Qualifications inſiſted upon; to infer, that the Defender had Acceſſion to his Father's Death: It is anſwered, *(primo)* That the Indytement, in ſo far as it is founded upon the 51. *Act. Par. K. Ja.* VI. in relation to the Murder under Truſt, which is declared to be puniſhable as Treaſon, is not relevant: Becauſe the Father cannot in Law be ſaid to be under Truſt and Aſſurance of the Son, and that Act of Parliament takes only Place in Caſes where a Man is invited to his Neighbour's Houſe, or of an Traveller being in an Inn, and that he be murdered under that Truſt; and the ſame Act of Parliament being founded on in the Caſe of *Swinton*, who killed his Wife, in the Year 1666, the Indytement was reſtricted to ſimple Slaughter. And in the Caſe of Maſter *James Oliphant* in the Year 1665, the Lords of the Seſſion found, that a Son killing his Mother, was not Murder under truſt, and ſo he was not puniſhable by that Act of Parliament, as guilty of the Crime of Treaſon.

2. The Acts and Qualifications condeſcended on to infer the Defender's Acceſſion to his Father's Death, are but very remote and uncertain; for as to that Expreſſion, That the Defender is alledged to have threatned his Father's Death, it is the Opinion of all Lawyers, who have written upon the Subject, that that is but a very remote Preſumption. And as *Carpzovius* expreſſes it, *Part.* 3. *Queſt.* 121. *Numb.* 51. *Quod eſt indicium admodum periculoſum, quippe cum homines ſæpe nil minus faciant quam quod minas exequantur & iracundia agitatus minas de crimine perpetrando ſæpe jactet, ipſo tamen animo fervore paulo poſt diſcuſſo, cohibeat manus, & abſtineat a facinore illo quod forſan ab alio poſtea committitur.* And *Paris de puteo* gives an Inſtance in his *Tractat. de Syndicatu* upon the Word *Tortura*; and *Boverius*, That a Woman ſeeing a Perſon going by her Window, againſt whom ſhe had a Prejudice, and that another having a Hatred againſt her, and hearing that ſhe had threatned to cut off that Perſon's Legs, the Party that did hear the Woman uſe the Threatning, did the Thing; upon which the Woman that did threaten, being challenged, and put to the Torture, did confeſs; yet thereafter it was found, that ſhe was altogether innocent, and that another had done it.

3. As to the pretended Acts of the Defender's alledged purſuing, and invading his Father, and firing Piſtols at him, at *Lothian-burn* and *Culterallors, in Annis* 1683 and 1684. As it is moſt groundleſs, ſo, if need were, it could be made appear by the Perſons who were in Company with him at that Time, that the Defender and his Father were then in entire Friendſhip all alongſt the Journey, and he was ſo far from making any ſuch Attempt, that it can be made appear, that the Defender did behave himſelf towards his Father with all the Submiſſion and Reſpect that became a Son to have to his Father: But as to theſe, and all other Acts, preceeding *March* 1685, the Defender is ſecured by the Act of Indemnity; and as the Defender cannot be purſued for any Crime preceeding that Time, neither in Judgment nor out with the ſame, they in effect being no Crimes, being taken away by the Act of Indemnity, they cannot be ſo much as made Uſe of as Qualifications or Aggravations, to infer another Crime poſterior thereto.

4. As to that pretended Qualification, that when the Defender did touch his Father's dead Body after it was taken out of the Grave, the Corps did bleed.

It is anſwered, That this is but a ſuperſtitious Obſervation, without any Ground either in Law or Reaſon. And *Carpzovius* relates, *Part* 3. *Queſt.* 122. *Numb.* 31. That ſeveral Perſons upon that Ground had been unjuſtly challenged, and that he in his own Experience had ſeen a dead Body bleed in Preſence of the Perſon who was not guilty; as alſo that he has ſeen the Body not bleed in Preſence of the Perſon that was guilty. And *Mattheus de Criminibus*, is of the ſame Opinion, *Tit.* 16. *de Quæſtionibus, Numb.* 12. *de Sanguine porro de Cadavere profluente quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falſa ſint; ratio vero idonea nulla reddi poſſit, non putaverim indicium ad torturam ſufficiens eſſe; non enim ſapientis Judicis eſt incerto experimento credere quod certa ratione dirimendum eſt.* And the Truth is, the Occaſion of the dead Body's bleeding, was, that the Chirurgions that came out to viſit the Body, did make an Inciſion about the Neck, which might be the Occaſion of the bleeding; and alſo the very moving of the dead Body, when it was taken out of the Grave, and out of the Coffin, might occaſion the bleeding; eſpecially ſeeing the Body did not bleed for ſome time after, which certainly was made by the Motion, and by the Inciſion: As alſo a further Evidence, that it could not be the Defender's touching the Body, the Chirurgions did likeways touch the Body as well as he, and ſeveral others preſent; ſo that the bleeding could no more be aſcribed to his touching, than the touching of the other Perſons preſent.

5. As to the other Articles lybel'd, relating to the pretended Murder, they are but meer Stories, and the Truth is, and it is offered to be proven, that the Defender having gone to his Chamber and Bed the Night before his Father's Death, he did not ſtir out of his Bed, nor out of the Roum, till the next Morning that *John Robertſon* his Father's Servant came to his Chamber, where he was in Bed, and told him, that he had been in his Maſter's Roum, and that he could not find him. Upon which the Defender immediately aroſe, and put on his Cloaths, and

went out to see where his Father was. And shortly after Word being brought him by some Person in the Town, that they did see his Father's Body lying in the Water, and it being generally concluded by all, that he had thrown himself in the Water, and the Body being taken out, and laid in a low Roum, it was thought fit by all the Neighbours about, that he should be buried the next Day.

6. The Particulars lybel'd to infer the Defender's Accession to his Father's Death, being but remote and uncertain Conjectures, it is a certain Principle in Law, that *ex præsumptionibus & conjecturis nemo criminaliter condemnari potest*, especially as to a Capital Punishment: As is clear from the Common Law, *Leg.* 5. *Digest. de pœnis, sed nec de supplicationibus debere aliquem damnari, satius enim est Impunitum relinqui facinus nocentis quam Innocentem damnari.* And which is the Opinion of all Lawers, writing upon the Subject: As *Bartol.* upon the foresaid Law, and *Farin. Part.* 3. *Oper. Crim. Quæst.* 86. and the Lawers by him there cited. And *Muscard de prob. Conclus.* 223, lays it down as a certain Conclusion, *quod Argumenta quantumcunque urgentissima, etiamsi essent talia quæ mentem indicantis adeo coactarent quod aliud credere non posset, non tamen sufficerent ad condemnationem pœnæ corporalis sed duntaxat pecuniariæ.*

7. The Presumptions and Qualifications lybel'd, cannot be sustained even to infer an Arbitrary Punishment: Because they may, and are taken off by other Presumptions, that either the Father was not murdered, but that in a Frainzie, or melancholy Fit, he had thrown himself in the Water: Or, at least, if he was murdered, that the Defender had no Accession thereto, and the Presumptions condescended upon in Behalf of the Defender, eleid the Presumptions contained in the Indytement are these: That it is notourlie known, that his Father was subject to melancholy Fits, and that in the Year 1679, the Time of *Bothwell-Bridge*, it is offered to be proven, that he was in a Fit of Distraction; and at another Time in his House at the *Nether-bow*, he was going to throw himself out over the Window, and one *Thomas Lindall* had not come in at the time, and pulled him back by the Legs, when his Body was half out at the Window. And some few Days before he went out of *Edinburgh* last, he came to *George Sterling*, Chirurgion, and desired him to draw Blood of him, for a Distemper in his Head, which he refused, unless he had Advice from a Physician. As also a Day or two before he went out of the Town, he was seen reading upon the Book of *Burtoun*'s *Melancholy*. And that Day when he went out of the Town in Company of Mr. *Bell* the Minister, and *Aiton*, Merchant in *Haddingtoun*, they observed him to be melancholy, disordered, and more troubled than ordinary; or if it could be made appear, that the Father was murdered, yet it cannot be presumed that the Defender had any Accession thereto, or that he would have committed such an Act against the very Ties and Light of Nature. As also it appears by the forsaid Letter, written to the Defender by his Father, that they were in entire Friendship; as also when the Surmise went Abroad, that his Father had been murdered, if he had been conscious to himself that he had any Accession thereto, he would have certainly fled the Country, and gone away. But he was so far from that, that upon the first Rumour of it, he came presently into *England*, and several Days thereafter, it being told him, that he was suspected to have Accession to his Father's Death, he came voluntarily and entered himself in Prison, that he might undergo the strictest and severest Trial: Which alone is sufficient, if it were no more, to take off all the Presumptions lybel'd, and to convince the World of the Defender's Innocence; and it being a Principle in Law, that *una præsumptio tollit aliam*, the Presumptions adduced for the Defender ought to be preponderat. *Muscard. Conclus.* 1205, is positive, That *præsumptiones quæ stant pro reis prævalent.* As also that *præsumptio affectionis naturalis prævalet contrariis præsumptionibus.* So that upon both these Considerations, the Presumptions alledged for the Defender ought to be sustained, to take away the Presumptions lybel'd, and to free him from the Crime.

His Majesties Advocate answers, That the Libel consists of three Articles, *(Primo)* Treason, by the Pannal's drinking the King's Confusion, and by the Murder under Trust. 2°. The cursing of a Parent, 3°. The Qualifications inferring the Pannal's Accession to the Murder of his Father.

As to the first, it cannot be denied, but that the drinking or wishing Confusion to his Majesty, is the highest Act of Contempt, Malice, and Disdain to his Royal Person; and as the Relevancy of this Article is not expresly contraverted, so the Atrocity of the Act, and the forcing others to do the same upon the common Grounds of Law, does clearly infer Treason, and it cannot be expected, that such extravagant Words should either be express'd or particularly provided against by any Law in express Terms; but the Nature of the Words in express Terms of our Law discharging all Speeches to the Disdain of his Majesty, the Contempt of his Authority, do clearly and naturally comprehend the Words lybel'd, and by the common Law, *Ad leg. jul. Maj. crimen læsæ Majestatis ad exemplum legis scriptæ est vindicandum.*

And whereas it is pretended, that these Words were inadvertently said, and that it appears by the Tract of the Pannal's Life, and his Readiness to engage in his Majesty's Service, that the Words could not be deliberat and malicious: It is replied, That it is offered to be proven, that the drinking Confusion to the King, was openly and plainly proposed; and that the Pannal did deliberately send out for Ale to drink certain Healths, and that this Health to the King's Confusion was the first or second, and that it was no Lapse or Mistake in the Expression; but that he forced others to pledge and drink that same Health. And the Malice and Disloyalty is evident, by the Healths Subsequent, *viz. Antichrist's, &c.* and it is not at all relevant (after the reiterate and deliberat expressing of these Words) that he had retracted or drank the King's Health; for a Crime once committed, is not retracted or taken off by such inconsistent and unconsequential Speeches. But to shew the Sense the Pannal had of the Importance of his own Words, the Pannal being informed, that some of the Persons present had divulged his having drunk the King's Confusion, the Pannal did conjure them to Secrecy, and did menace the Witnesses with a great Cane, that he would beat and brain them if ever they told it.

Whereas it is answered in general, as to all Crimes committed without the Kingdom, that they cannot be cognosced or punished here: It is replied, That as to Crimes against Nature, or the Law of Nations, as every Party is competent to be an Accuser, so every Judicature is competent; and therefore as to the Crimes of Treason, or cursing of Parents, whereever committed, they are punishable by the Justices: But because in relation to the Crimes committed abroad, there is not positive Probation, but Declarations and Testimonies; therefore as to these Crimes, his Majesties Advocate does not insist on them as distinct Crimes *per se*, but as Qualifications, Documents, and Evidences of the habitual Debauchery, and unnatural Malice express'd by the Pannal against his Father for a Tract of many Years.

Whereas it is answered, That as to all Crimes preceding 1685, they are taken off by the Indemnity: It is replyed, The Indemnity 1685, is no general Indemnity, neither as to Persons nor Crimes, but particular Crimes are remitted, and particularly enumerat, without any general Clause: And as cursing of Parents is not particularly enumerat, so by the Nature of that Crime, it cannot be included or comprehended in any general Indemnity: And the Words of the Act of Parliament, 20 *Act.* 1. *Par. K.* Ch. II. bears expresly, *That the Cursers of Parents shall be put to Death without Mercy.* So that a general Act of Indemnity, or Mercy, without a special Remission, could not include this Crime, which, as the Act of Parliament bears, is expresly against Nature, and the Law of God: And by the Opinion of all Lawers, general Indemnities do not extend to all Crimes; but these Crimes which are called in Law *Crimina excepta*, are never intended to be indemnified, nor such Crimes, where the Interest of Parties is more than the Interest of Publick Justice; and in all former and general Indemnities, Murder and other Crimes are particularly excepted with a general Clause, excepting all such Crimes as use not to be comprehended in general Acts of Indemnity: So that this so horrid a Crime, wherein the Parent was more interested than the Publick, neither was, nor could be comprehended under a general Indemnity: As also, that restricted, limited Indemnity, bears expresly an Exoneration for all Persons below the Degree and Quality of an Heretor, Wodsetter or Burgess; and whether the Pannal were an Heretor or not, yet it cannot be said, that he is below the Degree and Quality of a Wodsetter or Burgess; and therefore the Act of Indemnity is of no use to him.

Whereas it is answered, That Sir *James* was reconciled with the Pannal, and wrote kind Letters to him, whereby, *dissimulando*, former Injuries were taken off: It is replied, That Injuries are only taken off *dissimulando*, which are not attrocious, but never specifick Crimes, wherein the Discharge or express Renunciation of the Party injured cannot be liberat *à vindicta publica*, the Punishment of Crimes, especially in Capital Punishments, belonging to the Magistrat; and the privat Party has not the sole Interest, nor can dispense with Capital Punishments: But the Letter founded upon, does not in the least infer the Party's Forgiveness or Dissimulation of the Injury. And a Father ordering his Son to call in for Chamberlain Accompts, without impowering him to discharge the same, is not the least Evidence of Confidence in his Son, much less a remitting of his Crime.

As to the second Article, in relation to the Cursing, it is positively offered to be proven, not in single Acts, but by a Tract and Habit of cursing his Father in the most abominable Termes imaginable.

As to the third Article, in relation to the Murder, that this Matter may be clear, *& ut constet de Corpore delicti*, these undoubted Qualifications are offered to instruct, that Sir *James Standsfield* was murdered and strangled, and that he did not drown himself. 1. It is offered to be proven by the Minister, that was that Night in the House, that long after ten o'Clock at Night, and that Sir *James* had retired to the Chamber, where he lay alone, the Minister heard the confused Whispers, Murmurs, and Noise of several Persons, both Men and Women, which affrighted him; and that he heard the Noise go away by the back-side of the House, which leads directly to that Pool where Sir *James* his Body was thrown in the Water.

2. Sir *James*'s Body was found swimming above the Water; and albeit it appeared by the Ice upon the Top of his Cloaths, that he had been several Hours in the Water, yet there had no Water entered in his Body; which is a Demonstration, that he was dead before he was thrown into the Water; for a Person thrown alive into Water, drawing in of Air and Respiration, being in the Water, he must draw in Water; and if the Person drawes in as much Water as fills his Concavitie, he becomes heavy, having so much more Weight of Water, and therefore he sinks: But if a Person be thrown dead into the Water, when the Clap of his Throat is shut, the Water cannot enter, and there being so much Emptiness, the Body is light, and supported by more Parts of Water, than the Gravity of the Body can depress. 3. There being several Chirurgeons and others sent out by Order from Authority to take up and inspect the Body, to see whether there was any Evidence of Strangling, or other Symptoms of Murder upon the Body; it did appear to all these Persons, who did depone before a Committee of the Privy-Council, That from the one Jugular Vein to the other round the Neck, there was a Tumour of congealed black bruised Blood, three Inches broad, and that there was congealed Blood in the Throat; upon which Matter of Fact the College of Physicians have given an unanimous Testimony in Writing, That Sir *James Standsfield* was strangled, and not drowned: And the Deaconry of the Chirurgeons being conveened, have emitted a Declaration in Writing, concurring and agreeing with the Report of the Physicians: So that it is as clear as the Light of Day, that Sir *James Standsfield* was murdered.

3. For the Qualifications, that the Pannal was the Murderer, or accessory to the Murder of his Father, these clear Evidences are offered, which makes his Crime without possibility to be palliat or denied. 1. It is notorious, that the Pannal is a most debauched, vitious, pernicious Person, and has been Prisoner, or condemned to die in all the Places or Societies he ever haunted. He entered a Soldier in the *Scots* Regiment, where he was condemned to die at *Treves*, but made his Escape; and his being in Prison, in the *Marshalsea-Prisons*, *Orleance*, and *Brussels*, (which

makes the Circuit of his Travels) are not denyed: and his profligat Life and conſtant Drunkenneſs, ſince he came to the Priſon, is offered to be proven by the Keepers: And as it is unneceſſar to trace all his Debauches; ſo there is one material Point offered to be proven, That upon the leaſt Provocation, either by Man or Woman, the Pannal uſed to ſwear by horrid Oaths, that he would take their Lives, though he ſhould die in the *Graſs-mercat* for it.

3. Sir *James Standsfield* for theſe Debaucheries having diſheriſhed the Pannal, and diſponed his Eſtate to his ſecond Son: it is poſitively offered to be proven, That in the *Nungate* of *Haddingtoun*, in *James Smith*'s Houſe, the Pannal being told, that his Father would diſheriſh him, he with horrible Oaths vowed to cut his Father's Throat.

And whereas it is anſwered to this Qualification, That the ſaying that a Son would cut a Father's Throat, is but a remot Circumſtance: It is replied, that the Law, and all Lawers do agree, That *Minæ præcedentes & damnum ſequutum*, is a moſt pregnant Qualification of that Party's Crime, eſpecially where the Threats were to cut a Father's Throat, which of itſelf was ſo horrid and unnatural a Villany, that it cannot be doubted he who durſt vow it, wanted but an Occaſion to act it. And it is acknowledged, that though this be the cleareſt Preſumption, yet *per ſe*, it is not full Probation: For though the Son had both vowed, and reſolved, yet by an Accident he might have been prevented; but the Preſumption at leaſt lays the Burden, that except the Pannal could condeſcend, and document, that ſome other Perſon killed his Father, he muſt be reputed the Murderer.

3. It is offered to be proven, That Sir *James Standsfield*, who was a Perſon of eminent Sobriety and Veracity, did declare to ſeveral Perſons, that his unnatural Son had attempted his Life, and offered Violence to his Perſon, and particularly, that he had purſued him on Horſeback, and fired Piſtols on him; and that ſame *Friday* before Sir *James* was murdered, he did declare that it was not his Debts, or any thing under Heaven that troubled him, but that his Son and Family were plotting and contriving his Deſtruction; and the next Night he was murdered.

3. It is offered to be proven, That the Pannal's Mother declared, That her Son had vowed to be his Father's Death, and that he was a vindictive Perſon, and that ſhe did apprehend he had murdered him. So as to this Article, there is a Concourſe of the Pannal's own Oaths, to murder his Father, and of his Father and Mother's Declarations, that he had attempted, and was ſtill plotting the ſame.

The ſecond Qualification is, that, that *Saturday*'s-Night Sir *James Standsfield* came home, the Pannal would not come where his Father was, either to Supper, or Prayer; and being expreſly deſired by ſeveral Perſons to go to his Father, and ſpeak with him; he declared (that ſame Night he was murdered) he could not endure to ſee, or look upon his Father; and he had been all that Day cloſe with *Thomſon* and his Wife, and *Janet Johnſtoun*. So after ten Hours at even, after the Family was gone to Bed, he came out to *Thomſon*'s Houſe, which is hard by the Gate, and there in Preſence of *Thomſon*, his Wife, and *Janet Johnſtoun*, he declared that his Father would neither give him Money, nor Cloaths, and curſed his Father, and declared that he would ſhortly make ridd of him; which agrees with what he had ſeveral Times ſaid in other Companies, that he was to be Laird before *Chriſtmas*; and that he was ſhortly to be Maſter of all, and none can think how ſoon. As alſo, ſhortly before Sir *James*'s Death, the Pannal's Mother falling in a Swound, it was ſaid to him, *Philip*, ye will ſhortly want your Mother; to which he anſwered, *By God*, his Father ſhould be dead before her: And eight Days after, his Mother falling again ſick, he repeated the ſame Words; whereby it is evident the Murder was deliberate and determined.

3. On the *Sunday* Morning, before Sir *James*'s Body was found, *Philip* came to the Miniſter's Chamber, and told him that his Father was gone out in the Night, and that he had been ſearching for him about the Pools, and Water-ſide; and when the Miniſter reproved him for making ſuch Inſinuations againſt his Father, he laughed at him, and went away to the Pool, and ſtood looking upon his Father in the Water, but made no Diſcovery; and thereafter a Stranger coming by upon the Highway likewiſe, ſeeing Sir *James*'s Body in the Water, he came back and diſcovered the Matter; at which *Philip* ſeemed ſurpriſed, and told that he had ſeen his Father's Body in the Water before, but he did not think fit to be the firſt Diſcoverer, which ſhews, that he was conſcious of his own Guilt; otherways, upon the firſt Sight of his Father in the Water, he would have gone to him; but on the contrary, he never laid a Hand upon his Father's Body either to pull him out of the Water, or to carry him into the Houſe, for the Dread of ſome extraordinary Diſcovery, and did not allow the Corps to be brought within his Father's Gates, but cauſed carry the Corps to the Wake-Miln, where, to carry the Appearance of Strangling upon his Body, he entruſted *Janet Johnſtoun* with the Care of woonding him, who was known to be a Perſon ſo odious to Sir *James*, that he could not ſee her for her Baſeneſs with the Pannal, and ſhe did acknowledge, that ſhe had not been for three Quarters of a Year within the Houſe before; and yet this infamous Strumpet, who has been tortured by order of the Privy-Council, as acceſſory to the Murder, was chiefly intruſted to ſee the naked Body, and the Cloaths put on!

4. The Pannal did refuſe to ſend for a Chirurgion, and to let his Father's Body be ſighted, though the Miniſter and others did expreſly demand it; and the *Engliſhmen* in the Manufactory, who were acquainted with the Crowner-Laws, they made a Mutiny anent the Burial, till the Corps were ſighted; yet the Pannal cauſed bury the Corps that ſame Night without ſhewing them.

The Corps being raiſed by Order, and Inciſion being made, whereby the Strangling did clearly appear, and the Corps being dreſſed clean, and Linnen put on, there did appear no Bloud; but to take off ſuſpicion, the Corps were lifted up, and the Night-Cap being wrong put on, it was altered and changed, and thereafter the Corps were laid down without any Bloud upon the Linnen; and the Pannal (who to this time had never touched his Father's Corps) being required to aſſiſt to lift the Body into the Coffin, having taken his Father by the Right-ſide of the Head with his left Hand, *James Row* bearing the left, the Pannal's Hand was altogether blooding, as if his Hand had been put into a Veſſel of Bloud; which, notwithſtanding of all his impudent Reſolution to the contrary, had tha horrible Impreſſion, and Conviction upon him, that he let his Father's Head fall to the Ground, and cried out, *O God!* and run away and went to a Deſk in the Church, where he lay groaning and in Confuſion, but durſt never return to touch the Corps; and as there can no natural Reaſon be given, but an ordinar and wonderful Providence of God, in this kind of Diſcoveries of Murder; ſo the Fact was never more evident, and ſure: Though Half a Dozen of Perſons were bearing the Corps, no Man's Hands were bloody but the Pannal's, and the Corps being two intire Days in the Grave, in that Weather and Seaſon, the Blood by the Courſe of Nature was become ſtagnat and congealed; ſo that the former toſſing and lifting of the Corps, and even the Inciſion itſelf had occaſioned no ſuch Effuſion, but only ſome Water or Gore; but upon the firſt Touch of the Pannal, the Murderer, there appeared Abundance of liquid florid Bloud: And though this *per ſe* might not be ſufficient, and as *Mattheus* is cited, it ſhould not infer Torture; yet *Mattheus* acknowledges that moſt Part do ſuſtain this, as a violent Preſumption oft times experimented; yet in his Opinion it is not ſufficient for Torture, becauſe Torture being in itſelf a Puniſhment, it cannot be uſed, except where there is *ſemiplena probatio*, or where the Conſcience of the Judge is ſatisfied, as to the Truth of the Crime, and therefore uſes an extraordinar Courſe, to extort a Confeſſion, which proves that this Preſumption is *ſemiplena probatio per ſe*, according to their own Grounds.

And whereas it is alledged, that capital Puniſhment cannot be inferred from Conjectures, but from clear and poſitive Teſtimonies; it is anſwered, That the *Lex ult. Cod. de probationibus*, clearly ſtates that Probation is either, *Teſtibus tabulis inſtrumentis documentis & indiciis*. And *Mattheus* ſtates a particular Title upon this ſingle Queſtion, *Cap.* 6. *Titulo* 15. *de probationibus*, and does moſt poſitively determin that Crimes are to be proven *Documentis, Argumentis & Indiciis*. And it is moſt evident, that the Probation which ariſes from the Nature of the Thing, which is incapable to be ſoffiſticate, or impoſed upon, as Witneſſes may be, that kind of Probation is the ſureſt, becauſe it is always the ſame, and admits no Variation. It's true, and it is acknowledged that *Argumenta & Indicia* muſt be *clara & evidentia*, and Probation being *Quod facit fidem Judici*, every Man's Experience tells him, that the Complication and Conjunction of ſo many evident Qualifications, though none of them *per ſe* were ſufficient, yet being all of them joined, it induces a greater Certainty, than two Witneſſes poſitively deponing upon the Fact. And therefore the Evidence of the Probation belongs to the Inqueſt, and the Relevancy that theſe Articles conjoined, or any Part of them, are ſufficient to infer the Crime, belongs to the Judge.

As to the Preſumptions offered for the Exculpation of the Pannal, they are not at all relevant; for though ſo horrid a Murder is not to be preſumed againſt Nature, yet being proved, or ſo ſtrongly evinced, it does but conclude the Pannal's greater Guilt: And ſuppoſe that Sir *James Standsfield* was formerly Melancholy, and had been Frantick in the Year 1679, yet it is known he recovered his Health, and was of a compoſed, ſedat Temper of Mind for many Years thereafter, and was as capable and diligent about his Affairs, theſe many Years, as he had been formerly, and was ſo conſidered and employed by the wiſeſt Men in the Kingdom; and at the Time of his Death there was no Sickneſs, or returning of Frenzie upon him, but all that Week he had compoſedly done his Affairs; and did upon the *Saturday*, when he went Home, diſcourſe rationally upon all the Subjects that occurred: But it being ſo clearly documented and proven that he was ſtrangled, it is a ridiculous Conceit, and there remains no Poſſibility that after he was ſtrangled, he walked out and drowned himſelf. And as to that Preſumption, that the Pannal rendered himſelf Priſoner, it was indeed ſuitable to the reſt of his Impudence, and he did not render himſelf till after the Order to apprehend him was intimate to him, when he could not eſcape, and when he was under Obſervation; and there did not want Project in fixing upon this Impudence when he could not eſcape, as a Qualification of Innocence, that he would render.

Sir David Thoirs, *without Repetition of the Replyes made by his Majeſties Advocat, doth make his Duply to the foreſaids Replys, and every Member thereof, in order as follows*, viz.

TO the firſt, Anent the treaſonable Words, the Pannal's Procurators oppon their former Anſwers, and the Act of Parliament whereupon that Part of the Ditty is founded, being only in order to ſuch treaſonable Speeches adviſedly ſpoken. The conſtant Tract of the Pannal's Life, in drinking his Majeſties good Health at Occaſions, and offering to adventure his Life in his Service in the laſt Rebellion, ſufficiently demonſtrats, that if any ſuch Expreſſion did eſcape the Pannal, as it is denyed, the ſame was only raſh and unadviſed, and not deliberat and adviſed, as is required by the Act of Parliament, to infer the Pains lybelled; and the Qualifications added by my Lord Advocat, bearing, that the Pannal did conjure the Perſons then preſent to Secrecy, demonſtrats that the Pannal was *ex incontinenti* heartily ſorrowful and penitent for the ſame. And it's clear by that excellent Law of the *Code*, the Words whereof are, *Si quis Imperatori maledixerit, ſi ex inſania miſerando, ſi ex temeritate, & petulantia temnenda, ſi ex animo injuriandi ad principem remittendum*, which demonſtrats, that by the Common Law, ſuch an raſh and unadviſed Expreſſion was never to be laid hold on to infer a capital Puniſhment, where the Perſon alledged, Expreſſer thereof, was not otherways ſuſpect of Diſloyalty.

2. Repeats the Defence as to Crimes alledged committed abroad, and it were againſt Reaſon and Equity, that Perſons for one and the ſelf-ſame Crime, ſhould be ſubject to the Puniſhment of ſeveral Juriſdictions, where the Puniſhment of the ſaids Crimes are different: But ſeeing my Lord Advocat declares he hath no Probation for theſe alledged Crimes, but Certificats and Affidavits, they cannot be obtruded as a Part of the Libel, becauſe the ſaids pretended Certificats and Affidavits are neither inſert in the Libel, or given out to the Pannal, and all Crimes are to be proven *teſtibus, non teſtimoniis*; and if the Cuſtom of Affidavits ſhould be introduced in this Court, all Pannals (how innocent ſoever) might be murdered, by be-

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ing deprived of their unanſwerable Objections againſt the Granters of theſe Affidavits, *&c.* and therefore they cannot be ſuſtained as a Qualification to load the Pannal, or make the Inqueſt have a prejudicat Opinion of him.

3. As to my Lord Advocat's Reply anent the Act of Indemnity, the former Defence and Act of Indemnity is opponed, and bears expreſly Murders, Robberies, Slaughters, and all other Crimes committed againſt his Majeſty, and Laws of the Kingdom, either by Word, Writ, or Deed; which undoubtedly excludes all alledged Crimes, ſaid, done, or committed by the Pannal before that Time; and this Favour, *& gratia principis*, is to be ampliat and extended, and not reſtricted, and all his Majeſties Judges and Officers of State are commanded to ſuſtain the ſame, according to the moſt ample Interpretations for the Pannal, that the Words will allow.

4. The Pretence that the Pannal was of the Quality of a Burger, or a Baron, is moſt irrelevant, the Pannal having no viſible Fortune at the ſame time; and as my Lord Advocat himſelf acknowledgeth, no Expectation of any Fortune whatſoever: So that if Barons, Burgers, Life-renters, Wodſetters, and likewiſe theſe who have nothing in Poſſeſſion at the Time, ſhall be ſecluded from the Benefit of that Indemnity, it is ſcarce intelligible to whom, and from what Cauſe the ſame was granted. 5. And as to that Part of the Reply, bearing, that this was a privat Injury, and ſo not comprehended within the Act of Indemnity, the former Defence is opponed, and all Pretence of privat Injury was taken away by Diſſimulation or Death.

As to the Pretence that the Reconciliation can be no Defence againſt the Lybel, as to *vindicta publica*, and that the Letter whereupon the Defence is founded doth not import a Diſſimulation; it is duplyed, That the Act of Parliament being an Comminatory Law, and principally intended in Favours of Parents, the ſame was never yet made uſe of, and it were very hard to make uſe of the ſame to deprive a Parent of his Child, for any raſh or paſſionate Expreſſion; eſpecially, where upon Repentance the Father had remitted the Injury; but the Father being in effect Judge of the Injury, his remitting the ſame ought at leaſt to aſſoilzie the Child from any capital Concluſion. And as to the alledged habitual Curſing, the ſame is denyed, and the former Defence founded upon the Act of Indemnity, is repeated and opponed, and the Lybel is opponed, which doth not bear habitual Curſing, but particular Acts at particular Times.

And as to the Qualifications alledged by my Lord Advocat, for clearing that the Deſunct Sir *James Standsfield* was murdered, the Pannal is truly ſorry, that for his own Defence, and for clearing of his own Innocence, his Lawers ſhould be neceſſitated to plead any thing relating to his Father's Infirmities, or Way and Manner of his Death. But it is duplyed, That the whole Preſumptions adduced by my Lord Advocat are allanerly fallacious Conjectures, and can neither be *ſeparatim*, or complexly relevant to infer any ſuch thing, becauſe, 1. That the Miniſter did hear a whiſpering Noiſe, and was thereby terrified, his Terror and Conſternation having (as he himſelf pretends) put him in a Diſorder and Confuſion, he was thereby rendered incapable to obſerve or judge of any thing that happened. 2. That the Body was ſwimming above Water, imports nothing, the Defunct having a great Coat of thick Cloth about him, which was ſufficient to keep him floating above. 3. The Pretence that there was no Water in the Defunct's Body when the Chirurgions viſited the ſame, imports nothing, becauſe the Defunct's Body having been ſeveral times ſtirred before that time, by which the Water might have run out, as it actually did (in caſe there was any Water within it).

4. Albeit where a Man is drowned unwillingly, and endeavours to breathe, ſo long as he can, his Breathing may ſuck in the Water: Yet if a Man intend to drown himſelf, he will certainly endeavour all Means for quick Diſpatch of himſelf, and thereby keep in his Breath; and the keeping in of the Breath after that Manner was ſufficient, both to keep the Body floating, and the Water from coming in.

5. To put the Matter beyond all Queſtion, the Defunct was laying in the Water a conſiderable Space from the Bank; and albeit the Ice was not ſo ſtrong as to have carried a Child, yet the Ice was whole and entire betwixt the Defunct and the Bank, which demonſtrats, that the Defunct had jumped in from the Bank, to that Place where he was lying. 6. As to that Pretence, that there was Blood about the Defunct's Neck, all lapper'd and bruiſed before Inciſion was made, the Defunct being pulled out of the Water, by an great Cleik, the touching of the Neck with the Cleik, when his Breath was juſt gone out, was ſufficient to have made the Blood where that Part was, to lapper and congeal. 7. As to the Declarations of the Phyſicians and Chirurgions, they are only Declarations *ex auditu*, and upon Report of one or two Chirurgions, and hath no Foundation, but the Ignorance or Knowledge of the ſaids two Reporters; neither can any ſuch Declarations be obtruded againſt the Pannal, becauſe not given out with the Lybel: But whatever may be inferred from theſe Preſumptions, whether the Defunct was murdered or not, the ſame does not concern the Pannal, unleſs his Acceſſion to the Murder were inſtructed, as it is impoſſible it can be.

As to the Qualifications alledged by my Lord Advocat, for fixing the Murder, or Acceſſion thereto upon the Pannal; it is duplyed to the firſt, That the Pannal's alledged vitious Life, and the Story at *Treves*, his being drunk in Priſon, and threatning to cut Throats upon ſmall Provocations, the ſame are extrinſick to the Libel, and cannot be reſpected. 2. As to the alledged Threatning uſed in *James Smith's* Houſe, the Lybel is opponed, bearing theſe Expreſſions, to have been uſed in the Year 1684, or ſome Year preceeding; and therefore the former Defence founded upon the Indemnity, is repeated and opponed. And whereas my Lord Advocat pretends, that *minæ præcedentes cum damno ſequuto*, is ſufficient either to fix the Guilt upon the Perſon who uſed the Threats, or at leaſt to burden him with the Probation, that another committed the Crime: It is duplyed, 1. That my Lord Advocat's Poſition is abſolutely denyed, unleſs he can inſtruct ſome other poſitive Acceſſion againſt the Pannal; and theſe pretended Threats being taken away, not only by the Act of Indemnity, but likeways by Diſſimulation, which is not only offered to be inferred from the Letter made mention of in the Defence, but likeways by the Defunct's owning, receiving, intertaining, furniſhing, and providing for the Pannal, in every thing ſuitable as his eldeſt Son, the ſame doth undoubtedly take away all Pretence that can be founded upon threatning, ſo many Years preceeding; and by no Law can the Pannal be burdened to prove who were either Actors, or in Acceſſion to his Father's Murder.

As to the ſecond Qualification, bearing, that the Defunct ſaid to ſeveral Perſons, that the Pannal offered to invade him (denying the ſame) the Father's Aſſertion could not infer a Crime againſt the Pannal, unleſs the Crime itſelf were otherways proven by Witneſſes, and the ſame is libel'd to have been ſaid by Sir *James* before the Act of Indemnity. And Sir *James*'s other Aſſertion, that he was in Trouble, for fear of Prejudice from his Family, cannot infer a Crime, eſpecially againſt the Pannal; and far leſs can it be proven by the Relict and the other Son, who in Sir *James*'s Apprehenſion were deſigning Miſchief againſt him, and for their own Vindication, they would certainly depone partially againſt the Pannal. And the ſame is repeated againſt the other Expreſſions alledged ſpoken by the Mother; and Witneſſes cannot be received to prove what another Witneſs ſaid.

As to the Pretence, that the Pannal refuſed to ſup with his Father the Night before his Death: It is duplyed, the Pannal was not at all in uſe to ſup, except on *Sundays*-Night. And the Pannal had no Kindneſs for the Miniſter, becauſe he and others of his Gang had endeavoured to keep up Diſcord betwixt him and his Father.

As to the alledged Bleeding of the Corps, the former Defences are opponed; and albeit the Pannal did help to lift his Father's Corps before the Inciſion, yet no Blood did appear till long thereafter that the Inciſion was made, and the Pannal did fall to grip that Part of his Father's Head where the Inciſion was. So that the Blood falling from the Wound, can neither be a Ground nor Preſumption for Guilt; and though the Pannal was ſurpriſed to ſee his Father's Blood, yet the ſame did only proceed from natural Duty and Affection, and not from any Apprehenſion of Guilt. And theſe Qualifications being all libel'd and debated upon, it is humbly deſired for the Pannal, that the Lords of Juſticiary would give a ſeparat Interloquitor upon every particular Qualification.

Sir *Patrick Hume* for the Pannal adds, That as to the Point of Treaſon, It is offered to be proven, that it was when he was drunk, and after Cups, and is ſo preſumed, eſpecially it being, as it is acknowledged by the Libel, in a drunken Company.

2. As to the Act of Indemnity, it is extended to all Crimes except the Archbiſhop's Murder, and *exceptio firmat, regulat, &c.* And the Act bears not that Clauſe excepting other Crimes, which uſes to be excepted.

3. As to the Qualifications condeſcended on in my Lord Advocat's Anſwer, either they are libel'd, and ſo oppones the former Anſwer; and if they be not libel'd, they cannot be conſidered as Qualifications.

4. Whereas it is alledged, that the Pannal was in uſe to threaten to cut Throats, when in Paſſion, the Argument is retorted, for tho' he threatned, nothing followed; and ſo his Threatnings were but *verba jactantia*.

5. As to the Citation out of *Mattheus*, that Parties may be puniſhed upon Preſumptions, it is anſwered, that the Caſe there ſtated is, where the Perſon who committed the Slaughter was apprehended in the Place where it was committed; that he was all bloody, and with a bloody Sword, anſwerable to the Wound; and that he became pale when he was apprehended, and that he had made no Anſwer, but in Terrour fled away; which are ſuch Acts as do evidently make appear the Slaughter, and could admit of no other Conſtruction; but that cannot be pretended in this Caſe, where all the Preſumptions are remote and extrinſick. And even in the Caſe inſtanced by *Mattheus*, and others of that Nature, they are only to take Effect in order to an Arbitrary, but not a Capital Puniſhment, which is the Opinion of all Lawers who ever wrote upon the Subject, and particularly *Muſcard, de prob. concluſ.* 123. *Numb.* 20, and 31. where the Queſtion is ſtated, *An plures præſumptiones conjunguntur?* in order to inferr a capital Puniſhment: And he concludes in the Negative, as a general Concluſion by all Lawers, but only to inferr an arbitrary Puniſhment.

As to the bleeding of the Body, it is offered to be proven, that the Pannal touched his Father's Body before the Inciſion, and it did not bleed.

The Lords, Juſtice-General, and Commiſſioners of Juſticiary, having conſidered the Libel, purſued by his Majeſties Advocat againſt *Philip Standsfield*, the Pannal: And the firſt Part thereof, anent the Treaſon libel'd, they find the ſamen as it is libel'd, relevant to inferr the Pain of Treaſon.

And as to the Pannal's curſing of his Father, mentioned in the Indytement: They find theſe Expreſſions, or either of them, *viz.* The Devil take him, the Devil rive him, God damn him, relevant to inferr the Pain of Death: And repells the Defence founded upon the Act of Indemnity, and finds the Pannal is not under, or below the Quality therein ſpecified.

As to the Pannal's murthering of his Father mentioned in the Indytement, they found the Libel as it is libel'd and qualified relevant to inferr the Pain of Death, and remits the ſame with the Qualifications libel'd to the Knowledge of the Aſſiſe, and allowes Witneſſes to be led for the Pannal's proving his Father to have been melancholy the Day before the committing of the Murder, and remits to the Aſſiſe to conſider the Import thereof, if it be proven, and repells the whole other Defences proponed for the Pannal.

The Lords continues the Dyet againſt the ſaid *Philip Standsfield*, till Tomorrow at Two of the Clock in the Afternoon; and ordains him to be carried back to Priſon, and the Witneſſes and Aſſiſers to attend, ilk Perſon under the Pain of 200 Merks.

Edinburgh, the Seventh of *February*, 1687.

PHILIP Standsfield, Priſoner, being this Day entered on Pannal, dilated, indyted and accuſed for the treaſonable drinking of the King's Confuſion, curſing his Father, and for the cruel and unnatural murdering of him in Manner mentioned in this Ditty:

The Interloquitor above-written was this Day read again in Preſence of the Pannal, and the Aſſiſers after-named, *viz.*

William Bailly of *Lamingtoun*.
James Glen, Stationer.
Alexander Reid, Elder, Goldſmith.
Charles Charters, Merchand.
David Hepburn of *Humby*.

Edward

Edward Gilleſpy, Merchand.
Robert Sandilands, Merchand.
Samuel Moncrief, Merchand.
Thomas Lendall, Merchand.
James Cleiland, Merchand.
Hepburn of *Beinſtoun*.
William Paton, Merchand.
George Braithwood, Stabler.
John Marſhal, Merchand.
Alexander Edgar, Chirurgion in *Haddingtoun*.

The Aſſize lawfully ſworn, no Objection of the Law in the contrary.

His Majeſty's Advocat for Probation adduced the Witneſſes deponing, *viz.*

John Robertſon, late Servitor to Sir *James Standsfield* of *New-Milns*, aged twenty-four Years, unmarried, purged of Malice, Prejudice, Hatred, Ill-will, and partial Counſel, and ſolemnly ſworn, Depones, A little time before Harveſt laſt, the Pannal being in the Kitchin of *New-Milns*, in the deceaſt Sir *James Standsfield*'s Houſe, where the Deponent was likewiſe preſent, he ſaw the Pannal, *Philip Standsfield*, take a Cup of Ale, and heard him ſay, There is the Pope's Confuſion, the Antichriſt's, the Chancelour's, and the King's Confuſion, and put the Cup to his Head, and drank a little, and then gave it to *Samuel Spofforth*, and commanded him to drink it on his Knees; depones, that there were likewiſe beſides *Samuel Spofforth*, *Jeremy Smith*, *Agnes Bruce*, and *Elſpeth Jameſon*; and depones, that *Philip Standsfield*, the Pannal, was not drunk at the time; depones, that at the naming of the ſeveral Confuſions abovementioned, he ſtill drank a little of the Cup; and this is the Truth as he ſhall anſwer to God: The Deponent further depones, that he ſaid to the Pannal, after the drinking of the ſaid Confuſions, that it was Treaſon, and he anſwered, Ye Dog, what are you concerned? Ye do not underſtand to whom ye ſpeak.

Sic ſubſcribitur, JOHN ROBERTSON.

Agnes Bruce, Servant to the deceaſed Sir *James Standsfield*, aged twenty-four Years, unmarried, purged and ſworn, depones, That a little before Harveſt laſt, ſhe being in the Kitchin of *New-Milns* with *Philip Standsfield*, the Pannal, ſhe ſaw him take a Cup of Ale, and drank the Confuſion of the Pope and the King, and heard him bid *Samuel Spofforth* ſit down on his Knees and drink the ſame, which accordingly he did; after this the Deponent went up Stairs, and knows no more what paſt at that Time, but heard they drank more Confuſions. Depones, that about a Week after it being talked in the Houſe, that he had drank the Confuſions aforeſaid, he ſaid to the Deponent, God damn him, if he knew who divulged it, he would be their Death: And this is the Truth, as ſhe ſhall anſwer to God. Depones ſhe cannot write.

Sic ſubſcribitur, LINLITHGOW.

Samuel Spofforth, late Servitor to Sir *James Standsfield* of *New-Milns*, aged 19 Years, unmarried, purged and ſworn, depones, That a little before Harveſt laſt, the Deponent was in the Kitchin of *New-Milns* with *Philip Standsfield*, the Pannal, where he heard him drink a Confuſion to the Pope, Antichriſt, and the King, and to the Devil; and the Pannal preſt the Deponent to drink the ſame Confuſions upon his Knees. Depones, *John Robertſon*, *Agnes Bruce*, *Jeremy Smith*, and *Elſpeth Jameſon* were all likewiſe preſent at that time, and that theſe Confuſions were drank ſeverally: And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, SAMUEL SPOFFORTH.

John Robertſon, above-deſign'd, being re-examined, purged and ſworn, depones, That the Deponent being at *Morum*-Caſtle after Harveſt laſt, in order to give a Call to a Miniſter, the Deponent having met with *Philip Standsfield*, the Pannal, he ſaid to him, Ye are a wiſe Lad; if ye have ſubſcribed that Bond, the Devil take him, and particularly the Devil take his Father, and named his Father. Deponed, that at another time, in the midſt of Harveſt laſt, the Deponent and Sir *James Standsfield*, the Pannal's Father, being going to *Smeitoun* with a Miniſter, the Pannal aſked him, Where he and his Father was going? and the Deponent anſwered, that he was going to *Smeitoun* with his Father; and the Pannal, *Philip Standsfield*, ſaid, Devil, let never one of them come back again, Horſe nor Man. Depones further, That ſeveral times, and frequently, when the Deponent had been ſeeking the Pannal to come to Dinner with his Father, the Pannal's ordinar Anſwer was, the Devil damn him, and you both, and Devil rive him, for I will not go to him, and if he had a Sixpence a Day, he would not go near him, for his Father girned upon him like a Sheeps-head in a Tongs, and that he has heard him ſay ſometimes, God damn his Father: And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, JOHN ROBERTSON.

William Scott, Clothier in *New-Milns*, aged thirty Years, married, purged and ſworn, depones, That between *Michaelmaſs* and *Martinmaſs* laſt, the Pannal, *Philip Standsfield*, having come to the Deponent's Shop, and aſked for ſome Tobacco, the Deponent ſaid to *Philip*, his Father would not let him want for Money to buy Tobacco; and the Pannal, *Philip*, ſaid, the Devil take him and his Father both, for there never came an honeſt Man out of *Yorkſhire*. Depones, his Wife was preſent with him, when that Diſcourſe paſt. Depones he cannot write. And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, LINLITHGOW.

Agnes Bruce, above-deſigned, being re-examined, purged and ſworn, depones, That ſhe did hear the Pannal uſually vow and ſwear he would kill any Perſon that offended him, and that the Pannal did haunt much with *Janet Johnſtoun*, *George Thomſon* and his Wife, and that he went frequently out of his Father's Houſe after Supper to theſe Perſons; and further depones, that ſhe has heard the Pannal frequently curſe his Father, and bid the Devil damn him, and rive him, and ſwell him; and that ſhe has frequently heard him expreſs his Hatred and Abhorrence of his Father, and that he could not abide to ſee his Father. Further depones, that the *Monday* at Night before Sir *James* came to *Edinburgh*, the laſt time he was in it, being about a Fourthnight before his Death, the Deponent was ordered to call the Pannal to his Mother, after he was gone to his Chamber, and that accordingly ſhe did it; and when the Pannal came down, the Deponent left him with his Mother alone; and when ſhe was without the Door, ſhe heard him ſay to his Mother ſeveral times; *God damn him, if he did it not*; and deſired his Mother to take a good Heart, for as long as he had, ſhe ſhould not want. Depones, ſhe knows not what he meaned by theſe Words, but knows there had been a little Quarrel betwixt Sir *James* and his Lady that ſame Night. Further depones, that on *Tueſday* thereafter, when Sir *James Standsfield* was going into *Edinburgh*, ſhe did hear *Philip Standsfield*, the Pannal, ſay in his Mother's Chamber (his Father not being preſent), God let him never return, God let him never ſee his Father's Face again, the Devil go with him, the Devil rive him, and take him away; and that there was no body in the Roum at the Time, but the Pannal and his Mother, and the Deponent was at the Door. Further depones, that about a Month before, Sir *James* having reproved the Pannal, upon the Occaſion of an Accompt given in by *William Anderſon*, Brewer, ſhe did hear the Pannal ſay, in his Mother's Chamber, (Sir *James* not being preſent) God damn him, if he ſhould not do ten times worſe, and that he could not endure to ſee his Father's Face, and that he had hated his Father theſe ſix or ſeven Years. Further depones, that about a Fourthnight or twenty Days before Sir *James* his Death, it being ſaid that *Philip* was to go to Town with his Father, ſhe heard him ſay, he would be hang'd e'er he went with him; let him go, the Devil go with him, and let him never return; and this likewiſe in his Mother's Chamber, and in her Preſence. Depones, the Pannal did ordinarly ſhift Occaſions of being in his Father's Company. Depones, that the *Friday* before Sir *James* his Death, ſhe knows the Pannal and *Janet Johnſtoun* were a conſiderable Time together in the Pannal's Chamber, where the Deponent heard *Janet Johnſtoun*'s Tongue, but doth not know if *George Thomſon* and his Wife were with them. Depones, that on the *Wedneſday* before Sir *James* his Death, *Philip* having curſed ſome of the Servants, the Deponent ſaid to him, God be thanked, he was not their Maſter; and that he anſwered her with an Oath, ſhe knew not how ſoon he might be their Maſter: And further depones, that ſhe thought Sir *James* not ſo merry as his ordinar the Night before his death, but that he conveyed Mr. *Bell* to his Chamber, and thereafter came down to his own; and the Deponent having deſired to ſpeak with Sir *James* his Servant, *John Robertſon*, told her ſhe could not, becauſe his Chamber-Door was ſhut, and he was gone to Bed; and that ſhe did then ſee Light in his Roum, and when ſhe was going away, found the Hall-Door, which was without his Chamber-Door, ſhut, and that the Hall-Door was not uſually cloſed in the Night time, except Sir *James* had done it himſelf, and which he did but once in two or three Nights. Depones, that on the *Saturday*'s Night when Sir *James* came home, he did go to his Ladies Chamber, where he ſtayed not a Quarter of an Hour, and that his Lady fell a quarrelling of him for going to another Houſe before he came there, and that the Deponent came out of the Chamber, and knows not what more paſt there. Depones, the next Morning, when Sir *James* was miſt, the Deponent went into his Roum to put on a Fire, and found the Bed better ſpread up than it uſed to be, and the Curtains more drawn about it, and the Candle, which uſually was at the Bed-head, ſhe found it ſtanding on a Chair at the Bed-foot. And further depones, that when the Defunct's Body was bringing up to the Houſe, the Deponent would have had him brought to his own Chamber; but *Philip* ſwore that the Body ſhould not enter there, for he had not died like a Man, but like a Beaſt. Depones, that the Body was then put in the *Walk-Miln* (but knows not if *Philip* cauſed do it), and that the Body from that was brought to a Cellar within the Cloſs, where there was very little Light. Depones, that ſhe did not ſee any Water come out of his Mouth, and that when the Deponent lifted up the Linnen-ſheet, which was over him in the Cellar, ſome of them cauſed let it down again, for it was not fit to let the Body be ſeen. Depones, that *Janet Johnſtoun* was preſent with the Body in the Cellar with the reſt, and though it was known that neither Sir *James* nor his Lady would look upon her for a good Time before, nor was ſhe openly ſeen about the Houſe, yet that Morning ſhe went to the Ladies Chamber, as ſoon as the Body was taken out, and the Deponent was preſent and ſaw her come in, and well enough taken with. Depones, ſhe heard *Philip*, after his Father's Death, Greet and Cry, but ſaw no Tears. Depones, immediately after his Father's Body was found, he would have forced his Father's Chamber-Door, it being ſhut; but the Key being gotten, it was opened, and he entered in, and firſt took his Father's Gold and Money out of his Pocket, and then got the Keys, and ſearched the Cabinet; and that within an Hour after his Father was brought from the Water, he got the Buckles of his Father's Shoes, and put them in his. Depones, that on the *Monday* after Sir *James*'s Death, the Lady and *Janet Johnſtoun* having quarrelled together about ſome Remains of the Holland of the Woonding-ſheet, *Philip* came down out of his own Chamber, and the Deponent heard him ſay to *Janet Johnſtoun*, Hold your Peace, when I command you, for he would reward her well for the Kindneſs ſhe had done to him at that time. Depones, that when the Order came from *Edinburgh* to raiſe the Corps again, the Deponent did meet *George Thomſon* the Taylor, and perceived him ſhaking and trembling, and aſked him what troubled him? And that his Anſwer was, he heard the blackeſt News that ever he heard in his Life, for Sir *James*'s Body was to be raiſed again, and ſaid he would ſew no more in the Houſe of *New-Milns* for the World, and carried the Mournings to his own Houſe. Depones, ſhe knows nothing of falſe Keys made uſe of about the Houſe, only ſhe heard the Lady ſay, that there were. Depones, *Philip* had no lockfaſt Place in the Houſe, except a little Coffer, and that it once being opened, the Deponent did ſee ſeveral Keys within it, and that he offered once the Key of one of the Roums to the Deponent, but the Deponent took it not, becauſe ſhe had the ordinar Key of the Roum. Depones, that *Philip* was in uſe to ly alone, but that after his Father's Death, he would not ly in a Roum alone at *New-Milns*, and that he declared to the Deponent, that he was afraid to be alone in a Roum, either Night or Day, and that he ſlept not the Night after his Father died, and that he ſhould not go into the Roum where his Father lay, if once he had the Cabinet out of it. Depones, that a ſhort time before Sir *James* died, the Lady having fallen in a Swond, and the Deponent having told *Philip* of it, *Philip* came to his Mother's Chamber, and that his Mother told him then, that he was like in a ſhort Time to loſe his Mother; and that he anſwered, in the Deponent's hearing, that his Father ſhould be dead firſt: And depones, that ſome few Days thereafter, in his Mother's Chamber again, and in the Deponent's hear-

hearing, he renewed the ſame Words with an Oath: Further depones, that two Nights after Sir *James*'s Death, the Lady told to the Deponent, That ſomething then came in her Mind which ſhe had heard, to wit, that *Philip*, before he went to *London*, when he was in his Pomp, having heard that Sir *James* was to give his Eſtate to his ſecond Son, in the Houſe of *James Smith* in the *Nungate*, had vowed to kill his Brother, and the like or little leſs to his Father; and that thereafter when they were coming into *Edinburgh*, the Lady renewed again to the Deponent the ſame Words, and added; what if they ſhould put her Bairn in Priſon? And this is the Truth, as ſhe ſhall anſwer to God. Depones ſhe cannot write.

Sic ſubſcribitur, LINLITHGOW.

John Shand, ſome time Servitor to Sir *James Standsfield*, aged 43 Years, unmarried, purged, and ſworn, depones, That a little after *Philip Standsfield*, the Pannal's Marriage, the Pannal and Deponent being in *James Smith*'s Houſe, in *Nungate* of *Haddingtoun*, the Pannal did expoſtulat with the Deponent, that his Father dealt too narrowly with him, he being then married; and the Deponent told the Pannal that his Father was in Straits, and exhorted him to be dutiful to his Father; thereafter the Pannal ſaid, If I knew my Father would give his Eſtate to my Brother *John*, I would cut his Throat; and the Landlord of the Houſe being by, and preſent, and ſurprized, cryed out, *God preſerve me, what means the Man!* the Landlord underſtanding by the Word *His*, his Father: And though the Deponent took the Expreſſion in the ſame Senſe as *James Smith* did, yet the Deponent endeavoured to excuſe it, by ſaying it was not his Father that he meaned, but his Brother, or his Man *Donald*; and the Pannal being preſent, ſaid nothing for clearing of the Expreſſion; whereupon the Deponent went away, and left the Pannal, and could not endure to ſtay longer in his Company: Depones, the Night before Sir *James*'s Death, being the *Friday*, the Deponent was with Sir *James* in his Chamber, in *Edinburgh*, where the Defunct was reading a Sermon-Book, and appeared to be ſad, and ſaid to the Deponent, I have no Comfort in my Wife and Family. And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, JOHN SHAND.

Mr. *Roderick Mckenzie*, Advocate, being ſolemnly ſworn and purged, depones, That about eight Dayes before Sir *James Standsfield*'s Death, the Deponent and he having met in the Parliament-Cloſs, the Defunct invited him to take his Morning-Draught. And when they were gone to Mr. *Sheil*'s Houſe, the Deponent perceiving him to be in ſome Concern, the Deponent aſked him, what troubled him? The Defunct anſwered, that he had no Satisfaction at Home: Whereupon the Deponent ſaid, that People reported that he was partly the Occaſion of it, having diſheriſhed his Son the Pannal, and acquainted him therewith: And the Defunct anſwered, Ye do not know my Son, for he is the greateſt Debauch in the Earth. And that which troubles me moſt is, that he twice attempted my own Perſon: And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, ROD. MCKENZIE.

Archibald Dunbar, Merchand in *Edinburgh*, aged 26 Years, married, purged, and ſworn, depones, That the Deponent having met with the deceaſt Sir *James Standsfield* at *Culter*; but he does not remember poſitively the Time, but it was either in the Year of this King's Parliament, or the Harveſt before; and Sir *James* and the Deponent, and ſome other Company being in an Roum, Sir *James* was diſcourſing of his Son's Undutyfulneſs, and within a little while having heard a Shot at the Utter-door of the Houſe, and the Deponent and others offering to go out to ſee what the Matter was, Sir *James* was unwilling to let them, leſt they ſhould come to hazard. And thereafter having heard another Shot, they did offer to go down again, and Sir *James* ſtill diſſwaded them, and ſaid, that it might be his diſtracted Son *Philip*. And they having enquired if he was in the Country, and how he came to fear any harm from him, Sir *James* ſaid, he believed he was in the Country, and that in his going South, he had followed him to *Lothian-burn*, and ſhot two Piſtols, firſt one, and then another at him; and if it had not been that Sir *James* was well horſed, and his Son *Philip* upon a Work-Horſe, he had killed him. And *Samuel Menzies* having ſaid, he was ſure there could not be Ball in them; Sir *James* ſaid, he had gotten too many Proofs of his Son's Unnaturality to him, that he had no will to be in his Reverence. Depones, that Sir *James* all that Night went not to Bed, and the Deponent ſat up with him, and conveyed him into *Edinburgh*. And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, ARCHIBALD DUNBAR.

Mr. *William Clerk*, Advocat, purged, and ſworn, depones, That having frequent Occaſions to be with Sir *James Standsfield*, and he having deſired him to draw a Diſpoſition of his Eſtate to his Son *John*, Sir *James* did complain of his Son *Philip*'s Undutyfulneſs to him: And the Deponent having diſſwaded him to do it, ſince his ſon *Philip* might be reclaimed; Sir *James* ſaid, no, for he had no Expectation of it; for when he was at the *Lead-hills*, there was ſome Piſtol ſhot at him, which he was ſure came from his Son *Philip*. And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, WILLIAM CLERK.

Mr. *John Bell*, Miniſter of the Goſpel, aged forty Years, *Solutus*, purged and ſworn, produces a written Declaration ſigned under his Hand, upon what he knows relating to the Murder; and depones the ſame is Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, JOHN BELL.

Follows the Tenor of the ſaid Declaration.

The Declaration of Mr. *John Bell*, in anſwer to ſeveral Interrogatories propoſed by his Majeſties Advocat before the Lords of the Committee of the Council.

Imprimis, I declare, that at Sir *James Standsfield*'s earneſt Deſire, I went from this Town with him to *New-Milns*; and that by the Way I diſcerned nothing but ſound Judgment and Reaſon in Sir *James*, for his Diſcourſe was both rational and pertinent, and that both at Supper that Night, and after Supper, his Diſcourſe was rational, and his Carriage moſt civil, and was pleaſed to accompany me to my Chamber, and ſat with me there (as I ſuppoſed) until it was about ten o'Clock at Night, diſcourſing pertinently, and to good Purpoſe.

2. I declare, that having ſlept but little, I was awakened in Fear by a Cry (as I ſuppoſed), and being waking, I heard for a Time a great Dinn, and confuſed Noiſe of ſeveral Voices, and Perſons ſometimes walking, which affrighted me (ſuppoſing them to be evil wicked Spirits); and I apprehended the Voices to be near the Chamber-door ſometimes, or in the Tranſe, or Stairs, and ſometimes below, which put me to ariſe in the Night, and bolt the Chamber-door further, and to recommend myſelf by Prayer, for Protection and Preſervation to the Majeſtie of God: And having gone again to Bed, I heard theſe Voices continue, but more laigh, till within a little Time they came about to the Chamber-Window; and then I heard the Voice as high as before, which increaſed my Fear, and made me riſe again to look over the Window, to ſee whether they were Men or Women; but the Window would not come up for me, which Window looked to the Garden, and Water, whither the Voices went on till I heard them no more, only towards the Morning I heard walking on the Stairs, and in the Tranſe above that Chamber where I was lying.

3. I declare, that I told the Women who put on my Fire in my Chamber that *Sabbath*-Morning, that I had reſted little that Night, through Dinn I heard; and that I was ſure there were evil Spirits about that Houſe that Night.

4. I declare, that about an Hour after Day, *Philip* came to my Chamber, and aſked if Sir *James* came to that Chamber this Morning, and told me that he had been ſeeking him upon the Banks of the Water: Unto which I replyed, I have not ſeen your Father; but what mean ye by the Banks of the Water? Whereupon *Philip*, without anſwering, went down Stairs immediately, and within a little Time I followed to ſee what he meaned; and having gone without the Gate, and up the Cawſey that leads to the Manufactory, one came running, and ſaid, they had found Sir *James* lying in the Water: Whereupon I was ſtricken with ſuch Aſtoniſhment, Fear and Trembling, that I could go no further, but returned trembling to the Chamber; and having ſitten down on the Bed-ſide, I ſaid to an honeſt Man, who accompanied me, This is the ſaddeſt Day that ever I ſaw: My Affrightment in the Night was terrifying to me, but this is more grievous. And having gone to an honeſt Man's Houſe, where I took Horſe that Morning, I ſaid, if the Majeſtie of God did ever permit the Devil and his Inſtruments to do a honeſt Man wrong, then Sir *James Standsfield* has received Wrong this laſt Night, which the Lord will diſcover in his good Time.

5. I declare, that after my return from *Morum*, that *Sabbath*-Evening, *Philip* told me that he had advertiſed ſeveral Friends at *Edinburgh*, and that he was expecting the Commiſſary amongſt others that Night: Whereupon I commended what he had done, in ſending for ſuch intelligent Perſons, and that for two Reaſons, (1.) becauſe it was neceſſary his Father's Body ſhould be ſighted; (2.) becauſe they could adviſe him about his Burial. *Philip* anſwered, that he was ſeen by theſe that took him out of the Water. But I replyed, that was not enough, for the Murder committed was either a violent Murder, or a diſtracted Murder; and having deſcribed what a diſtracted Murder was (upon *Philip*'s relating ſome Diſtemper his Father had been in ſome Years formerly), I ſaid, that I conceived no Perſon could come to ſuch a high Act of Frenzie, to do ſuch a Thing, but it would be known on him many Hours, yea ſome Days before; but I could teſtifie, that Sir *James* was in his right Reaſon at ten o'Clock; wherefore I inclin'd to think it was a violent Murder committed by wicked Spirits; and ſo adviſed that the Corps might be ſighted by the neareſt Phyſicians and Friends, and the honeſt Men living in that Town: Nevertheleſs, they went and buried Sir *James* that Night, without either acquainting me, or ſeveral honeſt Perſons who lived in the Place. Mr. *John Bell* depones his above written Declaration in Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, { LINLITHGOW, JOHN BELL.

Sir *Robert Sinclair* of *Steinſloun*, purged and ſworn, depones, Sir *James Standsfield* being at the Deponent's Houſe, told the Deponent, that he regrated that his Son *Philip* had miſpent his Time and Money; and when he came home from *London*, he was aſhamed to tell how he came on him in his Chamber at *London*; and this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, RO. SINCLAIR.

James Murehead, Chirurgion, aged 32 Years, married, purged and ſworn, depones, That after the Deponent and *James Craufurd*, Chirurgion, had opened the Corps about the Neck, and ſewed it up again, and removed the foul Linnen, and put on again the clean Linnens, in doing whereof they were obliged to ſhake the Body to and fro, and move the Head back and forward, the Deponent deſired that the Friends might lift the Body, and put it in the Coffin, and that the Pannal, having come and lift up the Head, he did let it fall upon the Table ſuddenly, and that it made a conſiderable Noiſe at falling, and that the Pannal retired back quickly, rubbing his Hands on his Breaſt, and crying, *O God! O God!* and ſome ſuch other Words; and that the Deponent being aſtoniſhed thereat, looked to the Corps, and as the Pannal did take away his Hand from it, did ſee it darting out Blood through the Linnen, from the left Side of the Neck which the Pannal touched, and that the Deponent was amazed at the Sight, partly through the darting out of the Blood, and partly through the Apprehenſion he had of the Murder. Depones, he ſaw no body touch the left Side of the Defunct's Head the Time it bled, but the Pannal. Depones, that as ſoon as the Deponent recovered out of his Amazement, he cryed to the Boy, to give the Pannal ſome Triacle-Water, which he did; but depones, he did not ſee *Philip* the Pannal return again to the Body of his Father. Depones, when the Deponent and the other Chirurgion were putting on the clean Linnens, and ſtirring and moving the Head and Craig, he ſaw no Blood at all. And this is the Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, JAMES MUREHEAD.

James Murehead, and *James Craufurd*, Chirurgions, give in their Report and Declaration in Write, anent the Murder of Umquhile Sir *James Standsfield*, which they renewed upon Oath, in Preſence of the Juſtices and Aſſiſers, and whereof the Tenor follows:

Edinburgh, December 1, 1687. { *November* 30, 1687. We viewed the Corps in *Morum* Church.

We, under Subſcribers, *James Craufurd* and *James Murehead*, Chirurgions in *Edinburgh*, having Order from Sir *John Dalrymple*, his Majeſties Advocat, to go to *Morum*, and there to take up the Corps of Sir *James Standsfield*,

field, and to ſight and view the ſame exactly, and, if need were, to open up the Body, and to conſider whether there appeared any Evidence of Wounds, Bruiſes, or Strangling upon the Corps, beſides what might have happened by his falling or drowning in the Water, *&c.* In Obedience thereto, we cauſed take up the ſaid Corps, in the Preſence of *Philip Standsfield*, Mr. *Andrew Melvil*, Miniſter of *Morum*, *James Hamilton*, Writer to the Signet, *James Row* and *Alexander Campbel*, Merchands in *Edinburgh*, *Umphray Spurway*, *James Dick*, *James Mitchel*, and *John Robertſon*, Indwellers in *New-Milns*, and ſome others. Having with all poſſible Exactneſs viewed the Corps, we obſerved the Face a little ſwelled, and inclining to a dark reddiſh Colour, ſome Fulneſs of ſome capillarie Veins in the Pallat of the Mouth towards the Uvula, as alſo a large and conſpicuous Swelling, about three Inches broad, of a dark red or blae Colour, from one Side of the Larinx round backwards to the other Side thereof; we obſerved the Jugular Veins on both Sides the Neck very large and diſtended, and full of Blood; there was a large Swelling under and betwixt the Chin and the Cartilago Scutiformis; there was alſo a little Scratch below the left Mandibula, which had rankled the Cuticula, and made ſome little Impreſſion on the Cutis: Having made Inciſion from the Chin down about the Larinx, and croſs upon the Swelling of the Neck, we found a greater Laxneſs and Diſtance (as we think) than ordinary betwixt the Cartilago Scutiformis and Os Hyoides; we found the Tumour on the Neck, containing bruiſed, like dark or blackiſh Blood; the Jugulars, when cut, bled conſiderably, eſpecially that on the left Side.

Having opened his Breaſt, we found the Lungs diſtended to the filling up their Capacities, but free of Water: his Stomach, Liver, *&c.* were all in good Condition; we found no Water within the Corps; the Corps had no Smell at all; the Breaſt, Belly, Privy-Parts, *&c.* were all well coloured, there was noSwelling in his Belly, nor any thing by ordinary to be ſeen on his Head. This we atteſt, and ſubſcribe with our Hands.

Sic ſubſcribitur, JAMES CRAUFURD, JAMES MUREHEAD.

Edinburgh, *December* 6, 1687.

In Preſence of the Lord Archbiſhop of *Glaſgow*, Lord *Tarbat*, Preſident of Seſſion Advocat, and *Caſtlebill*:

James Murehead, and *James Craufurd*, Chirurgions, being ſolemnly ſworn in the Preſence of the Committee of Council, depone, That the written Report anent the Body of the deceaſt Sir *James Standsfield* is true, according to their Skill: And this is the Truth, as they ſhall anſwer to God.

Sic ſubſcribitur, JAMES CRAUFURD, JAMES MUREHEAD, JOHN GLASCOW, *J. P. D. C.*

Edinburgh, *February* 7, 1687.

In Preſence of the Juſtices and Aſſiſers.

James Murehead, and *James Craufurd*, Chirurgions, being ſolemnly ſworn, depone upon the Truth and Verity of the above-written Declaration in all Points.

Sic ſubſcribitur, JAMES CRAUFURD, JAMES MUREHEAD. *Linlithgow.*

Follows the Chirurgions of Edinburgh, *their Opinion anent the ſaid Murder.*

WE, under Subſcribers, Chirurgions in *Edinburgh*, having fully conſidered the Report made by *James Craufurd*, and *James Murehead*, concerning the Condition of the Corps of Sir *James Standsfield*, and tho' it be not uſual to declare more than Matter of Fact, yet in Obedience to your Lordſhips Commands, where ye deſire to be informed, if theſe Symptoms, found upon the Body, do import Drowning or Strangling; we humbly offer our Opinion, ſo far as our Art or Experience will allow. And whereas the Report informs us, that there was found a Swelling, and preternatural Redneſs in the Face, a large conſpicuous Tumour, about three Inches broad, of a dark red, or black Colour, from the one ſide of the Larinx round backwards to the other Side thereof, a large Swelling betwixt the Chin and the Cartilago Scutiformis, the Jugular Veines on both Sides very large and diſtended; and when Inciſion was made downwards, betwixt the Os Hyoid and Larinx was obſerved a Laxneſs, and Diſtance between the Os Hyoid and the Cartilago Scutiformis, Inciſion was made croſs alongſt the Tumour, it was found full of bruiſed Blood; the Jugulars likeways, when opened, yielding a conſiderable Quantity of Blood, eſpecially on the left Side, no Smell or Corruption appearing in any Part of the Body. It is very probable theſe Parts have ſuffered ſome exernal Violence, which hath made them appear ſo far different from their natural Figure and Colour, and could not be cauſed by Drowning ſimply. As to the other Part of the Report, the Breaſt and Belly being opened, the Lungs found diſtended, the Bronchi full of Air, without any Water, nor any Water found in the Stomach or Inteſtines, a Body, when drowned, being generally found to have much Water in it, with other Circumſtances of the Report conſidered, gives juſt Ground to think he was not drowned. This we ſubſcribe at *Edinburgh*, the 3d Day of *February*, 1687. *Sic ſubſcribitur*,

JOHN BALLIE, Deacon, WIL. BORTHWICK,
GEORGE STIRLING, THOMAS EDGAR,
JAMES CRAUFURD, JAMES MUREHEAD.

Follows the Report of the College of Phyſicians.

Edinburgh, February 6, 1687.

THE College of Phyſicians, being aſſembled at the Deſire of his Majeſties Advocat, to conſider a Report made by ſome Chirurgions, concerning the Body of the late Sir *James Standsfield*, and to give their Opinion, whether by the ſaid Report, there is any juſt Ground to believe, that the ſaid Sir *James Standsfield* was ſtrangled or drowned? And they have accordingly conſidered the ſaid Report. They are of Opinion, ſuppoſing the Verity of the ſaid Report or Declaration, that there is ſufficient Ground to believe, that the ſaid Sir *James Standsfield* was ſtrangled, and not drowned. In Teſtimony whereof their Preſents are ſubſcribed by Sir *Andrew Balfowr*, Preſident of the ſaid College.

Sic ſubſcribitur, A. BALFOWR, *P. C. R. M.*

Umphray Spurway, Clothier at *New-Milns*, aged 50 Years, *ſolutus*, purged and ſworn; depones upon the Truth and Verity of his own Declaration given in by him, which is all written, and ſubſcribed with his own Hand, and conſiſts of two Leaves of Paper, written on all Sides, which is Truth, as he ſhall anſwer to God.

Sic ſubſcribitur, UMPHRAY SPURWAY.

Follows the Declaration of Umphray Spurway, *Engliſhman.*

I *Umphray Spurway* of *New-Milns*, Clothier, being ſummoned to appear before the Lords of his Majeſties Privy-Council in *Edinburgh*, the 6th of *December* 1687, to declare my Knowledge of what I had ſeen, and heard, relating to the Death of Sir *James Standsfield* of *New-Milns*, did then and there declare before the ſaids Lords, as hereafter followeth: And after declaring what I had to ſay, was commanded to commit to writing my ſaid Declaration, under my own Hand, which I the aforeſaid *Umphray Spurway* do hereby humbly offer to the above-ſaid Lords of his Majeſties Council, ſubſcribing the ſame with my own Hand.

About ſix Weeks before the Death of Sir *James Standsfield*, after Night I went to pay my Reſpects to Sir *James*, as I uſually did when he was at *New-Milns*, at which time I found him not ſo free for Diſcourſe, nor ſo pleaſant as at other times: Inſomuch that I uſed that Freedom with him, to *Quere* the Reaſon why his Honour was ſo melancholy? Who, with a great Sigh, wringing his Hands together, with Tears trickling down his Cheeks, ſaid, Mr. *Spurway*, I have great Cauſe for it; I have born my own Burden, without complaining to others, but I have a very wicked Family, and it's very ſad, that a Man ſhould be deſtroyed by his own Bowels; but let me be never ſo ſparing in my Expence, both at home and abroad, yet they at home of my Family conſume me; condeſcending on ſome Particulars, of ſome extravagant Sums of Money, monethly brought in to him, that his Family had expended, beſides what he allowed for them, which was very ſufficient: But that which grieved him moſt was, that his youngeſt Son, whom he had ſome comfortable Hopes of, and upon whom he had ſettled his Eſtate upon, his juſt Debts being firſt payed, and that to the Knowledge of his Son; but now he was fruſtrated of his Hopes of that Son too; for his eldeſt Son had debauched his youngeſt Son, who had ſeveral Times of late come in drunk, as the other: This he declared to me with very great Grief of Heart. But the *Saturday*'s-Night after Sir *James*, and a Miniſter, one Mr. *Bell*, came to *New-Milns* from *Edinburgh*, I came in at the Houſe of one *James Marr*, where I ſaw Sir *James* and Mr. *Bell* ſitting by the Fire, before he had been at his own Houſe, which I wondred at, having never known the like done by him before; but ſince, I have had my Thoughts, that he had a Fear upon him (good Gentleman) of going to his own Houſe; but having ſat ſome time with him, he deſired Mr. *Marr* to ſend one of his People at his Houſe, to know, if they had kindled a Fire for him; and upon the Return, the Meſſenger gave this Anſwer, *May it pleaſe your Honour, your Fire is kindled for you*; upon which Sir *James* and the Miniſter aroſe, and took their leave of Mr. *Marr*; and I alſo accompanied Sir *James* and the Miniſter half the Way toward his Home, and ſo took my leave of him, wiſhing his Honour a good Night. But the next Morning, being *Sabbath*-Day, after the Light well appeared, one *Agnes Bruce* came at my Chamber-door, and knocked. I went and opened the Door. Says ſhe, *Sir, Sir* James *is gone out of his Lodging-Roum this Morning, and we have ſought all the Roums of the Houſe for him, but cannot find him.* She goes off, I immediately followed her, and when I came out of my Door, I met with Mr. *Philip Standsfield*, and *James Dick*. Mr. *Standsfield* declares to me, *Lord, Mr.* Spurway, *what ſhould be the Cauſe of this Man's Diſcontent, that he ſhould thus leave his Lodgings, and walk out?* To which I replyed, *Sir, do you wonder the Cauſe of his Diſcontent, who never gave him Content, but had been the Cauſe of grieving him, from one to the other of them, ever ſince I knew the Family?* But he turned his Back upon me, and made no Reply at all. However, I went at Sir *James*'s Houſe, but could not procure the Keys of neither of the Gardens, and I ſent abroad of Sir *James*'s Servants, and of my own, ſome on Horſeback, and ſome on Foot, to inquire after him: At laſt a Servant of mine, one *William Bowman*, found him in the River, a little by Weſt the Town. I went at the Place, and ſaw him lying about two Yeards, or eight Foot from the Brink of the River, lying upon his Belly, juſt at the Top of the Water, as it were floating, only his Coat and Weſtcoat looſe about him, and a Shirt on him that I ſaw. I ſaw the Place at the Brink of the River, where ſome one had ſtood all beaten to maſh with Feet, and the Ground very open and mellow, although a very hard froſty Morning; ſo I gave Order to ſome to get a Ladder, and to ſet one End into the River, as near the hinder Part of Sir *James* as they could, and the other End of the Ladder to fall at the Top of the Brae, which was very ſteep, and ſo they might get him out eaſily; ſo I came away from the Place, and deſired Mr. *Marr* to ſee the Body landed, declaring that I would go home, and write to Mr. *George Hume*, Merchand in *Edinburgh*, of the ſad Sight which I had ſeen, deſiring him to communicat the ſame to my Lord Advocat, with Deſire to know by the Meſſenger his Lordſhip's Pleaſure, what of Advice or Direction he would be pleaſed to give concerning it, and it ſhould be followed: But the Meſſenger that I ſent, after he had delivered my Letter to Mr. *Hume*, and Order given by Commiſſary *Dalrymple* how to proceed further with the Body of Sir *James*, which Order was directed to myſelf by a Letter, which when I read the Letter, the Contents was: That I ſhould endeavour to procure two or three diſcreet Perſons of *New-Milns* to myſelf, and we together view the Body of Sir *James*; and if we found no Grounds to believe that his Perſon had been wronged by others, that then with all ſpeed he ſhould be buried, and that as privatly, and with as little Noiſe as could be: But this Letter, which was the Commiſſary's Order to me, was ſent by the Hand of one *James Mitchel*, Kinſman to Sir *James*; for that Horſe that the Expreſs rode on to *Edinburgh*, was taken out of the Stable, where he was ſet up: And one Mr. *Patrick Smith*, the Brother-in-Law of Sir *James Standsfield*, mounted on him to come for *New-Milns*: So that my Expreſs was thereby diſabled to bring me the Anſwer of my Letter; and the ſaid *James Mitchel*, who brought my Letter, came home at the Place by Nine of the Clock that *Sabbath*-Day at Night, and gave an Account of the Letter that he had for me; but they diſſwaded him from bringing it me, ſo that I had it not till three Hours after Sir *James* was buried. But upon *Monday* Morning, I aroſe about three or four of the Clock; and coming out of my Houſe, I ſaw great Lights at Sir *James*'s Gate, which occaſioned my going down

to

to see what the Matter was; and as I went, I met with one *William Robinson*, coming up of Home; I asked what the Meaning was of these Lights, and of the Horses that I then saw at Sir *James*'s Gate? Who answered me, That Sir *James*'s Corps were brought out at the Gate, and that they were carrying it at *Morum*, to be buried, having received Orders from my Lord Advocat for that Purpose. At which I returned to my House, thinking it very strange thus to proceed without having had the Corps viewed by some Person, as I well knew was customary in *England* in such Cases. The next Step, to my Remembrance, was, That upon the *Tuesday* Night following, after I was in Bed, one Mr. *Alexander Campbell* in *Edinburgh*, with one Mr. *James Row*, and an Gentleman, one Mr. *Hamilton*, with two Chirurgions, came at my House, and caused me to rise out of my Bed, showing me an Order, which they had from my Lord Advocat, for the taking up again the Body of Sir *James Standsfield*, and commanded me to make ready to go with them; and having seen the Order, readily submitted thereunto, and when coming upon the Place at *Morum*, caused the said Grave to be opened, and the Coffin taken up. It was carried into the Church, and there opened; and as soon as Sir *James*'s Grave-Cloaths were taken off him, and all his upper Parts uncovered, home to his Privy-parts, methought his Face looked not as I expected, nor as others had insinuated, that were at the dressing of him at first; for they said, that his Body and Face was very fair and fresh; but I found his Face, at first View, of another Complexion, being blackish, with some Strakes of red, like standing, or rather strangled Blood; and under his left Ear I saw a Swelling home to his Throat, of a blackish red Colour. After this I saw the Chirurgions opening his Body, beginning at the Top of his Chin, and so down to the Pit of his Stomach, and then cut his Skin on both sides his Throat, towards each Ear, and coming at the Place near his left Ear, that I saw swoln, I there saw of corroded or congealed Blood, lying a Lump of a great Thickness, and two or three Inches long, which proved to me he had been strangled: And one Thing more I observed, that when Mr. *Murehead* put off his Cap at first from his Head, in slipping it back, Sir *James*'s Eye-lids opened, and his Eyes appeared, but his Eye-lids much swoln, and very red, which did also prove to me a Symptom of Strangling.

This being done, and his Breast opened, so that his Intrails appeared, and to me seemed in good Order, and no Appearance of Water in his Body, neither then, nor when first he was taken out of the River: The like, I think, has not been ever known by any Man that cast himself, or that has been cast into a River alive, and not to have his Body full of Water; nor that ever a dead Man should lie at the Top of the Water, where no running Stream is, but a still Water, of about five Foot deep: But to me in this it showes, that as God is a Wonder-working God, so he has in this shown no less, to convince Men, that this worthy Gentleman murdered not himself, but was murdered.

But my last Observation was of a Wonder more, that the Lord did show, when the Chirurgions had caused the Body of Sir *James* to be by their Servants sewen up again, and his Grave-Cloathes put on. A Speech was made to this purpose; It is requisit now, that those of Sir *James Standsfield*'s Relations, and neareſt Friends, should take him off from the Place where now he lyes, and lift him into his Coffin. So I saw Mr. *James Row* at the left Side of Sir *James*'s Head and Shoulder, and Mr. *Philip Standsfield* at the right Side of his Head and Shoulder; and going to lift off the Body, I saw Mr. *Philip* drop the Head of his Father upon the Furm, and much Blood in Hand, and himself flying off from the Body, crying, *Lord have Mercy upon me!* or *upon us!* wipeing off the Blood on his Cloaths, and so lay himself over a Seat in the Church; some supposing that he would swarff or swoun away, called for a Bottle of Water for him. After this we went for *Morum*-Castle, where Mr. *Philip Standsfield*, myself, and several others, stayed until it was Day: In which time I challenged Mr. *Philip* for his Unkindness to me, by his not inviting me to accompany the Corps of his Father, when first buried, knowing the Intimacy that there was betwixt his Father and myself; and that of all the People in or about the Town, his Father delighted in no one's Company as in mine; and that he did not give me Notice of his Burial, that I might do my last Office of Love and Service to him, by accompanying his Body to his Burial-place; I took it very ill from him. So then Mr. *Philip* swore, that he had sent two of his Servants to invite me, but if those damn'd Rogues would not do it, what could he help it? and yet did declare, as is proved, and as himself since confess'd before my Lord Advocat, that he would not invite me, assigning this as his Reason, supposing that myself and *James Marr* had been Instruments of setting his Father against him, which was a false Suggestion. All which Particulars I have before the Lords of his Majesty's honourable Privy Council declared: So, by their Command, I have in this Sheet of Paper written it over with my own Hand, and do hereby subscribe my Name, the sixth of *December*, 1687.

Sic subscribitur, per me, UMPHRAY SPURWAY.

Edinburgh, the 7th of *February*, 1687.

In Presence of the Justices and Assisers, *Umphray Spurway* ownes his Declaration above-written to be Truth in all Poynts; as he shall answer to God.

Sic subscribitur, { UMPHRAY SPURWAY, LINLITHGOW.

James Mitchel, Nephew to the deceas'd Sir *James Standsfield*, aged twenty Years, unmarried, purged and sworn, depones, That about twenty Dayes before Sir *James Standsfield*'s Death, being in Company with *Philip*, the Pannal, he heard the Pannal say, that if his Father did dispone his Estate by him, he would kill him, though he should die in the *Grass-Mercat* for it. Depones, That several Times about a Month before Sir *James*'s Death, he heard the Pannal say, that little thought the People had how soon the Pannal would be Laird; and when he was, he would then ride in their Skirts that had been ill to him. And this is the Truth, as he shall answer to God.

Sic subscribitur, JAMES MITCHEL.

John Topping in *Montrig*, aged twenty-five Years, married, purged, and sworn, depones, That upon the *Sabbath*-Morning after Sir *James Standsfield*'s Death, the Deponent coming from *Monkrig* to *New-Milns*, by the side of the Water, he discovered a Body floating, and saw *Philip Standsfield* looking to that Place of the Water where the Body was; and the Deponent asked the Pannal, whose Body that was in the Water? And the Pannal made no Answer; and when he came to *New-Milns*, he heard that Sir *James*'s Body was found in the Water. Depones, he saw the Body taken out of the Water, and went alongst with it, near to the *Walk-Milns*, but observed no Water come from the Body. This is the Truth, as he shall answer to God. Depones he cannot write.

Sic subscribitur, LINLITHGOW.

James Dick, in *New-Milns*, aged fourty-seven Years, married, purged, and sworn, depones, That the Pannal, *Philip Standsfield*, and the Deponent, being at *Morum*, after taking up of the Corps, and discoursing about the finding of the Body in the Water, the Deponent said to the Pannal, that he saw something in the Water, when they were searching after Sir *James*, but he did not suppose it to be Sir *James*'s Body; and the Pannal said, I saw him before any of you. Depones, That he saw the Body after it was taken out of the Water at the Brink of the Brae, and went alongst with the Body a Piece of the Way, and observed no Water come from the Mouth. And this is the Truth, as he shall answer to God.

Sic subscribitur, JAMES DICK.

His Majesties Advocat desired that *James Thomson*, Son to *George Thomson* in *New-Milns*, and *Anna Mark*, Daughter of *Janet Johnstoun*, Spouse to the said *James Thomson*, might be examined as Witnesses against the Pannal, for proving his Accession to his Father's Murder. And the Procurators for the Pannal having alledged, that the foresaid Persons were but Children, and so not by Law capable to be Witnesses, the Boy not being above thirteen Years of Age, and the Girl not above ten Years:

The Lords Justice General, and Commissioners of Justiciary, refused to receive them as Witnesses; but in regard the Persons on the Inquest earnestly desired the said *James Thomson* and *Anna Mark* might be examined, anent their Knowledge of the Pannal's Accession to the foresaid Murder, they allowed the forenamed Persons their Declarations to be taken for clearing of the Assise. And accordingly the said *James Thomson* being examined in Presence of the Justices and Inquest, declared as after follows; That *Janet Johnstoun* came to *George Thomson*'s House betwixt nine and ten at Night, and *Philip Standsfield*, the Pannal, came there shortly thereafter: and the House being dark, the said *Philip* gave the Declarant a Turnor to buy a Candle, which he did in the neighbouring House, and after the Declarant returned with the Candle, his Mother ordered him to go to his Bed, which was in the same Roum, and beat him because he did not presently obey. Declares, he heard one come to the Door, and enquire for *Janet Johnstoun*, and desired her to come home, and give her Child suck. Declares, he knew by the Voice that the Person who came was *Agnes Mark*, the said *Janet*'s Daughter, and that *Janet* ordered her to go away, and she should follow her. Declares, she stayed a considerable Time thereafter, and the said *Thomson*'s Wife was desired to go for a Pint of Ale, and *Philip* took out a handful of Money to see if he had any small Money, and finding he had none, the Ale was taken on upon Trust. Furder declares, That the said *George Thomson* and his Wife, and *Janet Johnstoun*, did stay together, and whisper softly a considerable Time. Declares, he heard *Philip Standsfield* complain that his Father would not give him Money, and pray the Devil to take his Father, and God damn his own Soul, if he should not make an End of his Father, and then all would be his, and then he would be kind to them. Declares, *Philip Standsfield* and *Janet Johnstoun* went away about Eleven, and shortly after his Father and Mother came to the Bed where the Declarant was lying cross the Bed-foot; and the Declarant in the Night-time perceiving his Father and Mother rising out of the Bed and going out of the House, and that they stayed a considerable Time away, about an Hour and an half, or two Hours, and that the Declarant was perfectly awake when they went and were away, and he wondered what they were going about. Declares, his Mother came in first, and came softly to Bed, and within some time after his Father came in, and put a Stool to the back of the Door, without locking it, for the Lock made always a great Noise when they locked the Door, and the Declarant's Father called to him whenever he came in, but the Declarant made no Answer, that it might be thought he was sleeping; and his Mother asked, what had stayed his Father? And thereupon his Father and Mother did fall discoursing of several things, and particularly his Father said, that the Deed was done, and that *Philip Standsfield* guarded the Chamber-door, with a drawen Sword and a bendet Pistol, and that he never thought a Man would have died so soon, and that they carried him out towards the Water-side, and they tyed a Stone about his Neck, and leaving him there, came back to the little Kiln, and reckoned whether they should cast him in the Water with the Stone about his Neck or not, and whether they should cast him in far in or near the Side, and at length they returned and took away the Stone from about his Neck, and threw him in the Water. Declares, his Father said, that yet he was afraid, for all that, that the Murder would come out, and his Mother answered, Hout, Fool, there is no Fear of that; it will be thought he has drowned himself, because he will be found in the Water. Declares, when Sir *James* was missing in the Morning, the Declarant's Mother said to his Father, Rise quickly, for if ye be found in your Bed, they will say, that ye have a Hand in the Murder. Declares, the Coat and Wastecoat which were upon Sir *James* when he was found in the Water, were sent to *Thomson*'s House, and *Thomson*'s Wife said to her Husband and *Janet Johnstoun*, in Presence of the Declarant, that she was affrighted to see the same Coat and Wastecoat, for she thought that some evil Spirit was in it, and desired her Husband to send it away, which he would not: And further, that his Mother said to her Husband, in the Declarant's hearing, that she was affrighted to be in the House alone after Night fell; and accordingly, whenever her Husband went out, she went out with him, which was not her ordinary. Declares, the said *George Thomson* did go into *Edinburgh* several Days before the Declarant's Mother was brought in, and she did immediately after he came into *Edinburgh* send away Sir *James*'s Coat and Wastecoat, and that she was never in her own House after.

after Night, since her Husband came in, but did lie in *Janet Johnstoun*'s House.

Sic subscribitur, LINLITHGOW, *J. P. D.*

Anna Mark, Daughter to *Janet Johnstoun*, declares, that on the said *Saturday*'s-Night *Philip* came up to her Mother's House, and sent for *George Thomson* and his Wife, and thereafter he sent her to see if Sir *James* was come Home; declares, that she saw *Philip*, with his Hat off, give a low Salutation to *George Thomson* when he came up to him; and when she returned and told that Sir *James* was come, *Philip* did take a drink, and runs down to *New-Milns*; that about eleven o'Clock that Night, her Good-father sent her to seek her Mother, and that she found her Mother with *Philip* in *George Thomson*'s House, and that her Mother bad her go Home, and she would come after her, and that her Good-father thereafter, finding her Mother did not come, sent her for *Margaret Isles* to give Suck to the Child, and went Home again; but that her Mother did not come long after that, as she thinks, about two in the Morning, and that she heard her Good-father say, Bitch and Whore, where have you been so long? And she answered, Wherever I have been, the Deed is done, and then went to Bed; and that after that, she heard them speak together, but could not know what they said: She declares also, that her Mother said, she was still feared, and would not abide alone, nor lie alone in the Bed, but said she was afraid.

Edinburgh, February the 7th, 1687.

The said *Anna Mark* being examined in Presence of the Assise and Justices, declares *affirmativè*, conform to the above-written Declaration in all Points.

Sic subscribitur, LINLITHGOW, *J. P. D.*

Sir George M'Kenzie's *Speech to the Inquest.*

Gentlemen of the Inquest,

I Am glad to see so strong and universal a Propensity for Justice in my native Country, that every Man upon first hearing this Death, concluded it a Murder, and trembled lest it should not have been discovered. Every Man became Sollicitor in it, wished to be of the Inquest; and ardent Prayers were generally put up to Almighty God for this End, with as much Earnestness as uses to be for removing general Plagues. And the Almighty, in return of those, did first make so clear Impressions on all Men's Spirits of *Philip*'s being the Murderer, that he had fallen by these: But his Divine Majesty, who loves to see just things done in a legal Way, furnished thereafter a full Probation in an extraordinary Manner, whereby we might not only convince ourselves, but all such as are not wicked enough to have been the Authors. You will discern the Finger of God in all the Steps of this Probation, as evidently as *Philip*'s Guilt; and this extraordinary Discovery has been made, as well to convince this wicked Age, that the World is governed by Divine Providence, as that he is guilty of this Murder. He is accused before you for three Crimes, *Treason*, the *Cursing of his Father*, and the *Murdering him*: Crimes in great Affinity, and naturally subservient to one another; for to pray Confusion to the King, who is *Pater patriæ*, is a Cursing our great Parent; and what can prove better a Design to murder his Parent, than the malicious Hatred that prevails over a Son to curse him? What restrains vitious Men from murdering those, by whose Death they may expect licentious Liberty, and an opulent Succession, save the Fear of the Laws of the Land, or at least an innate Awe of the Law of Nature? But here you see in the Treason, a Contempt of the Laws of the Land, and in the Cursing, an Abhorrence of the Laws of Nature.

There is no Reason to suspect our Zeal in this Case from any State Design; for we took Pains to shun a Probation of the Treason. It was forced upon us, and not sought by us; so violent were, and are we in the Search of the Murder, that even Treason was not able to divert us: Nor press I it at this Time, but to let you see there is nothing so wicked or dangerous, which this Pannal durst not attempt. He not only wishes the King's Confusion, but drinks it openly; and not only drinks the King's Confusion himself, but he forces others to do so; nor needed he to be drunk, to be guilty, for this was the first Step of his Drinking; and to convince you that he knew it was a Crime, it is proved that he took his Complices sworn never to detect it; the fatal Encouragement which always tempts him to commit his Villainies. The Cursing his Father is not from meer Humour or Dissoluteness, but it becomes yet probable by a previous Design to have his Estate, and from the Restraint he found from him, of being debarred from the ravishing Hopes of a boundless Liberty. The Expressions are various and execrable, such as, *Devil take him, drown him, rive him, let him never come back, let him never eat more*, &c. and these Expressions, which should never have been once spoke, were frequently repeited, and are proved, not by suspected Persons, or Strangers, but by his Father's, and his own Servants, and such of them too as were *Philip*'s own Favourits, and who think themselves very unhappy in being obliged to depone against him.

You are then, Gentlemen, in the third Place to judge, how far this Murder and Parricide are proved; in which you need to be the less scrupulous, that the Son, who is accused of it, is to die however; for either of the two former Crimes are so far proved beyond all Doubt, that though he should escape this, he cannot these. And as to the Probation of this Crime, I must first represent to you, that in occult or atrocious Crimes, the Law has relaxed, and remitted much of its Scrupulousness in Probation, because in these the ordinary Probation cannot be had; and to admit none but such, were to reject all: And therefore in Hamesucken, which is the beating a Man in his own House, but much more the murdering a Man by way of Hamesucken in his own House, wherein all Means are used to cover, and few can be got for discovering, you must not expect two Witnesses who saw the Murder committed, but only such Probation as can before God convince you, that this Murder was committed by that Man. No Inquest ever failed to find the Murder of Children to be clearly proved, though there were no Witnesses that saw it committed; and the murdering Parents is a more atrocious Crime, because we owe more Duty to our Parents, than any Parent does to a Child; and never Son owed more than this did, nor can be more believed to have killed a Parent. For clearing whereof you are to consider, first, that he did not drown himself, as was pretended, but was murdered by some Persons; and as the Law violently presumes, that no Man would murder himself, so, without the Help of this Presumption, it is proved most convincingly, by ocular Inspection, that he was strangled; the Marks of Strangling, *viz.* the congealed Blood, the Dislocation of one of the Vertebræ in his neck, *&c.* being visible Signs proved in the ordinary Way; and we have added to this the Opinion both of the Chirurgions and Physicians, who at once declared, that he was not drowned, and that he was strangled; the outward Marks likewise of his not being drowned appearing as visibly as that he was strangled: So you must conclude, that he was strangled, except you can think, that after he had strangled himself, and broke his own Neck, he drowned himself.

In the next Place, who could have murdered this innocent and obliging Gentleman, except some Person who had Access to his House, wherein he was murdered, and had Malice against himself? And these two can meet in no Person, but this unnatural barbarous Son; for one of the things that heightens his Guilt is, that he should abhor a Father, who engaged meer Strangers to love him as a Friend! And we have proved that he not only hated his Father, and that he had done so for many Years, but that he vowed he would take away his Life before *Christmas* next; and that in many various, but clear Expressions, and at many several Times; for sometimes he swore, if he made a Disposition to his second Son, he should take his Life; sometimes, that he should be Master of all before *Christmas*, and he should use the Servants as they used him: That though his Mother was like to die, that his Father should die before her: And he scarce ever spoke of his Father, without swearing he would strike a Sword to his Heart: Nor would his Passion so much as suffer him to dissemble this, even to his Mother; and he who durst own it to her, durst certainly do it whenever he had Occasion.

I proceed now to clear to you, that I have proved, that he not only designed and vowed in Passion, that he would murder his Father, but that he actually attempted to murder him; and for this I have led these Witnesses, who prove, that when his Father came from the Leaden Mines, he fled into *Culter*, as a trembling Partridge pursued by a Haulk, telling some Gentlemen, that he had been pursued seven Miles by his unnatural Son, who accordingly came to the House, and shot several Pistols in at the Windows; whereupon the Gentlemen who now depone, were forced to watch with his Father all the Night, and were forced to convoy him the next Day near to *Edinburgh*. We have also produced other Gentlemen, to whom his Father declared, that he attempted against his Life; and who will not believe the best of Fathers deponing against the worst of Sons? Nor could any thing have drawn this from the Father, save the terrifying Danger to which he was hourly exposed. All the Supream Courts of *Europe* have found the Attempt to kill sufficient to infer Parricide: This is a higher Degree of Guilt than Cursing, and yet that infers Death; and to atttempt to kill a Father is more villainous than to kill a Stranger. What shall be said then of frequent and deliberated Attempts? And thus you have this Son again proved guilty of Death, and even Parricide. That which hastened the perpetrating this Crime, was, that his Father, wearied out with his Villainies, was at last forced to dispone his Estate to his second Son; and though there be nothing more ridiculous than to ask, what Reason the Son had to kill his Father, as he now does; for there can be no Reason for so barbarous an Action; yet this was a Motive to him, and may be a Proof to you; for so kind a Father, who had tryed all Means and Methods to reclaim his licentious Son, had never proceeded to this, unless he had been driven to it by those frequent Attempts made by his Son upon his Life, in hopes to enjoy his Estate by the Death that he was to give. To disappoint which Hopes, his Father designed to settle his Estate on the second Brother; after which Settlement, he could gain nothing but the Gallows by killing his Father: Whereupon he, to prevent the Delivery of the Disposition, did associat to himself *Thomson*, whom himself used to call the Devil's Taylor, *Thomson*'s Wife, and *Janet Johnstoun*, who was his own Concubine, and his Father's known Enemy, whom he could never have frequented, except upon so barbarous a Design. *Thomson* denyed that he was in the House for Eight Days before; and yet it is proved he was in Sir *James*'s House the Night the Murder was committed. *Johnstoun* denyed also before the Council, that she was out of her House after Nine o'Clock that Night, and yet it is proved, that she stayed Abroad till after Twelve, so that her Husband was forced to send for a Stranger to give Suck to her Infant. Why did they both deny, or she abandon her Child, at so suspect a Time? And it is ridiculous to pretend, as they do, that they forgot so extraordinary a Circumstance, in so extraordinary a Night, especially being examined upon it within two or three Days thereafter. By their Assistance the Murder was designed to be upon *Saturday*, the Day of *January*; but God, to discover, and revenge a Murder (which he thought fit to suffer to be committed for the Punishment of so many preceeding horrid Crimes), inspired Sir *James* to bring with him that Night, a devout Minister, for preparing the Father, and proving against the Son; and this pious and grave Man, whose Merit may be laid in Balance with many Witnesses, depones, that he heard that Night the Noise of many People within the House, which was inconsistent with Sir *James*'s drowning himself without it: And depones, That his Attention followed this Noise until it died out towards the River, into which he was thrown by them; and the Brink is proved to have been broken and beat by many Feet, which fortifies much this Deposition. It is also proved, that he refused that Night to come to publick Prayer with his Father, swearing, that he could not look upon him, and that the next Morning, when all went to find out his Father, he confessed he had first found him; but that he came away without discovering that he had found him, nor did he shew the least Grief when he was found by others; whereas, if Nature had not been quite devoured by Vice and Guilt, he had certainly thrown himself upon his dead Father, and had lamented that fatal Death, which no Man, except he, saw with dry Eyes;

but whilſt others were mourning for his Father, this Miſcreant would not ſuffer him to be carried in to his own Houſe, ſaying, that he died like a Dog. O criminal Moderation! that never appeared in this paſſionate Creature, ſave upon the Death of his Father. O curſed Juſtice! never ſhowen, or pretended to, ſave in aſſerting, that his Father deſerved no Reſpect, becauſe he drowned himſelf. Upon this villainous Pretext, he cauſed throw him into a remot Houſe, where none were allowed to ſee the Body, ſave his own Accomplices, to prevent all Diſcovery by Inſpection of it: and for the ſame Reaſon cauſed bury him very ſuddenly, in ſpight of a Countermand from his Friends at *Edinburgh*. But they, fully perſwaded that Sir *James* was murdered by his own Son, ſent out ſome Chirurgions and Friends, who having raiſed the Body, did ſee it bleed miraculouſly upon his touching it. In which God Almighty himſelf was pleaſed to bear a Share in the Teſtimonies which we produce; that divine Power, which makes the Blood circulat during Life, has oft-times, in all Nations opened a Paſſage to it after Death, upon ſuch Occaſions, but moſt in this Caſe; for after all the Wounds had been ſewed up, and the Body deſignedly ſhaken up and down, and which is moſt wonderful, after the Body had been buried for ſeveral Days, which naturally occaſions the Blood to congeal; upon *Philip*'s touching it, the Blood darted and ſprung out, to the great Aſtoniſhment of the Chirurgions themſelves, who were deſired to watch this Event; whereupon *Philip*, aſtoniſhed more than they, threw down the Body, crying, *O God! O God!* and cleanſing his Hand, grew ſo faint, that they were forced to give him a Cordial. But leſt any Shadow of Difficulty might remain with you, his Divine Providence, which oft-times reveals itſelf by the Mouths of Babes and Sucklings, has brought us two little Witneſſes, whom, as no body could be ſo unworthy as to corrupt, ſo none can be ſuch Infidels as not to believe, eſpecially ſince they depone againſt their own Parents, and have owned firmly in their Preſence, what they now depone in yours. From them we have an Account, how *Philip* that Night came into the Houſe of their Parents, and there ſwore, *He would be rid of his Father that very Night:* How they went out at Midnight, and after their Return made their Reflections, how eaſily Sir *James* had died, and how briſkly *Philip* had behaved, by guarding the Door with a Piſtol in his one Hand, and a Sword in the other; how they had hung a Stone about his Neck, but had thereafter taken it away, and how the Mother durſt not ſtay in her own Houſe, while Sir *James*'s Coat was there; and if you had ſeen this little Boy upon his Knees, begging his Father to confeſs, with ſo much Affection, ſo much Judgment, ſo much Piety, you had needed no other Probation but himſelf. The Father himſelf, before his Death, was convinced, and frequently foretold, that his Son would kill him; and the Mother, how ſoon ſhe heard of her Huſband's Death, and ſome of the Circumſtances now inſiſted upon, and remembred what ſhe had heard her Son ſay to herſelf, and what he had ſaid at *Nunland*, concluded he was the Murderer, in ſpight even of that criminal Kindneſs which ſhe had for him; almoſt the whole Nation was convinced of this before any Probation was led: And the Lords of the Privy Council, among whom many of our Judges ſit, did declare, that they thought that half of the Probation which was led before them, ſufficient to convince an Inqueſt. How then ſhould the leaſt Scruple remain with you, before whom ſo full, ſo clear, and ſo legal a Probation has been led, that like a Bend, every Part of it ſupports another; and like a Chain, every Link drawson another?

I need not fortifie ſo pregnant a Probation, by laying out before you how often he and his Complices have contradicted one another, and even how often he has contradicted himſelf in the moſt obvious and material Points, and how he denyes every thing with Oaths, and with equal Confidence, though never ſo clearly prov'd; albeit ſuch as theſe are the chief things that make up the Probation in other Caſes: nor how he ſuffered the greateſt Indignities imaginable from his Complices in Preſence of the Privy-Council; though this convinced many of their Lordſhips, that he was at the Mercy of thoſe Complices, who were too far upon his Secrets, not to be ſlaviſhlie ſubmitted to. But I cannot omit, how that ſince he came into Priſon, he has lived ſo impiouſlie, and atheiſticallie, as ſhews, that he had no Awe upon his Spirit, to reſtrain him from committing any Crime from a Love to God, or a Fear to Hell; and that he conſtantly filled and kept himſelf drunk from Morning till Night, thereby to drown the Voice of his Conſcience, and to make himſelf inſenſible of the Terrors of the Almighty.

The Judges have declared what was neceſſary to be prov'd, and you are only to judge, if we have prov'd what they thought neceſſary; and therefore there is no Place to doubt, if a Man's Life may be taken upon meer Preſumptions; for the Judges have eaſed you of that Scruple, by finding the Grounds in this qualified Libel relevant; and his own Advocats have acknowledged this Probation to be ſo ſtrong and unanſwerable, that before the Half of it was led, they went away and deſerted a Client, whom they found they could not defend; nor ſhould any Man doubt of a Probation, which one's own Advocats think invincible. If then ſuch amongſt you as are Fathers, would not wiſh to be murdered by your own Children; or ſuch of you as are Sons, would not wiſh the World to believe that you are weary of your Fathers, you will all concur to find this Miſcreant guilty of a Crime that God has taken ſo much Pains to detect, and all Mankind had ſuch Reaſon to wiſh to be puniſhed. May then the Almighty God, who form'd your Hearts, convince them; and may this poor Nation cite you, as the remarkable Curbers of Vice, to all ſucceeding Ages!

Thereafter his Majeſties Advocat proteſted for an Aſſiſe of Error againſt the Inqueſt, in caſe they ſhould aſſoilzie the Pannal.

The Perſons who paſt upon the Aſſiſe of *Philip Standsfield*, return'd their Verdict in Preſence of the ſaids Lords; whereupon the Tenor follows.

The whole Aſſize called upon the Jury of *Philip Standsfield*, upon the three Points following, particularly lybel'd againſt him; to wit, the Crime of Treaſon, the Curſing of his Father, and Acceſſion to his Father's Murder; they unanimouſly, in one Voice, by the Mouth of *William Baillie* of *Lamington*, their Chancellor, finds the Pannal guilty of the forſaid Crimes.

Sic ſubſcribitur, WILLIAM BAILLIE, of *Lamington*, Chancellor.

THE Lords Juſtice General, and Commiſſioners of Juſticiary, having conſidered the Verdict of the Aſſiſe returned againſt *Philip Standsfield*, they, by the Mouth of *John Leſlie*, Dempſter of Court, decerned and adjudged the ſaid *Philip Standsfield* to be taken upon *Wedneſday* next, being the 15th of *February* inſtant, to the Mercat-Croſs of *Edinburgh*, and there, betwixt two and four a-Clock in the Afternoon, to be hanged on a Gibbet till he be dead, and his Tongue to be cut out, and burnt upon a Scaffold, and his Right Hand to be cut off, and affixt on the Eaſt-Port of *Haddingtoun*, and his Body to be carried to the *Gallowlie* betwixt *Leith* and *Edinburgh*, and there to be hanged up in Chains; and ordains his Name, Fame, Memory, and Honours to be extinct, his Arms to be riven forth, and delet out of the Books of Arms, ſwa that his Poſterity may never have Place, nor be able hereafter to bruik or joyſe any Honours, Offices, Titles, or Dignities, within this Realm in time coming, and to have forfaulted, amitted and tint all and ſundry his Lands, Heretages, Titles, Offices, Tacks, Steddings, Roums, Poſſeſſions, Goods and Gear whatſomever pertaining to him, to our Sovereign Lord, to remain perpetuallie with his Highneſs in Property; which was pronounced for Doom: Whereupon his Majeſties Advocat aſked, and took Inſtruments.

Sic ſubſcribitur, JO. LOCKHART, DAVID BALFOUR, ROGER HOGE, P. LYON.

Extracted forth of the Books of Adjournal, by me Mr. *Thomas Gordon*, Clerk to the Juſtice-Court.

Sic Subſcribitur, THO. GORDON.

Which Doom and Sentence, above-written, was accordingly put to due Execution upon the Perſon of the ſaid *Philip Standsfield*, in Manner above preſcribed.

CXLIV. *The Trial of the moſt Reverend Father in God,* Dr. William Sancroft, *Lord Archbiſhop of* Canterbury, *and of the Right Reverend Fathers in God,* Dr. William Lloyd, *Lord Biſhop of* St. Aſaph, Dr. Francis Turner, *Lord Biſhop of* Ely, Dr. John Lake, *Lord Biſhop of* Chicheſter, Dr. Thomas Kenn, *Lord Biſhop of* Bath *and* Wells, Dr. Thomas White, *Lord Biſhop of* Peterborough, *and Sir* Jonathan Trelawny, *Lord Biſhop of* Briſtol *, *at the* King's-Bench, *for Publiſhing a* Libel, June 29, 1688, Trin. 4 Jac. II.

FRIDAY *June* 15, 1688.

Sir *Robert Wright*, Lord Chief Juſtice,
Mr. Juſtice *Holloway*,
Mr. Juſtice *Powell*,
Mr. Juſtice *Allybone*,
} Judges.

THIS being the firſt Day of the Term, his Majeſty's Attorney-General (as ſoon as the Court of *King*'s-*Bench* was ſat) moved on the Behalf of the King for a *Habeas Corpus*, returnable *immediate*, directed to the Lieutenant of the *Tower*, to bring up his Grace the Lord Archbiſhop of *Canterbury*, and the Biſhops of *St. Aſaph*, *Ely*, *Chicheſter*, *Bath* and *Wells*, *Peterborough*, and *Briſtol*; which was granted.

And with great Diſpatch, about eleven o'Clock the ſame Day, the Lieutenant returned his Writ, and brought the ſaid Lord Archbiſhop and Biſhops into Court, where being ſet down in Chairs, ſet for that Purpoſe, Mr. *Attorney-General* moved the Court, *viz.*

Mr. Att. Gen. My Lord, I pray that the Writ and Retorn may be read, by which my Lords the Biſhops are brought hither.

Sir *Tho. Powis.*

L. C. J. Read the Retorn.

Clerk reads the Retorn, *which in* Engliſh *is as follows:*

'I Sir *Edward Hales*, Baronet, Lieutenant of the *Tower* of *London*, 'named in the Writ to this Schedule annext, To our *Moſt Serene* '*Lord the King*, do moſt humbly certify, That before the coming of the 'ſaid Writ, to wit, the eighth Day of *June*, in the fourth Year of the 'Reign of our Lord *James the Second*, King of *England*, &c. *William* 'Lord Archbiſhop of *Canterbury*, *William* Lord Biſhop of *St. Aſaph*, '*Francis* Lord Biſhop of *Ely*, *John* Lord Biſhop of *Chicheſter*, *Thomas* 'Lord Biſhop of *Bath* and *Wells*, *Thomas* Lord Biſhop of *Peterborough*, 'and *Jonathan* Lord Biſhop of *Briſtol*, mentioned in the afore-'ſaid Writ, were committed and delivered to, and are retained in 'my Cuſtody, by Virtue of a certain Warrant under the Hands 'and Seals of *George* Lord *Jefferies*, Baron of *Wem*, Lord High Chan-'cellor of *England*, *Robert* Earl of *Sunderland*, Lord Preſident of the Privy 'Council of our Lord the King, *Henry* Lord *Arundel* of *Warden*, Keeper of the

* *Burn.* Hiſt. Own Times, Vol. I. p. 741—743.

'the Privy-Seal of our said Lord the King, *William* Marquess of *Powis*, 'John Earl of *Mulgrave*, Lord Great-Chamberlain of *England*, *Theophi-* 'lus Earl of *Huntingdon*, *Henry* Earl of *Peterborough*, *William* Earl of *Cra-* 'ven, *Alexander* Earl of *Murray*, *Charles* Earl of *Middleton*, *John* Earl of 'Melfort, *Roger* Earl of *Castlemain*, *Richard* Viscount *Preston*, *George* 'Lord *Dartmouth*, *Sidney* Lord *Godolphin*, *Henry* Lord *Dover*, Sir *John* 'Ernle, Knight, Chancellor of the *Exchequer* of our said Lord the King, 'Sir *Edward Herbert*, Knight, Chief Justice of the Common-Bench of 'our Lord the King, and Sir *Nicholas Butler*, Knight, Lords of his Ma- 'jesty's most honourable Privy-Council, to me directed: The Tenor of 'which Warrant follows in these Words, *viz.*'

"THESE are, in his Majesty's Name, and by his Command, to re- "quire you to take into your Custody the Persons of *William* Lord "Archbishop of *Canterbury*, *William* Lord Bishop of *St. Asaph*, *Francis* "Lord Bishop of *Ely*, *John* Lord Bishop of *Chichester*, *Thomas* Lord Bishop "of *Bath* and *Wells*, *Thomas* Lord Bishop of *Peterborough*, and *Jonathan* "Lord Bishop of *Bristol*, *For Contriving*, *Making and Publishing a Seditious Libel in Writing*, *against his Majesty and his Government*, and them "safely to keep in your Custody until they shall be delivered by due "Course of Law; for which this shall be your sufficient Warrant. At "the Council-Chamber in *White-Hall*, this eighth Day of *June*, 1688. "And this is the Cause of the taking and detaining, *&c.*"

L. C. J. Well, what do you desire, Mr. *Attorney?*

Mr. Att. Gen. We pray for the King, that the Retorn may be filed.

L. C. J. Let it be filed.

Mr. Att. Gen. By this Retorn your Lordship observes what it is my Lords the Bishops were committed to the *Tower* for; it is by Warrant from the Council-Board, where, when their Lordships appeared, they were not pleased to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the *Tower*, and now come before the Court upon this Retorn of the King's Writ of *Habeas Corpus*; and by the Retorn it does appear, it was for *Contriving*, *Writing*, *Framing*, *and Publishing a Seditious Libel* against his Majesty and the Government. My Lord, it is our Duty, who are the King's Counsel, pursuant to our Orders, to prosecute such Kind of Offences; and when the proper Time shall come for us to open the Nature of the Offence; your Lordships will then judge what Reason there is for this Prosecution; but in the mean Time, what we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of *Canterbury*, and the rest of my Lords the Bishops, which we desire may be read to them, and pray that they may plead to it, according to the Course of the Court.

Sir *Robert Sawyer.* If it please your Lordship to spare us a Word for my Lords the Bishops.

Mr. Att. Gen. My Lord, we pray for the King the Information may be read.

Sir. *Rob. Sawyer.* We desire to be heard a Word first.

Sir *William Williams.* *Mr. Sol. Gen.* We oppose your speaking any thing, till the Information hath been read.

Sir. *Rob. Sawyer.* But what we have to offer is proper before it be read.

Mr. Att. Gen. Your Time is not yet come, Sir *Robert.*

Sir *Rob. Sawyer.* Yes, this is our proper Time for what we have to say, and therefore we move it now, before there be any other Proceedings in this Matter.

Mr. Sol. Gen. It is irregular to move any thing yet: Pray let the Information be read first.

Mr. *S. Pemberton.* If your Lordship please to spare us, we will offer nothing but what is fit for us to do.

Sir *Rob. Sawyer.* And now is our proper Time for it.

Mr. Sol. Gen. Gentlemen, You do know the Way of Proceeding in such Cases better than so: I am sure, as for you, Sir *Robert Sawyer*, you have often opposed any such Motion as irregular; and I hope the Case is not altered; however you may be, the Course of the Court is the same.

Sir *Rob. Sawyer.* With Submission, if your Lordship please to spare me a Word, that which I would move, is, to discharge my Lords the Bishops upon this Retorn, and from their Commitment upon this Warrant.

Mr. Att. Gen. Surely these Gentlemen think to have a Liberty above all other People: Here is an Information, which we pray my Lords the Bishops may hear read, and plead to.

Mr. Sol. Gen. Certainly, Sir *Robert Sawyer*, you would not have done thus half a Year ago.

Sir *Rob. Sawyer.* What would not I have done? I move regularly (with Submission) to discharge my Lords the Bishops from their Commitment; if they are not here legally imprisoned, now they are before your Lordships upon this Writ, then you will give us leave to move for their Discharge, before any thing else be said to them; and that is it we have to say, to demand the Judgment of the Court upon this Retorn, whether we are legally imprisoned?

Mr. Att. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

Mr. *S. Pemberton.* If we do not move it now, it will afterwards (I fear) be too late.

Mr. Sol. Gen. These Gentlemen are very forward, but certainly they mistake their Time; this is a *Habeas Corpus* that is brought by the King, and not by the Prisoners; and therefore they are too soon, till they see what the King has to say to them.

Mr. Att. Gen. Your Lordship cannot as yet be moved for your Judgment about the Legality of this Commitment, because this Writ was granted upon our Motion, who are of Counsel for the King, and upon this Writ they are brought here: And what is it we desire for the King? Certainly nothing but what is regular. We have here an Information for the King against my Lords, and we desire they may plead to it.

Mr *S. Pemberton.* Good my Lord, will you please to hear us a little to this Matter.

L. C. J. Brother *Pemberton*, we will not refuse to hear you by no means, when you speak in your proper Time, but it is not so now; for the King is pleased, by his Attorney and Sollicitor, to charge these noble Persons, my Lords the Bishops, with an Information; and the King's Counsel call to have that Information read, but you will not permit it to be read.

Mr. *S. Pemberton.* Pray, my Lord, spare us a Word: If we are not here as Prisoners regularly before your Lordship, and are not brought in by the due Process of the Court, then certainly the King's Council, or the Court, have no Power to charge us with an Information; therefore we beg that you will hear us to that, in the first Place, whether we are legally here before you.

Mr. Sol. Gen. These Gentlemen will have their proper Time for such a Motion hereafter.

Mr. *Pollexfen.* No, Mr. *Sollicitor*, this is, without all Question, our only Time for it; we shall have no Time afterwards.

Mr. Att. Gen. Yes, you will; for what do we, who are of Counsel for the King, now ask of the Court, but that this Information may be read? When that is done, if we move to have my Lords the Bishops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and, with Submission to your Lordship, whether my Lords the Bishops were duly committed, is not yet a Question.

Mr. *Finch:* But it is; and this is the fittest Time for it.

Mr. Sol. Gen. Pray will you hear us quietly what we have to say, and then answer us with Reason, if you can: I think we are in a proper Way, but they are not, my Lord; for (as I said) my Lords the Bishops are brought by the King's Writ upon our Motion for the King, not upon theirs; and now we have them here before the Court, We for the King will charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let these Gentlemen say what they will for them, they shall have their Time to speak; but certainly they ought not to obstruct the King's Proceedings, nor oppose the Reading of the Information to these noble Lords, who are brought here in Custody into Court, to this very Purpose, that they may be charged with this Information.

Mr. *S. Pemberton.* But we have somewhat to say before you can come to that, Mr. *Sollicitor.*

Mr. Sol. Gen. You ought not to be heard as yet.

Mr. *S. Pemberton.* Under Favour, we ought to be heard.

Sir *Robert Sawyer.* My Lord, Mr. *Sollicitor* has opposed our being heard, but we now desire he would hear our Answer to it; and that which we have to say, is this, That my Lords the Bishops are not here regularly in the Court to be charged with an Information; and if the Law be not with us in this Point, as we doubt not to make appear it is, no question but when your Lordship has heard what we have to say, you will give a right Rule in it. My Lord, we say, that by the Rules of Law, no Man ought to be charged with an Information or Indictment, by the express Statute of *Edward* the Third, unless he come into the Court by legal Process: That is a standing Rule, and the Practice of this and all other Courts is pursuant to it. Now in this Court you have several Processes that go out of this Court, and he that comes as taken by Virtue of a *Capias*, or an Attachment after a Summons, or by *Venire* in the Nature of a *Subpœna*; I say, he that comes in upon these Processes, may be charged with an Information: but where a Person is in Prison, committed by another Jurisdiction, and another Authority than that of this Court; when the Prisoner is brought here by *Habeas Corpus*, the first Thing the Court has to do, is to enquire whether he be legally committed; to that End the Retorn is filed, and the Party has leave to make his Exceptions to it, as we do in this Case. My Lords are brought here upon a *Habeas Corpus*, the Retorn of which has been read, and now the Retorn is filed, we are proper to move, that my Lords may be discharged; for you now see what they are committed for: it is for a Misdemeanor in making and publishing a Libel, that's the Matter for which they are committed; and it appears by the Retorn likewise, that they who are thus committed are Peers of the Realm; for so my Lords the Bishops all are, and for a Misdemeanor they ought not by Law to have been committed.

L. C. J. You go too far now, Sir *Robert Sawyer*; I would willingly hear you whatsoever you have to say; but then it must be in its due Time.

Mr. Att. Gen. This very Discourse (indeed I have heard) has pass'd up and down the Town for Law; we see now whence they had it.

Mr. Sol. Gen. I know it has heretofore been urged by me, but denied by them who now urge it, and I am glad that they now learn of me to tack about.

L. C. J. Look you, Gentlemen, do not fall upon one another, but keep to the Matter before you.

Mr. *S. Pemberton.* So we would, my Lord, if the King's Counsel would let us. First, we say, we being brought here upon a Retorn of a *Habeas Corpus*, there was neither at the Time of the Commitment Cause to imprison us, nor was there by the Warrant any Cause to detain us in Prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were committed by such and such Persons, Lords of the Privy-Council; but the Retorn doth not say, that it was done by them, as Lords of the Privy-Council, which must be in Council; for if it be not in Council, they have not Power to make such a Warrant for the Commitment of any Person; and that we stand upon. Here is a Retorn that is not a good Retorn of a legal Commitment, and therefore we pray my Lords may be discharged.

Mr. *Pollexfen.* Pray, my Lord, spare me a Word; that is the Thing we humbly offer to your Lordship's Consideration; and, under Favour, I think we are proper both as to the Matter, and as to the Time: The Retorn is now filed before you; if by this Retorn there appears to have been such a Cause to commit these Lords to Prison, as is legal, then we acknowledge they may in a legal Course be brought to answer for their Offence; but with Submission, it appears not by any thing that is in this Retorn, that my Lords the Bishops were committed by the order of the Privy-Council. All that is said, is, That they were committed by my Lord Chancellor, and those other Persons, named Lords of the Privy-Council; which we conceive is not a good Retorn; for they can do nothing as Lords of the Privy-Council, except only as they are in Council, and by Order made in Council; except that do appear, they have no Power to commit: Then take the Case to be so; here is a Man committed by one that has no Authority to commit him, and he is brought by *Habeas Corpus* into this Court, what shall the Court do with him? Shall they charge him with an Information? No, it does appear that he was in Custody, but under a Commitment,

by thoſe who had no legal Power to commit him; and therefore he muſt be diſcharged; and that we pray for my Lords the Biſhops. What the King's-Counſel may have to ſay to them afterwards, by Way of Information or otherwiſe, they muſt take the regular Methods of the Law to bring my Lords the Biſhops to anſwer; but as the Caſe ſtands here before you, upon this Retorn, it does appear, they had no Authority to commit them, by whoſe Warrant they were committed; and therefore this Court has nothing to do but to diſcharge them.

Mr. *Finch.* I beg your Lordſhip's leave to ſay one Word farther on the ſame Side: I think, with humble Submiſſion, this is the moſt proper Time for us to make this Motion; for here is a *Habeas Corpus* returned; this Retorn is filed, and then the King's Counſel move to charge my Lords the Biſhops with an Information. That Motion of theirs (we ſay) is too ſoon, unleſs my Lords are here in Court, I mean legally in Court; for no Man is in Court ſo as to be liable to be charged with an Indictment, or Information, that is not brought into Court by legal Proceſs, or as a Priſoner upon a legal Commitment: Then, my Lord, with humble Submiſſion, we ſay, that it doth appear by this Retorn, that my Lords the Biſhops are not here legally in Court, becauſe this Commitment of theirs was not a legal Commitment; and two Objections we have to it, the one is, that the Perſons committing had no Authority to commit; for the Retorn ſays, that it was by Virtue of a Warrant under the Hands of ſuch and ſuch, being Lords of the Council, and they (we ſay) have no Authority to do this. The other Objection is, that the Fact for which they were committed, they ought not to have been impriſoned for: The Fact charged upon them is in the Nature of a bare Miſdemeanor, and for ſuch a Fact it is the Right of my Lords the Biſhops (as Peers of the Realm) that they ought to be ſerved with the uſual Proceſs of *Subpœna*, and not to be committed to Priſon. Theſe are the two Objections that we have to this Retorn, and this is, under Favour, the proper Time for us to make this Objection, before the King's Counſel can charge my Lords the Biſhops with an Information.

L. C. J. What ſay you to it, Mr. *Attorney?*

Mr. Att. Gen. With Submiſſion, my Lord, theſe Gentlemen have out of Courſe, and prepoſterouſly, let themſelves into this Diſcourſe; and, when all is done, we muſt recur to that which we moved to your Lordſhip before, to deſire that your Lordſhip would order the Information to be read; and when we call my Lords to plead to the Information, then will be their proper Time to make this Objection; for 'tis a ſtrange Thing, certainly, for Men to make objections before they know what it is they are charged with! They ſay, the Ground of their Motion is, becauſe my Lords the Biſhops are here in Court upon the Retorn of an *Habeas Corpus*; and therefore they come in upon a Commitment (as they ſay) for that which they ought not to be committed for at all, and we cannot charge them, unleſs they be properly in Court. Now for that, it is true, if that Commitment of theirs were the only Thing that was here before the Court, then the Court would, if that Commitment were illegal, diſcharge them of that; but when a Man is preſent here in Court, brought into Court, let him come how he will, he is not to have any longer Time than that Inſtant to appear to, and be charged with the Information. 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a Man hath, as it were, an Eſſoyn, and may make his Excuſe, and he ſhall have Time; but when he is preſent in Court, either as a Perſon privileged, as an Officer, or as a Priſoner, he ſhall be charged preſently; and theſe Gentlemen are not to let themſelves into Invectives againſt the Commitment, thereby to keep off their being charged with the Information. Beſides that, it is ſtrange theſe Gentlemen ſhould know the Privilege of my Lords the Biſhops as Peers, better than all the Lords of the Council, who are moſt of them themſelves Peers; and they that make the Objection ſhould have conſidered, whether theſe Lords that made the Commitment, did not think themſelves concerned in all the Privileges of Peerage, as well as theſe ſeven Noble Lords!

Sir *Rob. Sawyer.* Is this an Anſwer to our Objection, Mr. *Attorney?*

Mr. Att. Gen. I ſay, it is a ſtrange Objection, and I anſwer, 'tis out of due time; for this we ſay, that my Lords the Biſhops being now here in Court as Priſoners upon a Commitment, and we deſiring to charge them with an Information, you are not to examine the Matter of their Commitment, and therefore I do inſiſt upon it, that the Information ſhould be read, and then you will conſider, whether they are not bound to plead to it.

Mr. *Finch.* My Lord, I hope Mr. *Attorney-General* will not think legal Objections to be Invectives.

Mr. Att. Gen. Truly I know not what you call legal Objections; I do not think yours are ſo, nor do I think legal Objections are Invectives; but I uſed that Expreſſion, as very proper for what you urged againſt the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about Words.

Mr. *Finch.* My Lord, we would not willingly have Words given us to quarrel at.

Mr. Sol. Gen. My Lord, the Queſtion is, Whether we are in the right Method of Practice, as to the Courſe of the Court, or they? It may be, theſe Gentlemen think to make us angry, and take Advantage of our being in a Paſſion.

Mr. *Finch.* Mr. *Sollicitor*, we deſire to have our Objections anſwered.

Mr. Sol. Gen. Nay, if you begin to be angry, Gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

Mr. Sol. Gen. It ſeems they would have an Anſwer to their Objections, but will not ſuffer us to give it; they would firſt examine, whether my Lords the Biſhops have been duly committed? That, we ſay, is not to be done by the Court as yet: Your Lordſhip ſees they are actually in Cuſtody, by a Commitment of the Lords of the Council; that appears by the Retorn before your Lordſhip, and for what they were committed. What do we now pray for the King? Firſt, we move for a *Habeas Corpus*, then that this Information may be read, and all is in order to bring this Fact, for which they were committed, to a Trial. 'Tis ſaid upon the Retorn, they were ſent to the Tower, for Contriving, Writing, and Publiſhing a Seditious Libel againſt the King's Perſon and Government; which, I think, is Crime enough for a Man to deſerve to be committed for: They would have you to diſcharge theſe Lords from this Commitment (the Retorn, as they ſay, being not legal) before the Information be read: But we think their Motion is irregular; for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your Lordſhip; and Mr. *Attorney* has exhibited an Information for the King, which is in the Nature of a Declaration at the King's Suit; and that in this Court, which is the ſupreme Court now in Being for the Trial of Matters of this Nature. We will come to that Queſtion, whether they were legally committed, when there is a proper Time for it. But now we find my Lords the Biſhops in Court, upon a Commitment for a great Crime: I repeat it again; it is for Contriving, Writing, and Publiſhing a Seditious Libel againſt the King's Perſon, and againſt the King's Government; and whether the King's Counſel ſhall not have Leave to make out this Charge by an Information, ſure, can be no Queſtion at all in this Court. I hear them mention the Statute of *Edward* the Third; but that is not at all to the Purpoſe; that is but what was offered in another Caſe that may be remembred, and offered by Way of Plea, and preſſed with a great deal of Earneſtneſs, but rejected by the Court; and now what could not be received then by Way of Plea, theſe Gentlemen would, by their Importunity, have you receive by Way of Parole at the Bar. I ſuppoſe the Deſign is to entertain this great Auditory with an Harangue, and to perſwade the weak Men of the World (for the Wiſe are not to be impoſed upon) that they are in the Right, and we in the Wrong. Under Favour, my Lord, we are in the Right for the King; we deſire this Information may be read, and let them plead what by Law they can to it, according to the Courſe of the Court: But that which they now urge, is untimely, and out of Courſe.

Sir *Rob. Sawyer.* My Lord, we offer this to your Lordſhip——

Mr. Att. Gen. Why, Gentlemen, you have been heard before your Time already.

Mr. *S. Pemberton.* Pray, my Lord, give us leave to anſwer what the King's Counſel have objected.

L. C. J. The King's Counſel have anſwered your Objections, and we muſt not permit Vying and Re-vying upon one another: If you have no more to ſay, but only as to the Matters that have been urged, you have been heard to it on both Sides already.

Mr. *S. Pemberton.* I would, if you pleaſe, anſwer what has been objected by the King's Counſel, and ſtate the Caſe aright.

Mr. Juſt. *Allybone.* Brother *Pemberton*, I do not apprehend that the Objection you make againſt this Commitment has any Weight in it. The Objection (as I take it) is this, That theſe Lords were not legally committed, becauſe they were committed (ſays the Retorn) by ſuch and ſuch Lords of the Council particularly named; and it does not ſpecify them to be united in the Privy-Council: Now truly, with me, that ſeems to have no Weight at all; and I will tell you why: If my Lord Chief Juſtice do commit any Perſon, and ſet his Name to the Warrant, he does not uſe to add to his Name, Lord Chief Juſtice, but he is known to be ſo, without that Addition. And would you have a different Retorn from the Lieutenant of the Tower to a *Habeas Corpus*, than the Warrant itſelf will juſtify? The Lords do not uſe to write themſelves Privy-Counſellors; they are known to be ſo, as well as a Judge, who only writes his Name, and does not uſe to make the Addition of his Office.

Sir *Rob. Sawyer.* Pray, my Lord, give me leave to be heard to this; I think truly it is a weighty Objection; for, under Favour, we ſay, it muſt upon the Retorn here appear, that they were legally committed, before you can charge them with an Information. I do not take Exceptions to the Warrant, becauſe it is ſubſcribed by ſuch Lords, and they do not write themſelves Lords of the Council; they need not do that: And the Retorn has averred that they are ſo; but the Retorn ought to have been, that it was by the Order of the Privy-Council, and ſo it muſt be, if they would ſhew my Lords to be legally committed, that they were committed by Order of the Privy-Council, and not by ſuch and ſuch particular Perſons, Lords of the Privy-Council. So in the Caſe put by Mr. Juſtice *Allybone*, of a Commitment by your Lordſhip or any of the Judges, it muſt be returned to be by ſuch a Warrant, by ſuch a one Chief Juſtice, for that ſhews the Authority of the Perſon committing, and then your Lordſhip's Name to it, indeed, is enough, without the Addition: But if it does not appear by the Retorn, that there was ſufficient Authority in the Perſon to commit, your Lordſhip cannot take it to be a legal Commitment. But now in this Caſe they could have no Authority to commit but in Council; and this Retorn ſeems to make it done by them as particular Perſons, and that's not a good Retorn, with your Lordſhip's Favour, upon which theſe Reverend and Noble Lords can be detained in Priſon. But what do they on the other Side ſay to this? Why, we ſhall be heard to it anon: But, my Lord, they very well know, it would be too late for that Effect which we deſire of our Motion, and therefore we lay the Objections before you now in its proper Time: (ſay we) you ought not to read any Information againſt us, becauſe we are not legally here before the Court; and ſure, that which was ſaid by the King's Counſel, that your Lordſhip may charge any one that you find here in Court, which way ſoever he comes in, cannot be legal.

Mr. Att. Gen. Who ever ſaid ſo?

Sir *Rob. Sawyer.* I apprehend you ſaid ſo, Mr. *Attorney*, or elſe you ſaid nothing.

Mr. Att. Gen. Sir *Robert Sawyer*, You of that Side have a Way of letting yourſelves in to ſay the ſame things over again, and of making us to ſay what you pleaſe.

Sir *Rob. Sawyer.* Truly I did apprehend you laid down that for Doctrine, which I thought a very ſtrange one; for we ſay, with your Lordſhip's Favour, he that is in Court without a legal Proceſs, is not in Court ſo as to be charged with an Information.

Mr. *S. Pemberton.* My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the Perſon accuſed is to be brought in by legal Proceſs: Then if we be not here by legal Proceſs, the Information cannot be charged upon us; and if we ſuffer it to be read, it will be too late for us to make this Objection.

L. C. J.

L. C. J. That you have all said over and over, and they have given it an Answer.

Mr. Att. Gen. Pray, Mr. Serjeant, will you make an End? You have repeated your Objection over and over, I know not how often, and will never be contented with our Answer.

Mr. Just. *Allybone.* Sir *Robert Sawyer*, that which you said in Answer to the Case I put, methinks does not answer it: For if the Retorn be as good, that it was by a Warrant from such an one, Lord Chief Justice, as if my Lord Chief Justice had added the Title of his Office to his own Name, when he subscribed the Warrant; then this Retorn, That this was done by such and such Lords of the Council, must be as good as if they had added that to their own Names.

Sir *Rob. Sawyer.* That is not our Objection.

Mr. Att. Gen. Your Objection has been heard, and answered; we pray the Information may be read.

Mr. *S. Pemberton.* No, we are not come to that yet.

Mr. Just. *Allybone.* Pray, would you have an Averment by the Lieutenant of the *Tower*, in his Retorn to an *Habeas Corpus*, that it was done by them in the Council-Chamber?

Mr. *Finch.* My Lord, the Difference is this, with Submission; a Commitment by Sir *Robert Wright*, Chief Justice, is a good Commitment, and a Retorn of that Nature were a good Retorn, because he is Chief Justice all over *England*, and hath Authority to commit wherever he is; but a Commitment by such an one, or such and such Lords of the Privy-Council, cannot be a good Retorn of a Commitment; because, though they be Lords of the Council, yet neither single, or apart, nor all together, have Authority to do such an Act, unless they be assembled in the Privy-Council: There their Authority is circumscribed; so that that must needs be a great Difference between a Commitment made by a Judge who is always so, and a Commitment by a Lord, or so many Lords, by the Name of Lords of the Privy-Council, who carry not their Authority about with them, but are limited to their Assembly in Council.

Mr. Just. *Allybone.* Mr. *Finch*, Indeed your Objection is worth something, if my Lord Chief-Justice could not act but as under the Character of Chief Justice; for you are now arguing, that these Lords could not do this Act, but as Lords of the Council in Council: The same (say I) may be said of a Commitment by the Lord Chief Justice; he cannot do it but under the Formality of his Authority, as he is Chief Justice, unless you will make it impossible for him to do any thing but as Chief Justice; or unless you make it impossible to separate his Person from his Authority.

Mr. *Finch.* Sir, the Difference lies here; the Authority of the one is general and universal, and goeth with him wherever he goes; the other's Authority is limited to a particular Sphere.

Mr. Just. *Allybone.* Why, would you have it averred, that they did it, being assembled in Council?

Mr. *Finch.* Under Favour, they cannot justify any thing that was done by them as Lords of the Council, but in the Privy-Council.

Mr. Just. *Powell.* Truly, my Lord, for my Part, I think there is no such great Necessity of Haste in this Matter: Here are Exceptions taken to this Retorn; and the Matter transacted now before us, appears to me to be of very great Weight; peradventure a greater or a weightier has not been agitated in this Place in any Age: It concerns these Noble and Reverend Lords in Point of Liberty: It comes suddenly upon us, and therefore, my Lord, I think it very fit we should consider a little of this Matter, and consult the Precedents of Retorns, how they are; for there are Multitudes of Retorns of Writs of *Habeas Corpus* in this Court; therefore it were requisite, that we did consult the Forms of other Retorns, and how the Precedents, as to this Matter, have always been: If they are according as this is, then all is well; but if they be otherwise, it is fit we should keep to the usual Forms.

L. C. J. What's your Opinion of it, Brother *Allybone?*

Mr. Just. *Allybone.* I am still of the same Mind I was, my Lord, That he could make no Retorn but this Retorn he has made; and if his Warrant was insufficient upon this Account, that these particular Persons, Lords of the Privy-Council, did this Act without saying, that they did it in Privy-Council; then 'tis not his Retorn that could mend it; and truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a sufficient Averment, this that is in the Retorn.

Mr. *Pollexfen.* They are Lords of the Council every where; but they do not act as Lords of the Council any where but in Council.

Mr. Just. *Allybone.* So my Lord Chief Justice is Chief Justice every where.

Mr. *Finch.* And he can do judicial Acts, as such, every where; but the Lords of the Council cannot act but in the Council.

Mr. Just. *Allybone.* Nor is it to be presumed that they do it.

Mr. *Finch.* It is not a Presumption that is to make any thing in this Case, but the Question is, whether here be a legal Retorn of a legal Commitment?

Mr. Just. *Allybone.* Such Publick Persons, in such publick Acts, can never be presumed to act in their separate private Capacities.

Mr. *Finch.* But, with Submission, your Lordships can judge only what is before you in this Retorn, whether it be a good Retorn, and whether here be a good Authority asserted in the Persons that did commit my Lords the Bishops?

L. C. J. Truly, as to this Objection and Exception that has been made by them, I have considered of it, and what has been said on all Sides, and I think 'tis the usual way of Commitment; I never saw any other; all the Warrants that ever I saw, are of this Form; if there were any Precedents, they should be shewn of that Side.

Sir *Robert Sawyer.* There are Multitudes of Precedents otherwise, and none of this Form.

L. C. J. I confess, 'tis a Case of great Weight, and the Persons concerned are of great Honour and Value; and I would be as willing as any Body to testify my Respects and Regards to my Lords the Bishops, if I could see any thing in it worth considering of.

Mr. Sol. Gen. There's no Colour for it, if they do but look upon the Statute of the 16th and 17th of the late King, which arraigns the Proceedings of his Privy-Council: That tells you what Things belong to the Cognizance of the Privy-Council, and what not; and there you have all the Distinctions about Commitments by the King and Council, and by the Lords of the Council: And that Act will shew, that this is a Commitment according to the usual Form. They know very well what the common Stile of the Orders and Commitments of Council is, as in other Places, and other Commitments. By such an one, Chief Justice, that is the Stile that is very well known for such Warrants: So a Commitment by such and such, naming them particularly, *Lords of the Council*, that's an Order made by the *Lords in Council*; and that Statute distinguishes between Commitments of one Sort and the other; and it does it, because sometimes Warrants run in one Form, and sometimes in another; but they all come within the Direction of that Statute. My Lord, we are in a plain Case, my Lords the Bishops come regularly before you, upon a Commitment by the Council; and therefore we pray they may be charged with this Information.

Sir *Robert Sawyer.* Pray, will your Lordship give us leave to have that Statute look'd into, which Mr. *Sollicitor* speaks of; and then we shall see whether it be to his Purpose.

L. C. J. Let the Statute be read.

Mr. Sol. Gen. If it be *Keeble*'s Book, it is the 16th of *Charles* the First; if it be the old Book, it is the 16th and 17th of *Car.* towards the End.

Clerk Reads. Provided always, and be it enacted, that this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star-Chamber; and to the said Court holden before the President and Council in the Marches of Wales, and before the President and Council in the Northern Parts.

Mr. Sol. Gen It is the Paragraph before that.

Clerk Reads. And be it also provided and enacted, that if any Person shall hereafter be committed, restrained of his Liberty, or suffer Imprisonment, by the Order and Decree of any such Court of Star-Chamber, or other Court aforesaid, now, or at any time hereafter, having, or pretending to have the same, or like Jurisdiction, Power, or Authority to commit, or imprison, as aforesaid; or by the Command or Warrant of the King's Majesty, his Heirs or Successors, in their own Persons; or by the Command or Warrant of the Council-Board, or of any of the Lords, or others of his Majesty's Privy-Council; that in every such Case, every Person so committed, restrained of his Liberty, or suffering Imprisonment, upon Demand——

Mr. Sol. Gen. That is all: Your Lordship sees these several Distinctions of the Stile of Commitment.

Mr. Att. Gen. Now, pray favour us a little. My Lord, I think these Gentlemen will not deny, but that the Lords of the Council can commit. I must confess, they ask that which was pretty reasonable, if the Case was as they would make it. They would have my Lords the Bishops discharged, because there is not a Retorn of a good Commitment, and that stands upon this Presumption, that what is here said to be done by all these Lords, at the End of whose Names this is added, *Lords of the Privy-Council*, was done by them out of Council, which, I suppose, your Lordship will not presume, but will take it, that they did this as Lords of the Council in Council; and no Man can say, but the Lords in Council can commit.

Mr. Sol. Gen. You may as well presume upon a Warrant made by my Lord Chief Justice, because it is not said where he did it, and therefore he did it in *Scotland*.

Mr. Att. Gen. I say again, unless your Lordship will presume that which is not to be presumed, this must needs be a very good Retorn.

Mr. Just. *Allybone.* Truly (as Mr. *Sollicitor* says) you may as well desire us to presume, that my Lord Chief Justice would commit a Man in *Ireland* or *Scotland*; I can see no imaginable Difference.

Mr. *Finch.* My Lord, that which we pray, is, not that your Lordship would presume, but that you would not presume, but take the Retorn as 'tis before you; and then see whether it can be thought to be a Commitment by the Lords in Council?

Mr. *S. Pemberton.* Pray, my Lord, spare us a little in this Matter: Here has been the Clause of a Statute read to you, from whence Mr. *Sollicitor* would conclude, that all Commitments by several Sorts of Persons there named, are legal; or else the Enumeration of the several Sorts of Commitments signifies nothing to this Purpose. But I pray your Lordship would consider this, that the very Scope and End of that Act of Parliament is, to relieve against illegal Commitments and Oppressions; then the several Commitments therein named, can never all be called legal; so that this signifies nothing to our Purpose. My Lord, they tell us we stand upon Presumption: No, we do not so; we say your Lordship ought not to presume the one or the other, but to judge upon what is before you: But here is nothing before you but this Retorn of a Commitment of these noble Persons, my Lord the Archbishop of *Canterbury*, and the rest of the Bishops, which is said to be by these particular Lords. Now if your Lordship will please to give us Time to look into it (for this is an Exception we take at the Bar upon hearing the Retorn read), we would shew the constant Way has been quite otherwise than this Retorn makes it; therefore we desire Leave to satisfy your Lordship concerning the usual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy-Council, and then he should have set forth the Warrant itself, which would have shewn the Names of the Privy-Counsellors, and he needed not to have put their Names in the Retorn, as the particular Persons that committed them: But now, my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Retorn is that which is before you, and you are to judge only upon what is before you.

L. C. J. So we do.

Mr. Just. *Allybone.* Pray, Sir *Robert Sawyer*, would the Saying of a Governor of the *Tower*, in his Retorn to a Writ of *Habeas Corpus*, alter the Nature of the Commitment?

Mr. Att. Gen. My Lord, we are in your Lordship's Judgment.

Mr. Just. *Allybone.* I say, Brother *Pemberton*, would any collateral Saying of the Lieutenant of the *Tower* alter the Nature of the Thing, his Retorn

Retorn in this Case is only an Inducement to the Warrant of Commitment, and his saying one way or t'other would neither vitiate nor mend the Commitment.

Mr. Sol. Gen. Your Lordship cannot take Notice of the Commitment but from the Warrant.

Mr. *Pollexfen.* The Retorn is the Fact upon which you are to judge.

Mr. Just. *Powell.* Certainly we must judge of the Record, and nothing else, and the Retorn is the Record now, being filed.

L. C. J. The Retorn is as certain, I think, as can be.

Mr. Sol Gen. By the Retorn it appears, the Bishops were committed by the Warrant of such and such Lords of the Council, and that which is before you now is, whether you will not intend it to be done by them in Council?

Mr. Just. *Powell.* We can intend nothing, but must take the Retorn as 'tis.

L. C. J. The Warrant is good enough, I think truly, and so is the Retorn.

Mr. Pollexfen. I think in all the *Habeas Corpus*'s that have been since the King's Return, of Persons committed by the Council, the Retorns have been quite otherwise than this Retorn is. We do all pretty well agree (for aught I can perceive) in these two Things, We do not deny but the Council-Board has Power to commit; they on the other Side do not affirm, that the Lords of the Council cannot commit out of Council.

Mr. Att. Gen. Yes, they may, as Justices of the Peace.

Mr. *Pollexfen.* This is not pretended to be so here.

L. C. J. No, no, that is not the Case.

Mr. *Pollexfen.* Then, my Lord, with Submission, I will compare it to any thing else of this Nature. I deny not but that the Council may commit, but the Question is, Whether this Retorn of their Commitmen tbe right? Suppose there should be a Retorn to a *Habeas Corpus*, that such a one was committed by Sir *Robert Wright*, and three others by Name, Justices of this Court, for a Contempt, without saying, that it was done in Court, this would be an ill Retorn: Although they had Power in Court to commit for a Contempt, yet it must appear, that it was done in Court, or it cannot be a good Retorn. If I had thought or foreseen, that such a Retorn would have been made, I could easily have made out our Objection; but we could not foretel what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the great Case of the *Habeas Corpus* concerning my Lord *Hollis*, and those other Gentlemen who were in Prison upon Commitments by the Privy-Council, the Retorns are, that they were committed by Order of the Privy-Council, as near as I can remember. I will not take it upon me to be positive in it, but I believe, if your Lordship thought fit to give us a short Time to look into it, we should be plainly able to shew you, that all the Retorns of Commitments of this Nature, are said to be by Order of the Council-Board, and never any of them naming the Lords; for that may be true, and yet not a legal Commitment.

L. C. J. I have seen several Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Retorn, because that only sets forth the Warrant.

Mr. *Pollexfen.* The Commitment you are to judge of, is upon the Retorn, with Submission, and supposing the Warrant to be right and good, yet the Retorn is not legal.

Mr. Att. Gen. We say in common Understanding, it cannot be but a Commitment in Council.

Mr. *S. Pemberton.* But common Understanding and legal Understanding are two Things, and we pray the Judgment of the Court.

Mr. Sol. Gen. And so do we, my Lord, and pray your Rule in it.

Mr. Just. *Allybone.* You may by the same Reason say, That upon all Commitments by Warrant from Justices of the Peace, that the Commitment was out of the County, if the Party does not alledge in the Warrant, or Retorn, that the Commitment was in the County. 'Tis an Objection that would put us upon presuming what we have no Reason to presume.

L. C. J. If you would have our Opinions, let my Brothers declare theirs, I will soon tell you my Mind.

Mr. Just. *Holloway.* Pray let the Retorn be read again. [*Which was done.*

Mr. Att. Gen. So that the Retorn says, they were committed by Virtue of a Warrant of such and such by Name, Lords of the Council, and whether this be a Warrant of the Council is the Question; and we think it is plain enough, that 'tis a good Retorn.

Mr. Just. *Powell.* I have given you my Thoughts already: I think we ought to consult Precedents in a Case of this Weight and Nature; and truly I will not take upon me to say, whether it be a good Retorn or not a good Retorn, without looking into Precedents.

Mr. Just. *Allybone.* For my own Part, it does not stick at all with me, for the Reasons I gave before. When any Man that has an Authority to commit, does commit a Person to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Watrant, by which the Party was committed, and whatsoever he says by the Bye, cannot have any Influence, one way or other, to alter the Nature of the Thing. Now unless you would make every Man that is a Justice of the Peace, to write his Name, and stile himself Justice of the Peace, this must be a good Commitment. Every Commitment shall be presumed to be pursuant to the Power of the Person committing; and I am sure, take these Lords separately, and they had no Power to commit, and consequently such a Warrant would be no Authority to the Lieutenant of the *Tower* to receive them: But when they send such a Warrant as this, we shall presume it to be according to the Power they have, and not according to the Power they have not. This Warrant is returned by the Officer, and I cannot but presume that it is all very well.

Mr. Just. *Holloway.* My Lords, I am very desirous and willing your Lordships should have all the Right and Justice done you that can be, and, by the Grace of God, I will endeavour it all I can. I see in this Case it is agreed on both Sides, that the Council have a Power to commit, and the Commitment is here certified in the Words of the Warrant, and the Lieutenant has made his Retorn, that they were committed by Virtue of this Warrant. If the Lieutenant of the *Tower* had returned any other Commitment, you would have blamed him for a false Retorn; but now you find Fault with his Retorn, because he does not say, the Warrant was made by the Lords of the Council, and in Council: That is a thing so notoriously known to all the Kingdom, that my Lords were sent to the *Tower* by the Council, that nobody doubts it; and being thus sent by this Warrant, I do not see but that this is a very good Retorn, and my Judgment is, that the Information ought to be read.

L. C. J. I told you in the Beginning, after you had made your Objections, that I thought it was as all other Retorns are; and I am of the same Opinion still, I find no fault with the Warrant, nor with the Retorn.

Mr. *S. Pemberton.* There is no Objection to the Warrant at present upon this Question.

L. C. J. Neither do I take upon me to say any thing, nor is there any thing now to be spoken of touching the Fact for which these Noble Lords were committed.

Mr. Att. Gen. We pray, my Lord, the Information may be read.

Mr. Just. *Holloway.* There is no Question about the Fact; but whether this be a good Retorn which is here made, that they were committed by such and such Lords of the Council?

L. C. J. I would do as much to give my Lords the Bishops Ease, and set them at Liberty, as I could possibly by Law; but we must not break the Rules of Law for any one.

Mr. Sol. Gen. Pray read the Information.

Mr. *Finch.* No, my Lord, we oppose the reading of it.

Mr. Sol. Gen. Why! Will not you be satisfied with the Opinion of the Court?

Mr. *Finch.* We have another Thing to offer, which we must have the Opinion of the Court in, before this Information can be read.

Mr. Att. Gen. Pray let us hear what it is?

Mr. *Finch.* My Lord, we did humbly offer one Objection more to your Lordship against the reading of the Information: The former Objection was concerning the Persons committing, in that it does not sufficiently appear upon the Retorn, that they were committed by the Lords in Council; the Court have given their Opinion in that: But the other Objection still remains, whether they ought to have been committed at all; and therefore when they now appear upon this *Habeas Corpus*, we say they were not legally committed to Prison, because a Peer ought not to be committed to Prison in the first Instance for Misdmeanor.

Mr. Sol. Gen. If you please you may speak to that by and by; but that is not proper now for you to offer, or for the Court to determine, whether a Peer may be committed upon an Accusation for a Misdemeanor?

Mr. *Finch.* With Submission, that is such a Difficulty that lies in the way against the reading of the Information, that you must get over it, before you can come at the reading of it.

Mr. Att. Gen. You will have your Time for all this Matter by and by; but certainly you cannot be admitted to it yet.

L. C. J. Truly I think you are too early with that Exception.

Mr. *Finch.* With Submission, we think this is the proper Time, and I will tell your Lordship the Reason why.

L. C. J. Mr. *Finch*, certainly every thing in the World that can be said, you will say for Clients, and you shall be heard; for we are very willing to deliver these noble Lords, if we can by Law, and if the Exceptions you make be legal.

Mr. *Finch.* My Lord, we do not doubt your Justice; and therefore we desire to offer what we have to say in this Point: The only Question (now, it seems) is about our Time of making our Exception. Mr. *Attorney* (we apprehend) did say one thing which was certainly a little too large; that however any Man comes into Court, if the Court find him here, they may charge with an Information.

Mr. Att. Gen. Who says so? I said no such thing.

Mr. *Finch.* Then I acquaint Mr. *Attorney* of it, he did not say so: Then both he and I agree the Law to be, That a Man does not come into Court, if he does not come in by legal Process, he is not to be charg'd with an Information: Then, since we do agree in that Proposition, certainly we must be heard to this Point, Whether we are here upon legal Process, before you can charge us with this Information?

Mr. Att. Gen. You think you have said a fine thing now, and take upon you an Authority to make me agree to what you please.

Mr. *Finch.* Certainly the Consequence is plain upon your own Premises.

Mr. Att. Gen. Do you undertake to speak for me?

Mr. *Finch.* I am in the Judgment of the Court, and to them I leave it.

Mr. Att. Gen. I know you thought you had got an extraordinary Advantage, by making me say what you please; but there has been very little said, but what has been grounded upon Mistakes all along. This is that I do say, If a Man comes in voluntarily upon any Recognizance, though he be not in Custody; or if he comes in upon any Process, if the Court find him here, though that Process be not for the thing charged in the Information yet the Court is so much in Possession of the Person; that he shall plead to any Information; and that I do say, and will stand by.

Mr. Sol. Gen. My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a greater and nobler Assembly than usually we have here) and these Gentlemen to shew their Eloquence and Oratory, would, by converting Propositions otherwise than they are delivered, put another Meaning upon them, and so draw strange Inferences from them. But these Arts, we are sure, will not prevail here; we say plainly, and we are sure the Law is so (let them apprehend what they will); that your Lorship cannot exhibit an Information to any Man that you find accidentally here in Court. Then, says Mr. *Finch*, we are agreed: But withal (say I) take my other Proposition; If a Person be brought into Court by legal Process, or upon any Contempt whatsoever, by an Attachment or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordship may certainly charge him with an Information. When these Gentlemen, who are so eager on the other side did preside here, and stood in the Places where Mr. *Attorney* and I now are; I can name them abundance of Cases of the like nature with this, when Men have been compelled to appear to Informations, and plead presently: They are the Persons that made the Precedents; they made the

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Law for aught I know: I am sure I find the Court in Possession of this as Law, and we pray the usual Course may be followed.

Mr. *Finch.* Pray, my Lord, spare us a Word in this Matter: I do agree with Mr. *Attorney* in this Matter, but I do not agree with Mr. *Sollicitor.*

Mr. Sol. Gen. You do not agree with yourself.

Mr. *Finch.* I hope I do, and always shall agree with myself; but I do not agree with you, Mr. *Sollicitor.*

Mr. Sol. Gen. You do not in 1688, agree with what you were in 1680.

Mr. *Finch.* Says Mr. *Attorney*, a Man that comes voluntarily in cannot be charged with an Information; with him I agree. Says Mr. *Sollicitor*, a Man that comes in, and is found in Court by any Process, may be charged with an Information: I say no, if the Process be wholly illegal; for he cannot be said to be legally in Court. Suppose a Peer of the Realm be taken upon a *Capias*, and is committed to the *Marshalsea*, and is brought up upon a *Habeas Corpus*, I would fain know, whether you could declare against him?

Mr. Att. Gen. No, we cannot.

Mr. *Finch.* And why is that, but because the Process is illegal, and he is not truly in Court: Then is it a proper Time now to make this a Question, Whether my Lords here were legally committed, before you can lay any Thing to their Charge by way of Information? For if the Commitment be illegal, it is a void Commitment; and if the Commitment be void, the Process is void, and then my Lords are not legally in Court.

L. C. J. That sure is but returning again to the same Question that has been determined already.

Mr. Sol. Gen. If your Lordship will permit them to go over and over the same things, we shall never have an End.

Mr. *Finch.* My Lord, we pray these Gentlemen of the King's Counsel may be a little cool with us, and then they will find, we do not talk the same things over and over again, nor meddle with that which the Court have given their Judgment in.

L. C. J. Well, go on, Sir.

Mr. *Finch.* My Lord, we say it is the Privilege of the Peers of *England*, that none of them shall be committed to Prison for a Misdemeanor, especially in the first Instance, and before Judgment. This (we say) is the Right of my Lords the Bishops, and that which they claim as Lords of Parliament. Now it appears upon this Return and the Warrant, that the Council-Table hath committed them (for your Lordship and the Court hath ruled it, that this Commitment must be taken to be by Order of the Privy-Council, and we meddle not with that further); but we say that the Council-Table may commit a Man unjustly, that is certain. There has been Relief often given in this Court against Commitments by the Council-Table: And that they were unjustly committed, depends upon that Point of their Privilege as Peers.

Mr. *S. Pemberton.* My Lord, we say, that the Lords of the Council have illegally committed these Noble Persons, who are Peers of the Realm, and ought to have the Privilege of their Peerage, which is not to be committed for a Misdemeanor; that the Council ought not to have done: For the Peers of *England* ought no more to be committed for a Misdemeanor, and to be imprisoned, especially upon the first Process, than they may be in a Case of Debt. It is true, in the Case of Treason, Felony, or the Breach of the Peace, the Peers have not such a Privilege; they may be committed: But for a Misdemeanor (as this does appear to be in the Warrant of Commitment) they ought not to be committed. But they were committed by the Lords of the Council; and we now complain of this to your Lordship as illegal, and therefore pray my Lords may be discharged.

Sir *Rob. Sawyer.* Will your Lordship be pleased to favour me a Word on the same side, for my Lords the Bishops. It must be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a Declaration; and the Reason is, because the Process is illegal: Then, my Lord, with Submission, when a Peer comes upon a Foreign Commitment, and is brought in Custody upon a *Habeas Corpus*, this is either in the Nature of a Process, or a final Commitment, as a Judgment; they will not say, that this is a good Commitment, so as to amount to a Judgment; for the Council-Board could not give a Judgment in the Case; besides, the Commitment is illegal, because it is not a Commitment till they find Security to answer an Information here, but 'tis a Warrant to keep them for a Misdemeanor: Besides, there is another thing we have to say to this Warrant (for I am making Objections against the Validity of this Commitment), it does not appear that there was any Oath made, and therefore the Court must adjudge that there was no Oath made, and then no Men ought without Oath to be committed, much less a Peer. But that which we chiefly rely upon is, That my Lords ought not to have been committed for this, which is but a Misdemeanor at most: And if they use it, as Process, to bring my Lords the Bishops to answer an Information, we say, by the Law no such Process can be taken out against the Persons of Peers for bare Misdemeanors. I do agree, that for Felony, Treason, or Surety of the Peace, the Persons of Peers may be committed; and that which is called Surety of the Peace in our Books, Mr. *Sollicitor* knows very well, in some of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the Meaning, in short, is, that it is such a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it should mean a Breach of the Peace by Implication, as all Trespasses and Misdemeanors are said to be *contra Pacem* in the Indictment, or Information, then it were a simple thing to enumerate the Cases wherein Privileges did not lie; for there could be no Information whatsoever, but must be *contra Pacem*, and so there could be no such thing as Privilege at all. And besides, we say, the very Course of this Court is contrary to what they would have; for in the Case of a Peer, for a Misdemeanor, you go first by Summons, and then you do not take out a *Capias* as against a common Person, but the next Process is a *Distringas*, and so *ad infinitum.* And I do appeal to them on the other side, and challenge them to shew any one Precedent, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Case of an apparent Breach of the Peace; for he must be charged in Custody, and there must be a *Committitur* to the Marshal, to entitle the Court to proceed. Your Lordship will find but very few Precedents of Cases of this Nature about common Persons; for till within these fourteen or fifteen Years there was no such thing ever done against a common Person: But this was the Rule: First there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Process, and then the Court would charge him presently; but if he did appear upon the Summons, they would not charge him, but he had Time to take a Copy of the Information, and an Imparlance of course, till the next Term, before he could be compelled to plead. But in the Case of a Peer, there never was any such Precedent as the Attaching his Person, but only a Summons and Distress: And I would be glad the King's Counsel would shew, that ever there was any such Process taken out against the Person of a Peer, for a meer Misdemeanor. My Lord, 'tis plain, what Breach of the Peace means in every Information; and I only speak this to acquaint the Court how the constant Proceedings in all these Cases have been. These Informations were antiently more frequent in the *Star-Chamber*; and what was the Process there? Not the common Process of a *Subpœna*, that was not the Course there; but the Process was a Letter from the Chancellor; that if the Party upon that Letter did not appear, in a common Case, there went out an Attachment; but in a Peer's Case never: And so it appears by *Crompton's Jurisdiction of Courts, Tit. Star-Chamber* 33. This appears likewise by the Proceedings in Chancery against the Peers, till the Queen's Time. They did not so much as take out an Attachment after Default upon a *Subpœna*, but they would then, in the Queen's Time, be so bold as to take out an Attachment against a Lord for not appearing; but that Course was condemned as illegal; so we find in my Lord *Dyer.*

Mr. Att. Gen. That was at a common Person's Suit.

Sir *Robert Sawyer.* But the Proceedings in the *Star-Chamber* were at the King's Suit, and I am sure Mr. *Sollicitor* knows, that the Peers Privileges reach to Informations; but, as I was saying, it was so adjudged as to the Chancery in my Lord *Cromwell's* Case, 14 *Eliz. Dyer*, 315.

L. C. J. You take a great Compass, Sir *Robert Sawyer*; but pray remember what you laid down at first, for the Ground of your Discourse, That there was never any Commitment of a Peer for a bare Misdemeanor: You must keep to that; that is the Point you are to look after.

Sir *Robert Sawyer.* My Lord, I will so; I do not cite these Cases but for this Purpose, to shew, that in all Courts the Peers have particular Privileges; and I am sure they can produce you no Precedents for any such Proceedings against a Peer. In my Experience of these Matters, I never knew any such; nay, I knew it always to be otherwise, that in Informations for Misdemeanors, there did never issue out a *Capias* against a Peer: And Mr. *Attorney* knows very well, it was so in the late Case of my Lord *Lovelace*; for that Case of my Lord *Devonshire*, that it was an express Breach of the Peace, though it was debated and disputed then; so that I take it, these Noble Lords cannot be charged with this Information, because they do not come in by legal Process; and unless they can shew me any Cases, where a Peer did ever come in upon such a Commitment, and answered to an Information upon that Commitment, it must certainly be allowed not to be the legal Course; though if such a Precedent could be shewn, that passed *sub Silentio*, without Debate or solemn Determination, that would not do, nor could bind the rest of the Peers. If one Man would lose a particular Benefit he has, all the whole Body must not lose it; and the Benefit is not small, of Time to make his Defence; of Imparling, of taking a Copy of the Indictment, and preparing himself to plead as his Case would bear; and indeed a common Person has used to have these Privileges, though in some Cases of late, they have taken the other Course; and if a *Capias* went out (which we say cannot go against a Lord) and the Party were brought in, he was to answer immediately. Now, my Lord, I take it, that the Privileges of Peers is in all Times the same with the Parliamentary Privilege in Parliament-Time, which reacheth to Informations, as well as other Actions. My Lord *Coke* is express in this Point, in the 4 *Instit.* 25. If that Objection should hold good, that every Information being *contra Pacem*, that should be a Breach of the Peace, then (as I said before) Privilege will hold in no Information, which is contrary to that and all our other Books: 'Tis only such a Breach of the Peace, as for which Security of the Peace may be required. But further, that this is a Privilege enjoyed by the Peers, Spiritual as well as Temporal, I suppose will not be denied; for I think they will not question, but that the Bishops and Abbots that were Lords of Parliament were Peers; and we find in our Books, when the Court has been moved for a *Capias* against an Abbot, if he were a Mitred Abbot, and sat in the Lords House, it was always said, that no such Process ought to go; and so it is in the Case of Bishops: But indeed for other Noblemen, the Difference is this: Where it does not appear upon Record, that they are Lords in Parliament, there the Courts have put them to bring their Writs of Privilege; but where it does appear upon Record, that they are Peers, the Court is to allow and take Notice of their Privilege; and there needs no such Writ. Now that the Parliament Privilege, and the Privilege of Peers (as to their Persons) is the same, appears by the Form of the Writ in the *Register*, *Fol.* 287. *Fitz. Herb. Nat. Brev.* 247. The Words of the Writ are these, That if such a one be sued at the Suit of another, the Writ commands, that a Peer out of Parliament-Time should have the same Privilege with those summoned by the King to the Parliament; and I know not any Difference that can be put between them; and it cannot be denied, that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament Privilege: So that upon these Grounds, I do press that my Lords the Bishops may be discharged. If there be any Information against us, we are ready to enter our Appearance, to answer it according to the Course of the Court: But if the Information be for no other thing than what is contained in the Warrant of Commitment, then their Persons ought to be privileged from Commitment.

Mr. *Pollexfen.*

Mr. *Pollexfen.* If your Lordſhip pleaſe to take it altogether, you will find it a Caſe very well worth your Conſideration, it being the Caſe of all the Peerage of *England.*

Mr. Att. Gen. My Lord, theſe Gentlemen have taken a great deal of Liberty, and ſpent much of your Time in making long Arguments, and after all, truly, I do not know where to have them, nor can underſtand what they would be at. It ſeems they agree, that for Treaſon, Felony, and Breach of the Peace, a Peer may be committed.

L. C. J. That is, ſay they, ſuch a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. Att. Gen. Then all the Learning they have been pleaſed to favour us with is at an End; for if here be any thing charged upon the Biſhops, for which Sureties of the Peace may be required, then this is a good Commitment.

L. C. J. That they muſt agree upon their own Arguments.

Mr. Att. Gen. Can then any Man in the World ſay, that a Libel does not require Sureties of the Peace? For we muſt now take it as it is here upon this Retorn. How my Lords the Biſhops will clear themſelves of it, is a Queſtion for another Time; but the Warrant ſays, they were committed for Contriving, Framing, and Publiſhing a Seditious Libel againſt his Majeſty, and his Government: Is there a greater Miſdemeanor? Or is there any thing on this Side a capital Crime that is a greater Offence? Is there any thing that does ſo tread upon the Heels of a capital Offence, and comes ſo near the greateſt of Crimes that can be committed againſt the Government? Not to enlarge at this Time upon what the Conſequences of ſuch Things may be; is there a greater Breach of the Peace than ſuch Seditious Practices? No doubt, any Man may be committed for it, and may be bound to find Sureties for his good Behaviour.

Sir. *Rob. Sawyer.* I ſay Sureties of the Peace, not of the good Behaviour.

Mr. Sol. Gen. Pray my Lord, would you conſider where we are; we are going towards *France*, I think, or ſome farther Country: They have ſet us out to Sea, and I do not ſee after this rate, when we ſhall come to Land. Certainly, theſe Gentlemen are mightily out of the Way, and would fain have us ſo too! We are here upon a ſingle Queſtion, as this Caſe ſtands before your Lordſhip, upon the Retorn. Here is a Libel, a Seditious Libel, ſaid to be contrived, made and publiſhed againſt the King and his Government, by theſe Noble Lords the Priſoners. This is the Accuſation; ſuppoſe this be true, that is to be proved hereafter; I hope they are innocent, and will prove themſelves ſo: But ſuppoſe it to be true, that they have made a Seditious Libel againſt the King and his Government, will any Man ſay, that this is not done *Vi & Armis?* This is a Libel with a Witneſs; nay, two or three Degrees more will carry it to High-Treaſon, and all the Informations that were exhibited by Sir *Robert Sawyer*, when he was *Attorney-General* (and he exhibited a great many for Libels), conſtantly theſe Words were in, *Vi & Armis & contra Pacem.*

Biſhop of Peterborough. Was it ſo in your own Caſe, Mr. *Solliciter?*

Mr. Sol. Gen. Yes, it was ſo in my Caſe, and you were one of them that proſecuted me, for aught I know; or if you did not proſecute me, you preached againſt me; or if you did not, ſome of your Tribe did: But ſo, my Lord, it was in many other Caſes, within Time of Memory. Sir *Robert Sawyer* has paſs'd a Compliment upon me, of my great Skill in Parliament Matters; but truly there needs no great Skill in Matters where the Law is ſo plain. A Peer they agree may be in Priſon for Treaſon, Felony, or Breach of the Peace; but that Breach of the Peace, ſay they, is where the Law requires Sureties of the Peace: But is there any Certainty where Sureties of the Peace ſhall be required, and where not? Then I would put this Caſe; Theſe Lords have contrived and publiſhed a Seditious Libel againſt the King and His Government; and whether this be not ſuch a Breach of the Peace, as will require Sureties of the Peace, is the Queſtion before you: And it plainly appears to be ſo, in Sir *Baptiſt Hicks*'s Caſe, in *Hobart.* If a Man write a private Letter provoking another to fight, although there be no Fighting, this is a Breach of the Peace. Now a Letter can do no Wrong in that kind, but as it incites and ſtirs up to Fighting, which may occaſion Blood-ſhed; and I think there cannot be a greater Breach of the Peace, than for a Man to come to the King's Face, and publiſh a Libel againſt him, and yet, according to their Doctrine, this Man ſhall go away, and you ſhall not take him up, but take a *Subpœna* againſt him, and wait for the Delay of all the ordinary Proceſs; and they tell you another Thing, that a *Capias* does not lie upon an Information againſt the Perſon of a Peer, and that there is no Precedent of any ſuch Thing; but I would pray them to remember the Caſe of my Lord *Lovelace*, about ſome three Years ago, for breaking a Foot-man's Head. It ſeems, if a Man libels the King in his own Preſence, that is not ſo great a Matter as a little Correction to an inſolent Foot-man; but there he was bound in a Recognizance to appear there in this Court, and accordingly he did appear, and was charged with an Information; and as to that Precedent, I do believe Sir *Robert Sawyer* and Mr. *Finch* won't contradict me. This was in the firſt Year of this King. There was likewiſe my Lord of *Pembroke*'s Caſe, who went to a diſorderly Houſe, and there frightned ſome People: We moved the Court, and had an Attachment againſt him for a Miſdemeanor, and he was glad to compound the Thing, or it had not ended ſo ſoon as it did; and yet if a Lord comes to the King's Perſon, and affronts Him to his very Face, will not an Attachment lie againſt him for it? Certainly it will. My Lord, we have gone out of the Way too much already, and theſe Gentlemen will lead us farther; but we hope your Lordſhips will reduce us to the Methods of the Law. Here is an Information which we deſire may be read; if they have any thing to plead to it, their Time for that will come after it is read: If they think they have been illegally impriſoned, it appears plainly upon this Retorn, who they were that did commit them. Here are a great many Noble Lords to anſwer an Action of falſe Impriſonment, if theſe Lords think fit, and may have theſe learned Gentlemen, that are very well able to adviſe them what they ſhould do in it.

Sir *Rob. Sawyer.* We pray your Lordſhip's Judgment, whether the Caſes put by Mr. *Sollicitor* are like our Caſe?

Mr. Sol. Gen. They are as like, as Sir *Robert Sawyer* is to Mr. *Attorney* that was.

Sir *Rob. Sawyer.* Thoſe Caſes are of apparent Breaches of the Peace; ſo likewiſe was my Lord of *Devonſhire*'s Caſe; but certainly that was not at all like this.

Mr. *Finch.* With your Lordſhip's Favour, I would add but one Word, and I would repeat nothing of what has been ſaid: All that I ſhall ſay is this; There is a great deal of Difference between an actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace, by Conſtruction of Law, it being *contra Pacem.* Suppoſe it be laid that a Man did *Vi & Armis* ſpeak Words, will that make the Words a Breach of the Peace?—*Mr. Sol. Gen.* It muſt be *Vi & Armis*, and certainly is a Breach of the Peace.

Mr. *Finch.* If a Man write a Petition, are the Pen and Ink that he uſes the Arms?—*Mr. Sol. Gen.* My Lord, I hope, Mr. *Finch* remembers what I heard him ſay in *Algernon Sidney*'s Caſe, *ſcribere eſt agere.*

Mr. *Finch.* I think it is ſo, Mr. *Sollicitor*, but every Action is not a Breach of the Peace.

L. C. J. Well, let my Brothers deliver their Opinions, I will give you mine.

Mr. Juſt. *Allybone.* The ſingle Queſtion now is, Whether or no that which Mr. *Sollicitor* was pleaſed to name as the Crime, and lay it to the Charge of my Lords the Biſhops, that is, a Seditious Libel, be a Breach of the Peace? I do confeſs that there is little of Argument to be drawn from Forms of Indictments; and I ſhall put no great Streſs upon the Words, *Vi & Armis*, where the Fact will not come near it; but if a Commitment may enſue (as they ſeem to agree) where-ever Surety of the Peace may be required, nothing ſeems more important to me, than that Surety of the Peace ſhould be required, where there is any thing of Sedition in the Caſe; and wherever there is a Seditious Act, I cannot tell how to make any other Conſtruction of it, but that it is an actual Breach of the Peace; that is my Opinion.

Mr. Juſt. *Powell.* I am of the ſame Opinion in this Point too, as I was in the other Point before: It was a Matter of great Conſequence, I thought, upon the former Point, but now it appears to me, to be of far greater Conſequence than it did at firſt; for here, all the Great, High, and Noble Peers of *England* are concerned in it, as to their Privilege. Our Predeceſſors in this Court heretofore would not determine the Privileges of the Peers, but left them to themſelves to make what Judgment they pleaſed of them. I think truly 'tis a Thing of that Weight, that it may be very fit for the Court to take Time to conſider of it, and I declare, for my own Part, I will not take upon me to deliver any Opinion in a Matter of this Conſequence, before I have conſulted all the Books that can give me any Light in the Caſe.

Mr. Juſt. *Allybone.* Brother *Powell*, I am not determining, limiting, or cramping the Privilege of Peers, but I am only conſidering whether or no a Seditious Libel be a Breach of the Peace. 'Tis agreed to be on all Hands a Breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there Sir *Robert Sawyer* has laid the Foundation of his Diſtinction, and if that ſhall draw any Perſon under a Commitment, then, ſay I, in my Judgment, wherever there is a Seditious Libel, there is that which is an actual Breach of the Peace; for I am ſure there is that which is ſufficient to require Sureties of the Peace. I controvert not the Right of the Peers one Way or other, but only declare my Opinion, That this is a Fact that comes within the Rule laid down by them, that what will require Sureties of the Peace, is a Breach of the Peace.

Mr. Juſt. *Holloway.* God forbid that in a Caſe of this Nature, any one ſhould take upon him here to ſay, that every Miſdemeanor were a Breach of the Peace: I ſay not ſo; but certainly there are ſome ſuch Miſdemeanors as are Breaches of the Peace; and if here be ſuch a Miſdemeanor before us, then it is acknowledged, that even in Parliament-time, a priviledged Perſon might be committed for it: For in Treaſon, Felony, and Breach of the Peace, Privilege does not hold. I will not take upon me, as my Brother ſaid, to determine concerning the Privilege of the Peers, it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine Privilege, nor do we determine whether this be ſuch a Libel as is charged in the Information, that will come in Queſtion another Time; but certainly as this Caſe is, the Information ought to be read, and my Lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the Privileges of the Peers as any in the World can be, and as tender as we would be, and ought to be in trying any Man's Right: It becomes us to do it with great Reſpect and Regard to my Lords the Biſhops; and therefore I would be as careful (if that were the Queſtion before me) to conſider very well before I give my Opinion, as ever I was in my Life. But when I ſee there can come no Miſchief at all to the Privileges of the Peers, by what is agreed on all Hands, I think I may very juſtly give my Opinion: For here is the Queſtion, Whether the Fact charged in the Warrant be ſuch a Miſdemeanor as is a Breach of the Peace? And the Words of the Warrant (which is now upon the Record) being ſuch as have been recited, I cannot but think it is ſuch a Miſdemeanor as would have required Sureties of the Peace; and if Sureties were not given, a Commitment might follow; and therefore I think the Information muſt be read.

Mr. Att. Gen. We pray the Clerk may read it.

Clerk reads. Middleſex. C. Memorand. That Sir *Thomas Powis*, Knight, *Attorney-General* of our Lord the King, who for our ſaid Lord the King in this Behalf ſues, comes in his own Perſon here into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Friday* next, after the Morrow of the *Holy-Trinity* in this Term, and for our ſaid Lord the King, gives the Court here to underſtand, and be informed, that our ſaid Sovereign Lord the King, out of his ſignal Clemency——

Mr. Sol. Gen. Read it as it is in *Latin.*

Biſhop of Peterborough. My Lord, we deſire it may be read in *Engliſh*, for we don't underſtand *Law-Latin.*

Mr. Sol. Gen. No, my Lords the Biſhops are very learned Men, we all know; pray read it in *Latin.*

Clerk reads. Memorandum, *Quod* Thomas Powis, *Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte ſequitur, in propria Perſona ſua venit hic in Curia dict' Domini Regis coram ipſo Rege apud* Weſtmonaſterium, *Die* Veneris *proxime poſt craſtinum* Sanctæ Trinitatis,

Trinitatis, *isto eodem Termino; & pro eodem Domino Rege, Dat Curiæ hic intelligi & informari, quod dictus Dominus Rex, nunc ex insigni Clementia & benigna Intentione suis erga Subditos suos Regni sui* Angliæ *per Regiam suam Prerogativam, quarto die* Aprilis, *Anno Regni Dict' Domini Regis nunc Tertio, apud* Westmonasterium *in Comitatu* Middlesexiæ, *Declarationem suam Intitulatam,* His Majesty's Gracious Declaration to all his Loving Subjects for Liberty of Conscience, *gerentem Datum eisdem Die & Anno, Magno Sigillo suo Angliæ Sigillatam publicavit; in qua quidem Declaratione continetur.*

James Rex.

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence, upon the Throne of Our Royal Ancestors, there is nothing now that We so earnestly desire, as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us, by Inclination as well as Duty, which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the Time to come, and add that to the perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preserved in these Kingdoms during Our Reign over them, as the truest Methods of Our Peace, and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the *Catholick* Church, yet We humbly thank Almighty God, it is, and hath long Time been Our constant Sense and Opinion (which upon divers Occasions We have declared), that Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government, which it destroys, by spoiling Trade, depopulating Countries, and discouraging Strangers; and finally, that it never obtained the End for which it was employed. And in this we are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing Endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all our loving Subjects, that they may live at Ease and Quiet, and for the Encrease of Trade, and Encouragement to Strangers, have thought fit, by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no Doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first Place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Disturbance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of *Penal Laws* in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Nonconformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately suspended, and the further Execution of the said *Penal Laws*, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby streightly charge and command all Our loving Subjects, that as We do freely give them Leave to Meet and serve God after their own Way and Manner, be it in Private Houses, or Places purposely hired or built for that Use, so that they take special Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly, and publickly held, and all Persons freely admitted to them; and that they do signify and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby command, that no disturbance of any kind be made or given unto them, under Pain of Our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the Benefit of the Service of all Our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administered on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirtieth Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any Time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is, or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention, from Time to Time hereafter, to grant Our Royal Dispensations, under Our Great Seal, to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above-mentioned Acts, and every of them. And to the end that all Our loving subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures and Disabilities by them, or any of them incurred or forfeited, or which they shall or may at any Time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion, and from all Suits, Troubles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recusants, and other Our loving Subjects, for all Crimes and things by them committed, or done contrary to the *Penal Laws* formerly made relating to Religion, and the Profession or Exercise thereof; hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from Time to Time be granted unto any Person or Persons desiring the same, willing and requiring Our Judges, Justices, and other Officers, to take Notice of, and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of Our loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to declare, That we will maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curiæ hic intelligi & informari, quod postea, scilicet, vicesimo septimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Westmonasterium prædictum in Comitatu Middlesexiæ prædicto, iidem Dominus Rex nunc ex eadem Clementia & benigna intentione suis erga subditos suos Regni sui Angliæ, per Regiam suam Prærogativam, aliam Regalem suam Declarationem Intitulatam, His Majesty's gracious Declaration, *gerentem datum eisdem die & anno ultimo mentionatis, magno sigillo suo Angliæ similiter sigillatam, publicavit; in quâ quidem Declaratione continetur.*

James Rex.

"OUR Conduct has been such in all Times, as ought to have perswaded the World, that We are firm and constant to Our Resolutions; yet, that easy People may not be abused by the Malice of crafty, wicked Men, We think fit to declare, that Our Intentions are not changed since the 4th of *April*, 1687, when We issued out Our Declaration for Liberty of Conscience in the following Terms.——

His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience.

James Rex.

IT having Pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of our Royal Ancestors, there is nothing now that we so earnestly desire as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us by Inclination as well as Duty; which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the Time to come, and add, That to the Perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preserved in these Kingdoms during our Reign over them, as the truest Methods of their Peace and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the Catholick Church; yet We humbly thank Almighty God, it is, and hath long time been Our constant Sense and Opinion (which upon divers Occasions We have declared) that Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government, which it destroys by spoiling Trade, depopulating Countries, and discouraging Strangers, and finally, that it never obtained the End for which it was employed. And in this We are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing Endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible the Success has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all Our loving Subjects, that they may live at Ease and Quiet, and for the Encrease of Trade, and Encouragement to Strangers, have thought fit, by virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first Place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Disturbance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of *Penal Laws* in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately suspended, and the further Execution of the said *Penal Laws*, and every of them is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby streightly charge and command all Our loving Subjects, that as we do freely give them Leave to Meet and serve God after their own Way and Manner, be it in private Houses, or places purposely hired or built for that Use, so that they take special Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly and publickly held, and all Persons freely admitted to them; and that they do signify and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all Our Subjects may enjoy such their Religious Assemblies with great Assurance and Protection, We have thought it requisite, and do hereby command, that no Disturbance of any kind be made or given to them, under Pain of Our Displeasure, and to be further proceeded against

with the utmoſt Severity. And foraſmuch as We are deſirous to have the Benefit of the Service of all our loving Subjects, which by the Law of Nature is inſeparably annexed to, and inherent in Our Royal Perſon, and that none of Our Subjects may for the future be under any Diſcouragement or Diſability (who are otherwiſe well inclined and fit to ſerve Us) by reaſon of ſome Oaths or Teſts that have been uſually adminiſtered on ſuch Occaſions, We do hereby further declare, That it is Our Royal Will and Pleaſure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and alſo the ſeveral Teſts and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirtieth Years of the Reign of Our late Royal Brother King *Charles* the Second, ſhall not at any Time hereafter be required to be taken, declared, or ſubſcribed by any Perſon or Perſons whatſoever, who is or ſhall be employed in any Office or Place of Truſt, either Civil or Military, under Us, or in Our Government. And we do further declare it to be Our Pleaſure and Intention, from Time to Time hereafter, to grant Our Royal Diſpenſations under Our Great Seal, to all Our loving Subjects ſo to be employed, who ſhall not take the ſaid Oaths, or ſubſcribe or declare the ſaid Teſts or Declarations in the above-mentioned Acts, and every of them. And to the end that all our loving Subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and diſcharged from all Pains, Penalties, Forfeitures, and Diſabilities by them or any of them incurred or forfeited, or which they ſhall or may at any Time hereafter be liable to, for or by reaſon of their Nonconformity, or the Exerciſe of their Religion; and from all Suits, Troubles or Diſturbances for the ſame; We do hereby give Our free and ample Pardon unto all Nonconformiſts, Recuſants, and other Our loving Subjects for all Crimes and Things by them committed or done, contrary to the *Penal Laws* formerly made relating to Religion, and the Profeſſion or Exerciſe thereof; hereby declaring, that this Our Royal Pardon and Indemnity ſhall be as good and effectual to all Intents and Purpoſes, as if every individual Perſon had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewiſe declare ſhall from Time to Time be granted unto any Perſon or Perſons deſiring the ſame; willing and requiring Our Judges, Juſtices, and other Officers, to take Notice of, and obey Our Royal Will and Pleaſure herein before declared. And although the Freedom and Aſſurance We have hereby given in relation to Religion and Property, might be ſufficient to remove from the Minds of our loving Subjects all Fears and Jealouſies in relation to either; yet We have thought fit further to declare, That We will maintain them in all their Properties and Poſſeſſions, as well of Church and Abby Lands, as in any other their Lands and Properties whatſoever. *Given at our Court at* Whitehall *the fourth Day of* April, 1687, *in the Third Year of Our Reign.*

Ever ſince We granted this Indulgence, We have made it Our principal Care to ſee it preſerved without Diſtinction, as We are encouraged to do daily by Multitudes of Addreſſes, and many other Aſſurances We received from Our Subjects of all Perſwaſions, as Teſtimonies of their Satisfaction and Duty, the Effects of which We doubt not but the next Parliament will plainly ſhew; and that it will not be in vain that We have reſolved to uſe our uttermoſt Endeavours to eſtabliſh Liberty of Conſcience on ſuch juſt and equal Foundations as will render it unalterable, and ſecure to all People the free Exerciſe of their Religion for ever; by which future Ages may reap the Benefit of what is ſo undoubtedly for the general Good of the whole Kingdom. It is ſuch a Security We deſire, without the Burden and Conſtraint of Oaths and Teſts, which have been unhappily made by ſome Governments, but could never ſupport any. Nor ſhould Men be advanced by ſuch Means to Offices and Employments, which ought to be the Reward of Services, Fidelity and Merit. We muſt conclude, that not only good Chriſtians will join in this, but whoever is concerned for the Encreaſe of the Wealth and Power of the Nation. It would perhaps prejudice ſome of our Neighbours, who might loſe Part of thoſe vaſt Advantages they now enjoy, if Liberty of Conſcience were ſettled in theſe Kingdoms, which are above all others moſt capable of Improvements, and of commanding the Trade of the World. In purſuance of this Great Work, We have been forced to make many Changes both of Civil and Military Offices throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the eſtabliſhing the Peace and Greatneſs of their Country, which We moſt earneſtly deſire, as unbiaſſed Men may ſee by the whole Conduct of our Government, and by the Condition of our Fleet, and of Our Armies, which, with good Management, ſhall be conſtantly the ſame, and greater, if the Safety or Honour of the Nation require it. We recommend theſe Conſiderations to all Our Subjects, and that they will reflect on their preſent Eaſe and Happineſs, how for above three Years, that it hath pleaſed God to permit Us to reign over theſe Kingdoms, We have not appeared to be that Prince Our Enemies would have made the World afraid of; Our chief Aim having been not to be the Oppreſſor, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aſide all private Animoſities, as well as groundleſs Jealouſies, and to chooſe ſuch Members of Parliament as may do their Part to finiſh what We have begun, for the Advantage of the Monarchy over which Almighty God hath placed Us, being reſolved to call a Parliament, that ſhall meet in *November* next at fartheſt.

'Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc poſtea ſcilicet triceſimo die Aprilis Anno Regni ſui quarto ſupradicto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, imprimi & per totam Angliam publicari cauſavit, & pro magis ſolemni demonſtratione, notificatione, & manifeſtatione gratiæ ſuæ Regiæ benignitatis & benevolentiæ ſuæ ad omnes ligeos ſuos in eadem Declaratione ultimò mentionata ſpecificatos, poſtea ſcilicet quarto die Maii Anno Regni ſui quarto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto idem Dominus Rex debita modo ordinavit prout ſequitur.'

At the Court at *Whitehall*, the 4th of *May*, 1688. It is this Day ordered by his Majeſty in Council, That his Majeſty's late Gracious Declaration, bearing Date the 27th of *April* laſt, be read at the uſual Time of Divine Service, upon the 20th and 27th of this Month, in all Churches and Chapels within the Cities of *London* and *Weſtminſter*, and ten Miles thereabout; and upon the 3d and 10th of *June* next, in all other Churches and Chapels throughout this Kingdom. And it is hereby further ordered, That the Right Reverend the Biſhops cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral and reſpective Dioceſes, to be read accordingly.

'Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curiæ hic intelligi & informari, quod poſt Confectionem prædicti ordinis, ſcilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto ſupradicto, apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto Willielmus Archiepiſcopus Cantuarienſis de Lambeth in Comitatu Surriæ, Willielmus Epiſcopus Aſaphenſis de St. Aſaph in Comitatu Flintiæ, Franciſcus Epiſcopus Elienſis de Parochia Sancti Andreæ Holborn in Comitatu Middleſexiæ, Johannes Epiſcopus Ciceſtrenſis de Ciceſtria in Comitatu Suſſexiæ, Thomas Epiſcopus Bathonenſis & Wellenſis de Civitate Wells in Comitatu Somerſetiæ, Thomas Epiſcopus Petriburgenſis de Parochiâ ſancti Andreæ Holborn in Comitatu Middleſexiæ, & Jonathan Epiſcopus Briſtollenſis de Civitate Briſtol, *inter ſe conſuluerunt & conſpiraverunt ad diminuendam Regiam Authoritatem, Regalem Prærogativam & Poteſtatem, & Regimen ejuſdem Domini Regis nunc* in præmiſſis, ac ad eundem Ordinem infrigendum & eludendum; *ac in proſecutione & executione conſpirationis prædictæ*, ipſi iidem Willielmus Archiepiſcopus Cantuarienſis, Willielmus Epiſcopus Aſaphenſis, Franciſcus Epiſcopus Elienſis, Johannes Epiſcopus Ciceſtrenſis, Thomas Epiſcopus Bathonenſis & Wellenſis, Thomas Epiſcopus Petriburgenſis, & Jonathan Epiſcopus Briſtollenſis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto ſupradicto, *Vi & Armis*, &c. apud Weſtmonaſterium prædictum in Comitatu Middleſexiæ prædicto, *illicitè, malitioſè, ſeditioſè, & ſcandaloſè, quoddam falſum, fictum, pernitioſum, & ſeditioſum libellum in ſcriptis, de eodem Domino Rege & Regali Declaratione & Ordine prædictis (prætenſu Petitionis) fabricaverunt, compoſuerunt & ſcripſerunt, & fabricari componi & ſcribi cauſaverunt*, & eundem falſum, fictum, malitioſum, pernitioſum, & ſeditioſum libellum per ipſos prædictum Willielmum Archiepiſcopum Cantuarienſem, Willielmum Epiſcopum Aſaphenſem, Franciſcum Epiſcopum Elienſem, Johannem Epiſcopum Ciceſtrenſem, Thomam Epiſcopum Bathonenſem & Wellenſem, Thomam Epiſcopum Petriburgenſem, & Jonathanum Epiſcopum Briſtollenſem manibus ſuis propriis reſpectivè ſubſcriptum die, & anno, & loco ultimo mentionatis *in præſentiâ dicti Domini Regis nunc Vi & Armis, &c. publicaverunt, & publicari cauſaverunt*; in quo quidem falſo, ficto, malitioſo, pernitioſo & ſeditioſo libello continetur-----

The humble Petition of William *Archbiſhop of* Canterbury, *and of divers of the Suffragan Biſhops of that Province (now preſent with him) in Behalf of themſelves and others of their abſent Brethren, and of the Clergy of their reſpective Dioceſes,*

Humbly ſheweth,

THAT the great Averſeneſs they find in themſelves to the diſtributing and publiſhing in all their Churches, your Majeſty's late Declaration for Liberty of Conſcience, proceedeth neither from any want of Duty and Obedience to your Majeſty; our holy Mother, the Church of *England*, being both in her Principles, and in her conſtant Practice, unqueſtionably Loyal, and having, to her great Honour, been more than once publickly acknowledged to be ſo by your Gracious Majeſty; nor yet from any Want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit, when that Matter ſhall be conſidered and ſettled in Parliament and Convocation. But among many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a diſpenſing Power, as hath been ofe declared illegal in Parliament, and particularly in the Years 1662, and 1672, and the Beginning of your Majeſty's Reign; and is a Matter of ſo great Moment and Conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour, or Conſcience, ſo far make themſelves Parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the Time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

'-----*In contemptum* dicti Domini Regis nunc, *& Legum hujus regni Angliæ*, manifeſtum, in malum exemplum omnium aliorum in tali caſu delinquentium, ac contra Pacem dicti Domini Regis nunc Coronam & Dignitatem ſuam, *&c.* Unde idem Attornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit adviſamentum Curiæ hic in præmiſſis *& debitum legis proceſſum verſus præfatos* Willielmum Archiepiſcopum Cantuarienſem, Willielmum Epiſcopum Aſaphenſem, Franciſcum Epiſcopum Elienſem, Johannem Epiſcopum Ciceſtrenſem, Thomam Epiſcopum Bathonenſem & Wellenſem, Thomam Epiſcopum Petriburgenſem, & Jonathanum Epiſcopum Briſtollenſem fieri; ad reſpondendum dicto Domino Regi de & in præmiſſis, *&c.*

T. Powys.
W. Williams.

Mr. Att. Gen. My Lord, we humbly pray, that according to the Rules of the Court in ſuch Caſes, my Lord Archbiſhop of *Canterbury*, and my Lords the Biſhops, may plead to the Information.

Mr. Sol. Gen. My Lords the Biſhops are here in Cuſtody in the Court, upon the higheſt Commitment that can be in this Kingdom, to wit, that of the King in Council; and we pray, that according to the Courſe of the Court, they may plead to the Information preſently.

L. C. J. What does his Grace and my Lords the Biſhops ſay to it?

Mr. *S. Pemberton.* Will your Lordſhip give us leave, who are of Counſel for his Grace my Lord of *Canterbury*, and the reſt of my Lords the Biſhops, to ſpeak a Word in this Matter?

L. C. J. Ay, Brother, go on.

Mr. *S. Pemberton.* That which we have to deſire of your Lordſhip, and the Court, is this; we have now heard this Information read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in general for a Libel; and this being a Caſe of the greateſt Conſequence, peradventure, that ever was in *Weſtminſter-Hall* (that, I think, I may boldly ſay, it is a Caſe of the greateſt Conſequence that ever was

was in this Court) and it being a Matter of this Nature, that these great and noble Persons, my Lords the Bishops, are here taxed with; that is, for making a seditious Libel, contained in such a Petition (as though it was a Libel to petition the King), we do beg this of your Lordship, that (it being of this great Importance) to the End we may come prepared to say what we have against it, we may have an Imparlance till the next Term.

Mr. *Finch*. Pray, my Lord, favour me with a Word on the same Side, for my Lords the Bishops. Your Lordship sees now how necessary the Trouble we gave you before, in making our Objections against the reading of the Information was, and what the Drift and Aim of the King's Counsel was, in the desiring the Information to be read first; for now it is read, What is it that they desire of your Lordship? They desire that my Lord Archbishop, and my Lords the Bishops, being in Custody, and brought here in Custody, they may be now so charged with this Information, as to plead presently. This, my Lord, we oppose, and with humble Submission we ought to have Time to imparle, and a Copy of the Information, that we may consider what we have to plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Case, to have Time to consider of our Defence. And, my Lord, till of latter Time this Practice which the King's Counsel now calls the Course of the Court, was never used, nor was any Man required to plead immediately; and, my Lord, if the Practice of the Court has not been antiently so (as I do believe they will scarce shew it to be antienter than a few Years last past), then, with humble Submission, though the Course of the Court have been so for some little Time past, yet it is not in the Power of the Court (as we humbly conceive) to make a Course in Prejudice of all the Privileges that the King's Subjects are by the antient Rules of Law intitled to; they cannot make a new Law in Prejudice of any Right or Privilege which the Subject hath, and call it the Course of the Court. Now that this which we desire for my Lords the Bishops, is the Right and Privilege of the Subject, is most manifest; for there might be many Defences that a Man may have to make to an Accusation of this Nature, which it is impossible for him to know at the first hearing of an Information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a Manner as the Law doth allow of and require. It may be the Pleas which he has to plead, may be such as that he has not Time to put into Form; there may be Matters upon the hearing the Information read, that it would be necessary for him to give Answer to, which he knew not of before, and therefore may neither have materials ready, nor be capable of putting them (if he had them ready) into such Form as the Law requires. They tell you on the other Side, that if a Man be brought into Court by legal Process, he may be charged with any Information whatsoever; that they are not tied to the Fact alledged in the Commitment, but finding the Party under a legal Imprisonment, they can exhibit an Information against him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his just and legal Defence, for he knows not his Accusation; for though he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with Materials for his Defence, but he must lose all Advantages which the Law gives him for his Defence. My Lord, if this be the Course of latter Times, yet you will not take that to be such a Law as is binding to all future Times; and we are sure the King's Counsel cannot shew that this was the antient Practice, for that was quite otherwise.

L. C. J. Mr. *Finch*, you were not here, I suppose, when this Question came in Debate in this Court lately, in the Case of a very great Person: 'Twas urged very earnestly and very learnedly by one that stands by you. We upon that Debate asked Sir *Samuel Astry*, what the Course of the Court was? And he told us, that the Course of the Court (of his own Knowledge for all the Time that he had sat as Clerk of the Crown in this Court) was, that when any one was brought in Custody, or upon a Recognizance, they were to plead presently.

Mr. *Finch*. Sir *Samuel Astry* has not been here so very long, as to make the Practice of his Time the Course of the Court.

L. C. J. But I will tell you what he said further, if you will hear me: He said, he had enquired of Mr. *Waterhouse*, whom we all know to have been an old Clerk in the *Crown-Office*, and he told him, that that had been the Practice all his Time.

Mr. *S. Pemberton*. My Lord, I hope the Course of the Courts of *Westminster-Hall* shall not depend upon the Certificate of such a one as Mr. *Waterhouse*, who is a Man, we all know, superannuated, and very defective in his Memory.

Mr. Just. *Powell*. Certainly what they desire for the Defendants is very reasonable, for I take the Point to be only this: Whether a Man may be compelled, being in Custody, to plead to an Information presently?

Mr. Just. *Allybone*. Pray, Brother *Powell*, spare me a Word in this Matter. Mr. *Finch*, I suppose you labour for what the Court will not deny you, that you may have Time to plead according to the Course of the Court. We are not making Courses for particular Facts, that by my Consent we will never do; but if you say such a Thing is not the Course of the Court, and the King's Counsel affirm it is, how shall this be determined? And from whom can we take our Information to determine what is the Course? I am sure there is none of us that are here now, can pretend to tell what the antient Course was; for my Part, I declare it, I cannot; and I know no Reason there should be any Novelty introduced into the Court upon any Ground or Reason whatsoever, nor will I consent to any while I sit here: Therefore I desire to know what is the antient Course, and how we shall come to the Knowledge of that Course, if not by the Certificate of those who have been ancient Officers of the Court?

L. C. J. Nay, that is certain, the Court will bring in nothing new in any such Case as this.

Mr. Just. *Allybone*. If that hath not been the antient Course without Exception, I am against it; I know no Reason my Lords the Bishops should have any thing new put upon them: On the other Side, they must not expect to have the antient Course of the Court declined in their Case.

Mr. *Pollexfen*. Pray, my Lord, hear me a little in this Matter: 'Tis not my Desire that any Law should be alter'd for any particular Case, and the Course of the Court I know is the Law of the Court; but I humbly crave leave to say, That I take the antient Course of the Court to be quite otherwise than what the King's Counsel would have it. There may be particular Things done now and then, perhaps in particular Cases, and upon particular Occasions, which will not make what is so done to be the Course of the Court, nor be a binding Rule to you. Now, as to this Matter of Time or no Time, to plead to an Information, I remember the Time very well, when I and some others that stood at the Bar, and wondered when we saw this Practice coming in, and thought it a very hard and mischievous Thing; for, in Truth, the several Plots that have been, and the Heats of Men about those Things, have brought in this Course: For certain I am, and I dare affirm, there never was any such Course here before, neither upon Warrant from the Chief Justice, nor upon Recognizance, or any other Process, was a Man compelled to plead instantly, without having a *Capias* in the regular Form, after a Contempt for not appearing upon Summons. Truly, my Lord, we had no Interest in the Matter one way or other, to make us scruple it any otherwise than as we were concerned that the Law and Justice of the Nation should have its true and antient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice *Saunders*, and Mr. Serjeant *Holt*, and myself, who taking Notice when this was first offered at, to make a Man plead immediately, without giving him Time to consider what he should plead, could not but say among ourselves, that it was an unreasonable Thing; and we were inclined to speak to the Court to inform them of the Consequence of it, which needs must be very mischievous. Sir *Samuel Astry*, we know, came to be Clerk of the Crown in my Lord *Scroggs*'s Time. We know 'tis usual and customary for the Court to ask what is the Course of the Court in doubtful Cases, and to receive the Information from the Officers of the Court on both Sides. If it be on the Plea-side, from Mr. *Aston*; if on the Crown-side, from Sir *Samuel Astry*, concerning Things of Practice; but I did never think that what they reported was final and conclusive to the Court: But to make this Matter clear, I humbly pray, that you would please to give Order for the Search of old Precedents, how the old Practice really hath been: Every thing that has been done in hot Times, is not to be made a standing Rule. If there do any such thing appear to have been done and practised antiently, truly, my Lord, I will submit, and say I am under a mighty Mistake; but if this which is now urged for the Course of the Court, is nothing but what the Zeal of the Times, and Heat of Persecutions hath introduced, surely that is not fit to be a constant Rule for the Court to go by; for every one knows, that the Zeal of one Time may bring in that by Surprize upon one Man, which, when things are cool at another time, will appear to be plain Injustice. We have indeed seen strange Things of this kind done before, but I hope to God they are now at an End, and we shall never see any such thing done hereafter; and as for this particular Point, I think it is a wonderful Thing in the Consequence of it, if the Law should be as they would have it. Here is a long Information just read over to a Man (but whether long or short, as to the main Point, 'tis the same) and you say the Course of the Court is, he must plead to it immediately. Surely Matters of Crime that require Punishment to be inflicted on Men, are of as much Consequence and Concern, as any Civil Matter whatsoever; and Men are to have their Rights in those Matters preserved, as well as in other Matters, which is all I press: For suppose a Man has a special Matter to plead; as particularly, suppose it be the King's Pardon, I cannot give this in Evidence upon a Trial after not guilty pleaded, then I ought to plead it. But what if I have it not ready? 'Tis not telling the Court of it without shewing of it, that will do; and it may be a Man that is taken up, and brought hither in Custody, cannot have it ready to shew; but yet then, by this Rule a Man shall lose the Benefit of his Plea, by being compelled to answer immediately. But they say, the Court will do right: I suppose they will; and my Lords the Bishops in this Case, I believe, do not distrust but that the Court will do right; but I never thought the Law was brought to that Pass, that such things as these were left wholly in the Discretion of the Court. Certainly Imparlances, Time to plead, and just Preparations for a Man's Defence, are things that the Law has settled, and not left in the Discretion of the Court: and truly to me it seems all one utterly to take away a Man's Defence, as to hinder him of the Means to prepare for it. My Lord, here is an Information before you against these noble Lords, 'tis a Matter of great Moment, and though I hope in God there is no great Cause for it, yet however, since such Persons are concerned, and 'tis a Matter of such great Weight, I hope you will give us such an Imparlance, as if we had this Day appeared upon the ordinary Process, which is an Imparlance until the next Term.

L. C. J. There is a Difference between this and that other Case: If my Lords the Bishops had appeared upon the Summons, they would have had an Imparlance of Course; but when they are brought up hither in Custody, that mightily alters the Case. But that we may not be too hasty in a thing of this Nature, let the Clerk of the Court be consulted with, that we may know what the true Course is.

Mr. Att. Gen. My Lord, we pray Sir *Samuel Astry* may be examined a little about it.

Mr. Just. *Allybone*. Mr. *Pollexfen*, I believe the Court is unanimous in their Resolutions of making nothing new in this Case; but pray give me leave to tell you, this is not the first Time that this Question has come to be agitated in this Court since I came hither. Now from whence can the Court take their Measures to be rightly informed what the Practice of the Court is, but from the Information of the Officers of the Court? who by their constant Employment, are most capable of knowing what the Course is. Now, if you come to offer any thing that may be Matter of Doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for so it has been) should have provided yourself with something that must be a reasonable Motive for us to doubt; for this has not been only once, but often moved, and our Officers have been consulted with concerning this Question, which took its Rise from such Objections as you have made now. Now for you to tell us,

That

That you deſire that we would look into Precedents, is, methinks, pretty odd. If you had brought us any Precedents, it had been ſomething: And withal I muſt tell you, that you muſt not reckon the Favour of the Court, in any particular Caſe, to be the ſtanding Rules for the Practice and Courſe of the Court; but inſtead of bringing Precedents, you only offer your own Thoughts, and thoſe would create no Doubt in us but what has been before ſatisfied upon Examination of the Officers of the Court.

Mr. *Pollexfen.* Pray, Sir, will you give me leave to anſwer one Word?

Mr. Juſt. *Powell.* Truly I have not obſerved that ever this Coint was ſtarted ſo as to beget a Queſtion ſince I came hither, but only in the Caſes of the *Quo Warranto*'s; and truly in that Caſe I thought it hard they ſhould be denied Time to plead, eſpecially the Conſequence being ſo fatal.

L. C. J. Yes, yes, Brother, it has been ſeveral Times.

Mr. Juſt. *Powell.* Truly, my Lord, I have not obſerved it, nor do I remember it.

Sir *Robert Sawyer.* My Lord I have always taken the Diſtinction, as to theſe Matters, to be this——

Mr. Juſt. *Powell.* But, my Lord, if the antient Courſe of the Court hath been to grant an Imparlance, and a Copy of the Information before they plead, I ſee no Reaſon why my Lords the Biſhops ſhould not have the Benefit of that antient Courſe: For if a Man that is ſued at Law for a two-penny Treſpaſs, ſhall have that Advantage as to receive a Declaration, and have Time to plead what he can to it, why ſhould not my Lords the Biſhops, in a Matter of ſo great a Weight, have the ſame Advantage too? But indeed, if the Courſe of the Court had been antiently otherwiſe, I can ſay nothing to it; for the Courſe of the Court is certainly the Law of the Court.

Mr. Juſt. *Allybone.* Brother *Powell*, you ſay well, if they did produce any one Precedent to give us Occaſion to doubt in the Matter.

Sir *Robert Sawyer.* Pray, good my Lord, will you give me leave——

Mr. Att. Gen. Why, Sir *Robert Sawyer*, will you never have done?

Mr. Sol. Gen. No, they are ſo zealous and eager in this Caſe, that they won't permit either the Court, or any body elſe to ſpeak a Word but themſelves.

Mr. *S. Pemberton.* Good Mr. *Sollicitor*, give us leave to anſwer the Objection that the Court hath made to us; we would ſatisfy your Lordſhip where the Diſtinction really lieth, where there has been an Opportunity for the Party to come in, as by Summons or *Subpœna*, or the like, and he has ſlipped that opportunity, and ſo the King is delayed. In that Caſe they always uſed to put the Party upon Pleading preſently, when he was taken up upon a *Capias*, and brought in Cuſtody; but when there was never any *Subpœna* taken out (as the Caſe is here) ſo that the Party never had an Opportunity to come in and render himſelf, and appear to anſwer it according to the due Courſe of Law, an Imparlance was never yet denied, nor Time to plead; and that is the Caſe here.

Sir *Rob. Sawyer.* My Lord, Mr. Serjeant has given you the true Diſtinction, where Proceſs has gone out to ſummon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Proſecutor for the King makes out a *Capias*; if he be brought in upon that *Capias*, the antient Courſe has been ſo as they ſay: But for that other Matter, where a Man comes in upon a Commitment at the firſt Inſtance, and an Information is put in juſt as this is, the ſame Morning, and not before; if they can ſhew any one Precedent of this Kind fifteen Years ago, I would be contented to yield that they are in the right; but I am ſure they are not able to do it. In Sir *Matthew Hale*'s Time when this was moved, it was refuſed; and he was clear of another Opinion.

Mr. Att. Gen. I hope now, my Lord, we ſhall be heard a little for the King; and I cannot forbear obſerving, in the firſt Place, ſomewhat that theſe Gentlemen have offered at, who are now inveighing againſt the Heat of the Times, when a great Part of that Heat we know who were the Inflamers of; but what is all this to the Purpoſe? The Queſtion is barely this, Whether when a Man is brought into Cuſtody into this Court, and charged with an Information, he ſhall not by the Courſe of the Court be compelled to plead preſently?

Sir *Robert Sawyer.* To Indictments for Treaſon and Felony he ſhall be compelled to plead preſently, but not to an Information for Miſdemeanors.

Mr. Juſt. *Powell.* It ſeems to me very hard he ſhould.

Mr. Att. Gen. Sir, there are many Things that ſeem hard in Law, but yet when all is done, the Judges cannot alter the Law. 'Tis a hard Caſe that a Man that is tried for his Life for Treaſon or Felony, cannot have a Copy of his Indictment, cannot have Counſel, cannot have his Witneſſes ſworn; but this has been long practiſed, and the Uſage is grown to a Law, and from Time to Time it hath been ſo taken for Law; it cannot be altered without a new Law made; as it hath been heretofore, ſo it muſt be now, till a greater Authority alter it; and ſo, as to the Caſe here at preſent, if it were a new Caſe, and it was the firſt Inſtance, I muſt confeſs, I think I ſhould not preſs it; but if this be the conſtant Practice of the Court, and if theſe Gentlemen that now oppoſe it, ſome of them miniſterially, ſome of them judicially, have themſelves eſtabliſhed this Practice, they have no Reaſon to wonder that we follow them in it. We do not blame them for what they do now; for Men, when they are of Counſel, may be permitted to argue for their Client contrary to their former Opinions; but if theſe Things, by their Procurement, have been done thus before, ſurely without Offence we may pray the like may be done now. 'Tis our Duty, on Behalf of the King, to deſire that he may have Right done him, as well as they on Behalf of my Lords the Biſhops; and for the Uſage, to cite Precedents were endleſs, eſpecially of late Times; and theſe Gentlemen know them all very well, for they were ſome of them Parties to them themſelves, and we can do no more, nor need, than to put them in mind of their own Doings; whether it was ſo before their Time or not, it concerns them to make out and retract their own Errors; but in our obſervation, if ever this was preſſed, or inſiſted upon on the King's Behalf, this Courſe has always been purſued.

Sir *Rob. Sawyer.* For a Precedent, my Lord, there is the Caſe of my Lord *Hollis*, where there was given Time after Time.

Mr. Sol. Gen. That was only Time to argue the Plea to the Juriſdiction of the Court.

Mr. Juſt. *Powell.* Mr. *Sollicitor*, have you ever known it conteſted, and upon Debate ſo ruled, in an Information for a Miſdemeanor, as this Caſe is?

Mr. Sol. Gen. If you pleaſe to aſk Sir *Samuel Aſtry*, he will inform you how the Courſe has been.

L. C. J. What ſay you, Sir *Samuel Aſtry?*

Sir *Samuel Aſtry.* My Lord, when I came into this Place, there was an antient Gentleman that had been long a Clerk in the Office.

L. C. J. How many Years is it ſince you came into this Office?

Sir *Samuel Aſtry.* About a Dozen Years, I think, my Lord; and he ſat in this Place where Mr. *Harcourt* does now. He was always accounted a loyal, honeſt, and intelligent Man, that is Mr. *Waterhouſe*, who is now alive; and when I came into my Office, I took my Inſtructions in a great Meaſure from him, and aſked him, what the Courſe of the Court was, in ſuch Caſes which I myſelf did not underſtand? For though I had been an Attorney twenty Years, yet it was on the other Side, the Civil Side; and though I knew ſome Things of my own Knowledge, yet I did not ſo well know the whole Practice of the Court; and particularly I asked him, what was the Courſe of the Court in this Caſe that is now in Queſtion? And he told me, that in all his Time and Experience, if a Man appears upon a Recognizance, or was a Perſon in Cuſtody, or appeared in *propria perſona*, as a Perſon privileged, he ought to plead at the firſt Inſtance; and according to that Practice, when Sir *Robert Sawyer* was *Attorney-General*, it was the conſtant Practice; and I am ſure he knows it is no new Thing.

Sir *Robert Sawyer.* But upon what Information, Sir *Samuel Aſtry?* Were they Informations upon Miſdemeanors?

Sir *Samuel Aſtry.* Yes, ſeveral.

Sir *R. Saw.* But was there no Proceſs taken out firſt to call the Party in?

Sir *Samuel Aſtry.* Yes, where Proceſs was never taken out.

Mr. Att. Gen. For how long Time is that you ſpeak of your own Knowledge, Sir *Samuel?*

Sir *Samuel Aſtry.* About a Dozen Years.

Mr. *S. Pemberton.* It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. Sol. Gen. I would ask you, Sir *Samuel Aſtry*, one Queſtion: Was the uſual Proceſs of *Subpœna* firſt taſten out? For Mr. Serjeant *Pemberton* ſays it was, do you find any Warrant for ſuch a Difference as that?

Mr. *S. Pemberton.* Do you find any ſuch Caſe as this is?

Mr. Sol. Gen. Nay, pray Mr. Serjeant, give us your Favour, and let us aſk our Queſtions according to your own Doctrine. How do you find the Practice to have been as to that Diſtinction they have made?

Sir *Samuel Aſtry.* Sir, I would be very loth to enlarge the Precedents of the Crown-Office further than the Truth is; I tell you whence I took my Inſtructions, from Mr. *Waterhouſe*, who was an antient Clerk in the Office, he has been in that Office ſixty Years, and the Inſtructions I took from him, were, that this was the Practice all his Time, and it has been aſſerted all my Time. It has been often conteſted, I confeſs, and Mr. *Pollexfen* has always oppoſed it, and moved againſt it, but it has been always ruled againſt him: I know it was againſt his Judgment, but the Court always over-ruled it.

Sir *Robert Sawyer.* Sir *Samuel Aſtry*, can you give any one Precedent before you came into this Office?

Sir *Samuel Aſtry.* Sir, I can go no farther than this, that I have told you what Information I received from him.

Sir *Rob. Sawyer.* What is all this but a Certificate from Mr. *Waterhouſe?*

L. C. J. We can be informed no otherways than by Certificate from the old Clerks of the Office.

Mr. *S. Pemberton.* Alas, he is a Child, and not fit to do any thing.

Mr. *Pollexfen.* We all know Mr. *Waterhouſe* very well, he is a very weak Man, and alway was ſo, and there is no depending upon any thing that he ſays.

Mr. Sol. Gen. Pray, my Lord, will you hear us a little for the King.

The Biſhop of Peterborough *whiſpering with Sir* Robert Sawyer, *Mr.* Sollicitor *ſaid to him, My Lord, you had better look another way, and look towards the Court, for there your Buſineſs lies.*

L. C. J. Well, Mr. *Sollicitor*, what ſay you?

Mr. Sol. Gen. My Lord, it appears plainly, that the King is in Poſſeſſion of this Privilege, and has been ſo for theſe Dozen Years; for ſo long the Juſtice of the Kingdom towards all the Subjects, hath run in all the Inſtances of it in this Channel; and though it hath been conteſted as often as Mr. *Pollexfen* has been of Counſel for the Defendant, in ſuch Caſes it has always been ruled againſt him. He indeed has made his continual Claims (Sir *Samuel Aſtry* ſays), he has raiſed the Duſt, and made a Hue and Cry, but it has always gone againſt him: And I would ask the reſt of you, Gentlemen, that are of Counſel for my Lords the Biſhops (for ſome, or one of you, I am ſure, has been concerned in every Information that has been exhibited in this Court for theſe nine or ten Years laſt paſt, I would ask you) whether in any Information that you have been concerned in, if the Party being brought in by Proceſs, inſiſted to have Time and an Imparlance, it was ever granted him? I know you will not ſay it ever was; why then ſhould there be more done in this Caſe, than has been done in all other Caſes theſe ten Years? 'Tis not ſufficient to make Declarations againſt the Unreaſonableneſs of the Practice, for it is but what you have done yourſelves, and inſiſted upon for Law; and all thoſe Men that upon Informations have been compelled to plead, have had Injury done them; or elſe theſe Lords will have no Injury by the Court's taking the ſame Courſe. It is true, my Lords the Biſhops are Peers, and here are ſeven of them, and ſeven Lords go a great Way; they make a Committee, I think, in the Houſe of Peers, and a mighty Matter is made of it, that this is the Caſe of ſo many Lords! But will you alter the Courſe of the Court, becauſe ſeven of my Lords the Biſhops are concerned in it, and they make a mighty Stir about the Reaſonableneſs of the Thing? How can it be believed that the Law will not give a Man Time to make his Defence? They agree themſelves, that if it were in the Caſe of Life and Death, they muſt plead preſently; and

and doth not the ſame Reaſon hold? And may not an Argument be drawn *à fortiori*, in the Caſe of a Miſdemeanor? If I am not to have Time when I plead for my Life, there is leſs Reaſon I ſhould have Time to anſwer a Treſpaſs: But, my Lord, 'tis not Reaſon that weighs in the Caſe, 'tis the Courſe of the Court, which is the Law of the Court that we are contending for: And what is there in the Caſe that ſhould require ſo much Time for my Lords the Biſhops to plead to it? It is charged in the Information, that theſe noble Prelates did make a Libel which was produced by them, and publiſhed in the King's Preſence; they can eaſily tell whether they have done this or not done it. What can they plead but the general Iſſue? They talk of ſpecial Matter to be pleaded, but can they ſhew any more that they can ſay, than what any poor ordinary Countryman, if he were here to plead to an Information, could ſay? That is, whether he was guilty or not guilty. Theſe Lords can tell whether it be true, that they did publiſh the Paper laid in the Information, and then your Lordſhip will tell them what will be the Conſequences of that Publication in Point of Law. We ſay all this was done at *Weſtminſter*; there the Scene is laid, and it is not an Information for an old ſtale Thing done a great while ago, but a Thing that was done Yeſterday, and a Thing notorious enough, their conteſting with the King about his Declaration of Indulgence. And as to what Mr. *Finch* has ſaid, that this is a novel Invention, and a Trick to rob a Man of his juſt Defence; ſure he forgets who it is that taught us the Trick. If it be a Trick, we have learnt it from thoſe that trick'd before us; and what is it that theſe Lords do deſire? They would have an Imparlance till *Michaelmas* Term: Does, or can your Lordſhip think they aſk that which is reaſonable? To have ſix Months Time to plead not guilty to an Information for a Libel, and when ſo many Men have been denied it formerly upon the Inſtigation of thoſe very Gentlemen that now preſs ſo very hard to have it granted, ſure they muſt expect to be denied it too; and all this while theſe Lords lie under this Accuſation, which is not ſo trivial a Matter as ſome would make it. I believe my Lords the Biſhops have a Deſire to be cleared, I ſuppoſe it is only their Counſel that deſire to delay it, upon what Ground I know not; I believe they themſelves would be glad to remove the Imputation, which would be beſt done by a Trial, and the ſooner the better: If they have a Mind to juſtify themſelves, that is the readieſt Courſe for it, and they may do it preſently, by pleading Not Guilty. My Lord, I know I am in a great Auditory, and Abundance of your Lordſhip's Time has been taken up already; I preſs it therefore for the Sake of the King, and for the Sake of my Lords the Biſhops, we ſhall elſe have all hang in Suſpence, and hang in the Air for ſix Months longer; therefore let the Matter be put upon a fair Iſſue, ſo as it may come to a ſpeedy Determination. I am ſure if theſe Lords be innocent To-day, they will be innocent To-morrow, and if it were my own Caſe, I would deſire to have it tried as ſpeedily as I could, and therefore I pray they may plead immediately.

Mr. *Juſt. Powell.* Mr. Sollicitor, what do you ſay to the Difference that was taken between a Perſon that was brought in Cuſtody at the firſt Inſtance, where there is no Contempt to the Proceſs of the Court, and one that comes here by *Capias*, upon Default of appearing at the Summons?

Mr. *Finch.* My Lord, if I apprehend them aright, they give us more than we did aſk, for Mr. Sollicitor has laid it down as a Rule, that if a Man is taken upon a *Capias* in a mean Proceſs, he ſhall have no Imparlance.

Mr. *Soll. Gen.* No, you are greatly miſtaken, Sir, and I pray don't lay down Rules for me.

Mr. *Finch.* If I am, Sir, I beg your Pardon, but this I am ſure of, if a *Venire Fac* goes out, which is in the Nature of a *Subpœna*, and the Party appear to it, that being the firſt Time he could come into Court, you cannot force him to plead to an Information, but he has an Imparlance of Courſe.

Mr. *Juſt. Powell.* Methinks it ſeems very reaſonable, that this forcing a Man to plead preſently ſhould be only a Puniſhment for a Contempt of the Court, and pray, were my Lords the Biſhops in Contempt to the Court when they came here To-day? Certainly they were not, for no Man is in Contempt, but he that, being ſerved with Proceſs, diſobeys that Proceſs; and if my Lords the Biſhops had been ſerved with a *Subpœna* and had not appeared, then there would have gone out a *Capias* to bring them in, and then they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. *Soll. Gen.* If you have a Mind to it, you may aſk Sir *Samuel Aſtry* again.

Mr. *Att. Gen.* If they come in upon Bail, they ought to plead preſently.

Mr. *Juſt. Allybone.* Mr. *Finch*, I'll tell you what ſticks with me, truly you could not but be aware that this would be required of you; for this very Thing was in Debate laſt Term, and you know what Rules the Officer ſaid was the Courſe of the Court, why did you not therefore come prepared with ſome Precedents, to ſhew us what the Courſe of the Court is?

Mr. *Att. Gen.* Truly, my Lord, at this Rate, we ſhall keep your Lordſhip here all this Afternoon, if theſe Gentlemen will not be ſatisfied with the Rule of the Court; and for an Anſwer to what Mr. Juſtice *Powell* ſays, if any Riot be committed in the Country, and the Parties are bound by Recognizance to appear here, that is no Proceſs of this Court, and ſo conſequently there can be no Contempt, and yet they muſt plead preſently.

Mr. *Juſt. Powell.* There is a particular Reaſon for that, becauſe they are bound by Recognizance, Sir *Samuel Aſtry* and others ſay, that if they come in by Recognizance they muſt plead preſently.

Mr. *Soll. Gen.* But for the Thing itſelf (that the People that hear us may not imagine that this Court puts a Hardſhip upon my Lords the Biſhops, more than is done in other Caſes) it is beſt to keep the ſame Rule as in all other Caſes; for when all is done, when Juſtice goes with an equal Current, without any Regard to one Perſon or other, then every Body is ſafe, and all Perſons concerned do their Duty: ſo in this Caſe, here be no Precedents produced wherein it has been otherwiſe; then can no Perſon complain but that Things go in this Caſe as they do in all other Caſes; perhaps ſuch a Caſe (as to the Fact of it) never happened before; but for the Law of it, that is plain, and the ſame is in all other Caſes; for that there may be an Information againſt my Lords the Biſhops, as well as other People, if they make Libels, ſure it is no Doubt at all; and if an Information lies againſt them for it, they are under the ſame Rules as others are: But theſe Gentlemen talk of being ſurprized, and that this is the firſt Time they have heard of this Information; but have we told any News in this Information? Was not all that is contained in it, notoriouſly enough known before? Was not the King's firſt Declaration very well known? Was not his ſecond Declaration very well known? Was not his Order of Council for reading of this Declaration very well known? Is not your own Petition a Thing very well known to yourſelves and all the World? Then theſe being the particular Facts of which this Information is made up, and we only ſay you did this Fact, and we aſk you, did you do it, or did you not? Can there be any great Surprize in this? My Lord, I cannot ſee any thing that alters this from the common Caſe, but only their being Peers; and ſince this Queſtion has been heretofore under Conteſt, theſe Gentlemen have had Time enough to have prepared Precedents, to differ this from the common Rule, if they could; but ſince they cannot, we deſire they may have the ſame Rule that is in all other Caſes, and then to be ſure all will go right.

L. C. J. Sir *Samuel Aſtry*, pray will you tell us, whether ever the Court uſed to grant an Imparlance where a Perſon comes in in Cuſtody? Or did you ever know, when a Perſon comes in upon a Commitment, Time was given him to plead?

Mr. *S. Pemberton.* Have you ever known it diſputed and denied?

Sir *Sam. Aſtry.* My Lord, I have known that 'tis in the Diſcretion of the Court to grant what Time they pleaſe.

L. C. J. Is it the Courſe of the Court to give an Imparlance?

Sir *Sam. Aſtry.* No, 'tis the Favour of the Court, and if the Defendants have at any Time ſhewed a reaſonable Cauſe, that they have a ſpecial Matter to plead, or any other Cauſe allowed by the Court, the Court has ſometimes indulged them ſo far as to give them Time.

L. C. J. But how is the ordinary Courſe, Sir *Samuel Aſtry?*

Mr. *Juſt. Allybone.* Ay, for as I ſaid before, Things done in particular Caſes in Favour are not Precedents.

Sir *Sam. Aſtry.* I have told your Lordſhip the Courſe is this, that any Perſon that appears upon a Recognizance, or is taken up by your Lordſhip's Warrant, or by a Warrant from a Juſtice of Peace, or any other Way in Cuſtody, or any Officer of the Court that is a privileged Perſon, and that muſt appear in *propriâ perſonâ*, muſt plead preſently, if the Court upon particular Reaſons do not give him Time; and this I received Information of, as the Practice of the Court, from Mr. *Waterhouſe*, who had been a Clerk in the Office ſixty Years.

Mr. *Soll. Gen.* He ſaid ſo before, but theſe Gentlemen will never be contented, unleſs they have a new Law made for them.

Mr. *Pollexfen.* My Lord, I would not unneceſſarily trouble your Lordſhip; but truly this is a Caſe of great Concern. And firſt of all, I think we ſhall all agree, that what has been uſed for ten or twelve Years paſt will not make the Courſe of the Court, and next I perceive they do not bring any one Inſtance for any Proceeding of this Sort above ten or twelve Years old. But then ſay they on the other Side, why do not you bring Precedents that it has gone otherwiſe heretofore? My Lord, that cannot be done, for it is a Negative on our Side, that this which they deſire is not the Courſe of the Court: But then, as it is impoſſible to prove a Negative, ſo the Proofs ſhould come on the other Side, that this has been done: They ought to ſhew it if there has been any ſuch Thing as a ſtanding Rule, or elſe it ſhall be preſumed an Innovation, as being contrary to all Reaſon. But, my Lord, becauſe they put it upon us, there is this Proof on our Side, as much as a Negative can afford. In thoſe Proceedings that were in the great Caſe of the *Habeas Corpus*, there was an Information againſt *Elliot* and others; they had Time given them to plead over and over, ſo that there is one Precedent: And as many of theſe Caſes in former Times as can be found, will ſhew that this was always the Courſe. But pray, ſay they, produce us one Inſtance, that ever there was a Man that came in upon a Recognizance, that had Time to plead. Truly, my Lord, I cannot juſt now tell whether any ſuch Inſtance can be produced, but I verily believe there may be a great many; but I turn it upon them, and that with great Reaſon. With Submiſſion to your Lordſhip ſhew me any Man, if you can, above a Dozen Years ago that had not Time allowed him to plead. Ay but, ſay they, Mr. *Waterhouſe*, an antient Clerk of the Crown-Office, that has been there theſe ſixty Years, hath certified that this hath been the Practice of all his Time. My Lord, we that have been converſant in the Buſineſs of this Court, did all very well know Mr. *Waterhouſe* when he was here, and ſat in Court in the Place of Sir *Samuel Aſtry*.

Sir *Sam. Aſtry.* No, Sir, it was in Mr. *Harcourt*'s Place.

Mr. *Pollexfen.* Well, he executed a Place here, and 'tis no Matter whether he were Maſter of the Office or no; but I think we all knew him very well, he was a Man as lame in his Buſineſs as could be; for there are ſome Men that will never do Buſineſs well, let them be never ſo long at it; and he was as weak in the Practice of the Court and every Thing elſe, as 'tis poſſible for one that has been bred in an Office can be; and at this Time he is grown ſo decrepit and ſuperannuated, that you may as well depend upon the Certificate of an old Woman, as any Thing that he ſhall ſay in ſuch a Matter as this: He is now almoſt fourſcore Years of Age, and has loſt that little Memory and Underſtanding he had; but if his Certificate muſt be depended upon becauſe of his ſtanding in the Office, pray, my Lord, let him come hither, and do you aſk him what he has to ſay in this Matter.

Mr. *Soll. Gen.* Ay, that is very well indeed.

Mr. *Pollexfen.* Good Mr. Sollicitor, ſpare us, certainly there needs not ſuch great Haſte in this Matter, we are upon a Buſineſs of very great Weight and Concernment; for you are now making a Law for the whole Kingdom, in Point of Practice, in Caſes of this Nature. We do ſay indeed, that by the Reaſon of the Heat and Zeal of theſe laſt ten Years, ſuch a Uſage has been introduced, but Sir *Samuel Aſtry* tells you it was oppoſed, and I hope that neither I, nor the Thing will be the worſe thought of, becauſe I oppoſed what I thought an unreaſonable and new Invention. My Lord, I know in the Caſe of the City of *London*, we had Time to plead a whole Vacation after an Imparlance, and were not at all hurried

hurried on, as the King's Counſel would do in this Caſe. My Lord, if they can produce any antient Precedent for it, I will ſay no more; but there is no Caſe in Print in any of our Books, that ever I read, or can remember, that countenances ſuch an Opinion. A Man by this Means may loſe his juſt Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a ſudden into Court upon a Warrant, and when he is here, he ſhall be charged with an Information, and preſently he muſt plead not guilty, becauſe he has not Time to prepare a Plea of any other Nature, let him have never ſo much other ſpecial Matter or Occaſion for it. If you pleaſe to let this Matter be examined what the Precedents are, and of what Age thoſe Precedents are, then perhaps your Lordſhip will get ſome Satisfaction; but otherwiſe, if the bare Certificate of the Maſter of the Office is to be a Guide to the Court what is Law, and what is not, we ſhall be in a very uncertain Condition, eſpecially when the Matter carries in the very Face of it a great deal of Unreaſonableneſs and Injuſtice. They on the other Side will argue, that it is not more unreaſonable than the Practice in the Caſe of Treaſon and Felony, where Perſons are compelled to plead inſtantly. But under Favour, my Lord, there is no Compariſon between this Caſe and that, though I know it was always thought a Hardſhip and Defect in our Law, that a Perſon ſhould be denied Time to plead in Caſe of Life and Death, except he can ſhew ſome ſpecial Matter of Law that he has to plead, and then he has always Time allowed him to put it into Form; and I could never think there was any Reaſon to be given for it, but becauſe the common Defences of Felons would be little Shifts and Arts, which would deſtroy Proceedings, and make them tedious, and that would be an Encouragement to People to commit Felony; and beſides there is a Truſt which the Law repoſes in the Court in capital Caſes, to take Care that theſe Men ſhould not ſuffer upon any little Tricks in Law; but if you come below Treaſon and Felony, the Law puts no ſuch Hardſhip upon the Defendant, nor repoſes ſuch a ſpecial Truſt in the Court; but a Man may plead any Thing he has to plead; and can any Man plead before he ſees what he is to plead to? And ſhall the Law allow him Counſel to prepare his Plea, and not allow him Time to conſult with that Counſel about it? Theſe are Things, my Lord, that truly to me ſeem unreaſonable: But as to the Practice and Courſe of the Court, I pray your Lordſhip to give Order that the Precedents may be ſearched, that you may know what the antient Practice was.

Mr. *Finch.* Whether you will grant an Imparlance now or no, yet I hope, however, you will think fit to give my Lords the Biſhops Time to plead.

L. C. J. But Mr. *Finch*, we have had a Certificate from Sir *Samuel Aſtry*, which truly weighs a great deal with me; he tells you the Practice has been ſo ever ſince he came here, and that Mr. *Waterhouſe* told him that it had been ſo all his Time, which is ſixty Years.

Mr. *Pollexfen.* My Lord, there are Perſons here that will upon their Oaths declare, That Mr. *Waterhouſe* has often told them the Practice was otherwiſe, even in his Time, and afterwards a long Time before this new Way of Proceeding came in.

Mr. *Ince.* My Lord, if I might have Liberty to ſpeak, I can ſay Mr. *Waterhouſe* has told me———

L. C. J. Pray be quiet, Mr. *Ince.*

Mr. *Juſt. Allybone.* But pray, Mr. *Pollexfen*, give me Leave to mind you how the Evidence ſtands againſt you; the Objections are, that this has been a Practice but for twelve Years laſt paſt: If that be true, I think it goes a great Way, for the Practice of twelve Years is Precedent enough, *Primâ Facie*, that ſuch is the Practice: for how ſhall we come to the Knowledge of the Practice, but from our Officer Sir *Samuel Aſtry*, who has been here examined? And he tells you, that upon his coming into the Office, when it could not be ſo doubtful as now, it ſeems, it is, he took Inſtructions from Mr. *Waterhouſe:* I allow you it is but his certificate, but that muſt go a great Way with the Court.

Sir *Rob. Sawyer.* Such a Practice as this has been always very rare in Informations for Miſdemeanors; and they bring you nothing of any Precedent older than Sir *Samuel Aſtry*'s Time.

Mr. *Finch.* Pray, my Lord, give me Leave to vary the Queſtion; I do not now make it a Queſtion, whether your Lordſhips ſhould grant my Lords the Biſhops an Imparlance, but whether you would think fit to look into the Courſe of the Court before that Time that Sir *Samuel Aſtry* ſpeaks of, and take Time to conſider and ſearch into Precedents.

Mr. *Juſt. Allybone.* Do you, Mr. *Finch*, give us any one Reaſon or Precedent that may make us doubt, whether this be the Courſe of the Court or no? And you could not but be aware of this before, and therefore ſhould have come prepared to make out your Objection.

Mr. *Finch.* Mr. *Pollexfen* and the reſt of the Practiſers in my Lord *Hale*'s Time will tell you, that the Courſe was otherwiſe in his Time. Sir *Samuel Aſtry* indeed tells you it has been ſo ſince his Time; but this was one of the Points it ſeems, that he was ignorant of, which made him enquire of Mr. *Waterhouſe*, ſo doubtful was his Practice.

Sir *Samuel Aſtry.* I was an Attender upon this Court before I came into this Office, but it was in another Place, on the other Side of the Court; and therefore was not concerned ſo much to know what was the Courſe on this Side, till I came into this Office.

Mr. *Soll. Gen.* Theſe Gentlemen differ among themſelves, one would have an Imparlance, the other only Time to plead; I believe truly they cannot tell what they would have; I pray the Rules of the Court may be kept to.

Sir *Samuel Aſtry.* Here are two Clerks that ſit by me, that have been a long Time in the Office, Mr. *Harcourt*, my Secondary, and the Clerk of the Rules, I pray they may be aſked their Knowledge of this Matter.

Mr. *Att. Gen.* Certainly theſe Gentlemen think they have a Privilege above all other People, that they muſt not be ſubject to the ſame Rules as others are! We on our Parts have taken all the Methods that we could to make this Matter manifeſt, and what is it that theſe Gentlemen now propoſe? They pray you to take Time to conſider, but have they uſed the right Means of creating a Jealouſy or Suſpicion in the Court, that the Courſe is otherwiſe? They can give no Inſtance of it, and all they ſay is, 'tis a Negative, that this is not the Courſe of the Court, but the Imparlance that they beg is in the Affirmative, ſurely that they can find Proof of, if it be ſo. As for my Lord *Hollis*'s Caſe, that is with us, and not againſt us; let Mr. *Pollexfen* ſhew that ever any one of the Men, that were brought into Court in Cuſtody, either had Time to plead, or an Imparlance.

L. C. J. Sir *Samuel Aſtry* ſays he has given you his Opinion, and here are two other Clerks of the Office that he refers himſelf to, are you willing that they ſhould be aſked?

Mr. *S. Pemberton.* Yes, my Lord, with all our Hearts.

L. C. J. Mr. *Harcourt*, how long have you been a Clerk in the Crown Office?

Mr. *Harcourt.* About ſeventeen or eighteen Years, my Lord.

L. C. J. How long have you known the Practice of the Court in this Matter, and what is it?

Mr. *Harcourt.* I cannot charge myſelf ſo with Particulars from the Time of my coming into the Office, but for theſe ten or twelve Years paſt (I remember) it has been as the King's Counſel preſſed, and as Sir *Samuel Aſtry* has declared.

L. C. J. What ſay you, Mr. *Sillyard*, how long have you known the Crown-Office?

Mr. *Sillyard.* I have been a Clerk here about thirty Years.

L. C. J. Well, and how has the Practice been all your Time?

Mr. *Sillyard.* I have not ſat here as Clerk of the Rules but a little while, but ſince I have ſat here, I have always obſerved it to be the Practice, that one that comes in Cuſtody ſhould plead immediately; it was a Thing heretofore that did not ſo often happen as it hath done here of late, therefore I cannot ſo well ſpeak it; but it hath fallen out frequently within ſome Years laſt paſt, and that hath been the conſtant Courſe.

Sir *Samuel Aſtry.* When you firſt came to be Attorney-General, Sir *Robert Sawyer*, I am ſure it was ſo.

Mr. *Att. Gen.* Pray let me aſk you, Mr. *Sillyard*, you ſay you have known the Office thirty Years; when you firſt came to the Office, were Informations as frequent as they are now, and have been of late?

Mr. *Soll. Gen.* It was ſo in the Caſe of Mr. *Hampden*, when you were Attorney-General, Sir *Robert Sawyer*, he was forced to plead immediately to an Indictment, for a Crime that perhaps you will ſay was near upon Treaſon.

Sir *Rob. Sawyer.* Yes truly, it wanted but one Witneſs, that was all.

Mr. *Soll. Gen.* But yet the Indictment was only for a Miſdemeanor, and there we ſtruggled and debated the Matter, but were forced to give it over, becauſe the Courſe of the Court was againſt us, ſo it has been by the unqueſtionable Teſtimony of Sir *Samuel Aſtry* for theſe twelve Years laſt paſt; and in thoſe twelve Years we have had many Changes, perhaps there may have been twelve Chief Judges, and they have all affirmed it, and if I then make it out, that in all theſe Judges Times that are within our Remembrance, it has gone thus, then there are enough Precedents in the Matter.

Sir *Rob. Sawyer.* But, my Lord, I deſire to know, whether that were the antient Courſe, Mr. Sollicitor?

Mr. *Soll. Gen.* They that make the Objection ought to prove it; but I will name Sir *Robert Sawyer* another Caſe, and that is the Caſe of Sir *Samuel Barnardiſton*, which was the Caſe of a Libel too, he was forced to plead immediately, and it coſt him 10,000*l.* Fine.

L. C. J. Well, Gentlemen, have you done on either Side?

Mr. *S. Pemberton.* If your Lordſhip will pleaſe to give us Time till To-morrow Morning, we will come hither by Rule of Court, and bring you ſome Certificates and Affidavits, or elſe ſome Precedents that we hope will ſatisfy your Lordſhip in this Matter.

L. C. J. No, Brother, we cannot do that; the Queſtion is what the Courſe of the Court is, we have an Account of that from Sir *Samuel Aſtry*, for twelve Years of his own Knowledge, and from Mr. *Waterhouſe* by him for ſixty Years; but for Mr. *Waterhouſe* they except againſt him, and ſay he was a Perſon that was always lazy and did not ſo well underſtand his Buſineſs, and now is ſuperannuated, that is ſaid, but is but *gratis dictum*, perhaps it may be ſo, perhaps not; and they have offered to examine Mr. *Ince* about ſome Opinion that he has had from this Mr. *Waterhouſe*; it may be he may have aſked him ſome Queſtion that may lead to it, and he may have given him ſome ſlight Anſwer, but then here are theſe two Perſons, Mr. *Harcourt*, and Mr. *Sillyard*, and the one has been a Clerk theſe ſixteen or ſeventeen Years, and the other has known the Office thirty Years, though there were not heretofore ſo many Informations of this Nature and Kind as now of late, but ſtill they ſay, that a Perſon that comes in upon a Commitment, or a Recognizance, ſhall never have any Imparlance.

Mr. *Soll. Gen.* Can they give any one Inſtance that has any the leaſt Shadow to the contrary?

Mr. *Pollexfen.* My Lord, if we had Time, we hope we ſhould be able to ſatisfy you in this Matter.

Mr. *Soll. Gen.* You have had time enough to prepare yourſelves for this Queſtion, if you had thought you could do any good in it.

L. C. J. Would the Courſe of the Court be otherwiſe To-morrow than it is To-day, we have taken all the Care we can to be ſatisfied in this Matter, and we will take Care that the Lords the Biſhops ſhall have all Juſtice done them, nay they ſhall have all the Favour by my Conſent that can be ſhewn them, without doing wrong to my Maſter the King; but truly I cannot depart from the Courſe of the Court in this Matter, if the King's Counſel preſs it.

Mr. *Att. Gen.* My Lord, we muſt pray your Judgment in it, and your Direction, that they may plead.

L. C. J. Truly I think they muſt plead to the Information.

Mr. *Att. Gen.* Sir *Samuel Aſtry*, pray aſk my Lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbiſhop of Canterbury *ſtood up, and offered a Paper to the Court.*

L. Archbiſh. of Cant. My Lord, I tender here a ſhort Plea (a very ſhort one) on Behalf of myſelf and my Brethren and the other Defendants; and I humbly deſire the Court will admit of this Plea.

L. C. J. If it pleaſe your Grace, it ſhould have been in Parchment.

Mr. *Soll. Gen.* What is that my Lord offers to the Court?

L. C. J. We will ſee what it is preſently, Mr. Sollicitor.

Bish. of Peterb. I pray, my Lord, that the Plea may be read.

Mr. *Soll. Gen.* But not received.

Mr. *Att. Gen.* No, we desire to know what it is first.

Sir *Robert Sawyer.* Mr. Attorney, if they will plead, the Court sure is obliged to receive it.

L. C. J. If it is a Plea, your Grace will stand by it.

L. Archbish. of Cant. We will all stand by it, my Lord; it is subscribed by our Counsel, and we pray it may be admitted by the Court.

Mr. *S. Pemberton.* I hope the Court will not deny to receive a special Plea, if we offer one.

L. C. J. Brother, let us hear what it is.

Mr. *Soll. Gen.* Read it if you please, but not receive it.

Clerk reads the Plea; which in English *is thus:*

The BISHOPS PLEA.

AND the aforesaid William *Archbishop of* Canterbury, William *Bishop of St.* Asaph, Francis *Bishop of* Ely, John *Bishop of* Chichester, Thomas *Bishop of* Bath *and* Wells, Thomas *Bishop of* Peterborough, *and* Jonathan *Bishop of* Bristol, *being present here in Court in their own Persons, pray Oyer of the Information aforesaid; and it is read to them, which being read and heard by them the said Archbishop and Bishops, the said Archbishop and Bishops say, that they are Peers of this Kingdom of* England, *and Lords of Parliament, and each of them is one of the Peers of this Kingdom of* England, *and a Lord of the Parliament, and that they being (as before is manifest) Peers of this Kingdom of* England, *and Lords of Parliament, ought not to be compelled to answer instantly for the Misdemeanor aforesaid, mentioned in the said Information exhibited here against them in this Court; but they ought to be required to appear by due Process in Law issuing out of this Court here upon the Information aforesaid, and upon their Appearance to have a Copy of the said Information exhibited against them, and reasonable Time to imparle thereupon, and to advise with Counsel learned in the Law, concerning their Defence in that Behalf, before they be compelled to answer the said Information:* Whereupon, *for that the said Archbishop and Bishops were imprisoned, and by Writ of our Lord the King, of* Habeas Corpus, *directed to the Lieutenant of the Tower of* London, *are now brought here in Custody, without any Process upon the Information aforesaid issued against them, and without having any Copy of the said Information, or any Time given them to imparle, or be advised,* they pray Judgment, *and the Privilege of Peers of this Kingdom, in this Case to be allowed them; and that they the said Archbishop, and Bishops, may not be compelled instantly to answer the Information aforesaid,* &c.

ROBERT SAWYER.
HEN. FINCH.
HEN. POLLEXFEN.

Mr. *Att. Gen.* My Lord, with your Lordship's Favour, this, in an ordinary Person's Case, would perhaps be thought not fair Dealing, or that which (it being in the Case of these Reverend Prelates) I shall not now name; to make all this Debate and Stir in a Point of this Nature; to take the Judgment of the Court after three or four Hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Jurisdiction of the Court——

Sir *Rob. Sawyer.* It is no such Plea.

Mr. *Att. Gen.* It is so in Effect; but certainly it is such an Irregularity, and such an unfair way of proceeding as would not be endured in an ordinary Case; and I hope you will give so little Countenance to it, as to reject it, and make them plead according to the usual Course and Way of Proceedings. Certainly a Plea of this Nature, after so long an Argument, would be reckoned nothing but a Trick.

Mr. *S. Pemberton.* We hope the Court and you are not of one Mind, Mr. Attorney, in this Matter; we desire the Court to receive the Plea.

Mr. *Att. Gen.* With Submission, the Court is not bound to receive Pleas that are put in purely for Delay, as this is; for the Judgment of the Court has been already given in the very Matter of this Plea; and for rejecting a Plea, it is done every Day; if a Man puts in a meer trifling dilatory Plea, the Court may reject it. Does this Plea contain any thing in it, but what has been argued and debated *pro & con*, and settled by the Court already? If they will put in any Plea in Chief they may, but such a Plea as this, I hope shall not have so much Countenance as to be received by the Court.

Mr. *Pollexfen.* Do you demur to it? if you please, Mr. Attorney, we will join in Demurrer with you.

Mr. *Att. Gen.* No, there will be no need of that.

Mr. *Soll. Gen.* Surely the Court will never give so much Countenance to it, as to receive it.

Mr. *Finch.* If you will please either to reply or demur, Mr. Sollicitor, we are here to maintain the Plea.

Mr. *Soll. Gen.* If you were here, you would say the same thing that we do. My Lord, this Plea is, that my Lords the Bishops are not bound to plead instantly; so that 'tis not a Question, Whether they ought to answer, or not to answer, but whether they ought to answer immediately, and what do they say more? They would have an Imparlance, and Time to consult with their Counsel what they shall plead, which is all but one and the same Thing; and what is the Reason they give for this? They induce it thus, These Noble Persons are Peers of the Realm, and so ought not to be compelled to plead immediately: This, if I mistake not, is the Sum of their Plea. Now pray, my Lord, what sort of Plea is this? It is not a Plea to the Jurisdiction of the Court, though it do in a sort decline the Justice of the Court: Is it a Plea in Abatement? No, it is not; for it is only to gain Time: And do they now offer any thing more for themselves, than what was said by their Counsel before? only that we are Peers of the Realm, and that such is the Privilege of Peers, that they ought to have an Imparlance, and Time to plead, and that they ought not to answer presently. My Lord, this Matter hath been long agitated in the Court already; your Lordship, and the Court, have given your Judgments, and we know your Lordship, and the Court, will not admit of Tricks to delay the King's Causes. We all know the Term is a short Term; and what I said in the Beginning upon this Matter, I say again, it is the Interest, and for the Honour of my Lords the Bishops (if they understand their own Interest, and value their Honour) to have this Cause tried as soon as may be; but this Trifling and Tricking is only for Delay: For what Issue can be taken upon this Plea? Certainly none. And if we should demur, what will be the End of that, but only to get Time to slip over the Term? If there were any thing worth the considering in this Plea, and that had not been already debated and settled, then it might concern us to give some Answer to it; but we have spent three Hours, by my Watch, in the Dispute, and the Matter having been over-ruled already, it is Time to have an End of it. Sure the Court will never be so treated by these Persons that are of Counsel for my Lords the Bishops, for it cannot be thought that my Lords the Bishops do it of themselves; and whether the Court will be so served, we submit to your Lordship. Certainly you will not receive such a Plea as this, especially it being in Paper, you will never countenance such a Practice so far as to give these Lords Time to trifle with the Court. If any such thing as a Plea be tender'd to the Court, it ought to be in Parchment; and if they would have an Imparlance, there ought to have been an Entry of a *Petit Licentiam interloquendi*, upon the Roll, but not such a Plea as this; for this in effect is no more than desiring an Imparlance, which if it be granted of course, upon such a Prayer entered upon the Roll, you take it of course; but if it be not of course, you cannot come in by way of Plea, it must be by Suggestion upon the Roll, and a *Conceditur* entred. If this be admitted as a Precedent, every Man hereafter that comes in upon any Information, will take advantage of it, and plead such a Plea as this; and if you grant an Imparlance in this Case upon this Plea, you must grant an Imparlance in every Case. Certainly the Law is not to be altered, the Methods of Proceedings ought to be the same in every Case. And I hope you will not make a particular Rule in the Case of my Lords the Bishops, without a special Reason for it.

Mr. *S. Pemberton.* We put in this Plea, my Lord, and are ready to abide by it; and we say that, according to the Course of the Court, it ought to be received.

Mr. *Att. Gen.* No, but good Mr. Serjeant, 'tis in the Discretion of the Court whether they will receive it or not; for the Matter has been in Debate already, and has received a Determination; the Court has over-ruled them in this very Point already, and there is no more in this Plea than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. *Soll. Gen.* Here is a Plea offered in Writing, and in Paper; the Court sees what it is, and I hope you will give no Countenance to it.

Mr. *Pollexfen.* I do hope, my Lord, you will not judge this is a frivolous Plea; I think our Case is such, that you will not do that; if you think fit you may over-rule it, but I hope you will not refuse it.

Mr. *Soll. Gen.* The Court will certainly refuse a frivolous Plea, and they may do it.

Mr. *Pollexfen.* But, Mr. Sollicitor, I hope the Court will consider of it, whether it be a frivolous Plea or not. It is true, there has been a Debate about the Course of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate; but yet still perhaps it may remain in Doubt, and it being a Question of such a Consequence as this, it may very well deserve the Court's Consideration. There never was a judicial Settlement of it that I know of yet; nor do I know any way of having it satisfactorily settled, but by the Judgment of the Court entred upon Record. Here we offer a Plea that contains the Matter in Debate, and this Plea will appear upon Record; and if upon Consideration of the Plea your Lordship shall think fit to over-rule it, and be of opinion against the Plea, then will you, by your Resolution, in a judicial way, settle the Question that has hitherto been in Controversy.

L. C. J. Mr. *Pollexfen*, I would ask you whether the Counsel have dealt ingenuously with the Court or no in this Matter, after four Hours Debate, and the Opinion of the Court delivered, to come and sum up all the Arguments in such a Plea as this, and so put us upon debating it over again?

Mr. *Pollexfen.* My Lord, certainly this has been done before, without Offence. After we had moved for a Thing which was denied upon Motion, it is no such great Disrespect to the Court, with Submission, to put the same Matter into a Plea, for the judicial Opinion of the Court.

Sir *Rob. Sawyer.* That, without all Question, has been done a great many times.

Mr. *Soll. Gen.* How many times have you been accused of playing Tricks, Sir *Robert Sawyer?*

Sir *Robert Sawyer.* Not so many as you, Mr. Sollicitor.

Mr. *Soll. Gen.* I don't ask it as if I questioned it; for I assure you, I don't doubt it of your Part at all.

L. C. J. Pray, Gentlemen, don't fall out with one another at the Bar: we have had Time enough spent already.

Mr. *Pollexfen.* Truly, my Lord, I would not trick with the Court in any Case, nor on the other side would I be wanting to advise, and do for my Client what I am able, and lawfully may. We have laboured all we could to get Time for my Lords the Bishops to imparle to this Information; and we have been the more earnest in it, because it concerns us, who attend this Bar, to take what Care we can that the Course of the Court may be observed; but as for this Matter, we suppose this Practice of the Court is not in Law a good Practice. Now what Way in the World has any Man to bring this so in question, as to have a judicial Resolution of the Court about it, but by such a Plea? We take it, that it is usual and legal for us to have an Imparlance, and a Man would imparle, but the Court upon Motion refused to give him an Imparlance. Is it not, think you, very fit for the Party to have this judicially entered upon Record? where all this Matter will appear, and the Party may be relieved by Writ of Error, if the Judgment of the Court should be wrong; but truly I cannot see how the Court can refuse the Plea; for if so be a Plea be pleaded, they have their Liberty to answer it on the other side by a Replication, or else to demur, and the Judgment of the Court may be had upon it one Way or other; but the Court will never go about to hinder any Man from pleading where he may plead by Law. Here is a Plea put in, and the Court sure will take no Notice what is the Matter of the Plea, till the other Party have either replied or demurred. The same thing may happen in any other Plea that is pleaded, and the Party will be without Remedy upon a Writ of Error, because the Plea being rejected, there does nothing appear upon Record.

Truly

Truly for the Court to reject and refuſe the Plea, would be as hard as the refuſing of the Imparlance, and we know no Way we have to help ourſelves.

Mr. *Soll. Gen.* You might have entered your Suggeſtion for an Imparlance upon the Roll, and then it would have appeared upon Record, and if the Court had unjuſtly denied it you, you would have had the Benefit of that Suggeſtion elſewhere. Truly, my Lord, I think if any thing be tricking this is, for it is plainly ill pleading.

Mr. *Finch.* Then pray demur to it.

Mr. *Soll. Gen.* No, Sir, 'tis fencing with the Court, and that the Court won't ſuffer. It is only to delay; and if we ſhould demur, then there muſt be Time for arguing; and what is the Queſtion after all, but whether you would be of the ſame Opinion To-morrow, that you are To-day?

Sir *Robert Sawyer.* I would put Mr. Sollicitor in Mind of *Fitz-Harris*'s Caſe, which he knows very well: He put in a Plea, and we for the King deſired it might not be received; but the Court gave him Time to put it into Form, and I was fain to join in Demurrer preſently, and ſo may theſe Gentlemen do if they pleaſe.

Mr. *Soll. Gen.* Yes, Sir *Robert Sawyer*, I do know the Caſe of *Fitz-Harris* very well; I was aſſigned of Counſel by the Court for him; we were four of us, and there was a Plea put in, but no ſuch Plea as this. There was an Indictment of High-Treaſon againſt him, in which Caſe it is agreed on all Hands, that the Party muſt anſwer preſently; but becauſe he ſuggeſted here at the Bar, ſays he, I have Matter to plead to the Juriſdiction of the Court, and ſhewed what it was. I was impeached before the Lords in Parliament for Treaſon, for the ſame Matter of which I am here accuſed. The Court did give him Time to put this into Form, and we were aſſigned his Counſel to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here indicted for one and the ſame Treaſon for which we were impeached in Parliament, and that that Impeachment was ſtill depending, and ſo we reſted in the Judgment of the Court, whether we ſhould be put to anſwer it here. This was a Plea that carried ſomething of Weight in it, and not ſuch a trifling one as this. It is true, Sir *Robert Sawyer*, who was then Attorney-General, did preſs the Court to over-rule it immediately; but it being a Matter of ſome Importance, the Court would not do that, but had it argued ſolemnly by Counſel on both Sides, and at laſt there was the Opinion of three Judges againſt one, that the Plea was no good Plea. But what is that to ſuch a trifling Plea as this?

Mr. *Att. Gen.* Pray, my Lord, favour me a few Words about that Caſe of Mr. *Fitz-Harris.* It is true, there was a Plea put in, and it is true alſo, that that which brought that Plea to be argued, was the Demurrer that was put in by Sir *Robert Sawyer*, who was ſo zealous and haſty in the Matter, that becauſe the Court did not preſently over-rule the Plea, as he deſired, he immediately demurred, before the reſt of the King's Counſel could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt muſt be argued, and ſpoke to on both Sides; but where Pleas are really in Abuſe of the Court, the Court never gives any Countenance to them: Nay, truly I have known another Courſe taken; I am unwilling to mention a Caſe that happened much about that Time too in this Court, becauſe of that Regard I have to my Lords the Biſhops, but Sir *Robert Sawyer* remembers it very well, I am ſure: It was the Caſe of one *Whitaker*, who for a Thing like this, putting in a trifling Plea, not only had his Plea rejected, but ſomething elſe was ordered. I could ſhew the Precedent, but that I am more tender than to preſs it in this Caſe, becauſe there the Court order'd an Attachment to go againſt him; but I will put theſe Gentlemen in Mind of another Caſe, and that is the Caſe of a Peer too: It is the Caſe of my Lord *Delamere*, which they cannot but remember, it being in the higheſt Caſe, a Caſe of Treaſon. When my Lord *Delamere* was arraigned, and to be tried for High-Treaſon, he put in a Plea before my Lord Chancellor, who was then High Steward, and Sir *Robert Sawyer*, who was then Attorney-General, prayed the Lord Steward, and the Peers, to reject it, and the Court did reject it (as we hope the Court will do this), and would never ſo far delay Juſtice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was abſolutely refuſed. My Lord, in this Caſe we have had the Judgment of the Court already, and therefore we muſt now deſire that this Plea may be rejected.

Mr. *Soll. Gen.* My Lord, we have now gone out of the Way far enough already; it is Time for us to return, and bring the Caſe into its due Methods. We pray your Lordſhip to reject this Plea.

Sir *Robert Sawyer.* My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You ſhall have my Judgment preſently; but my Brothers are to ſpeak firſt.

Mr. *Juſt. Allybone.* Mr. *Pollexfen* makes it a Queſtion, whether this Plea may be rejected nor not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. *Juſt. Powell.* Truly I do not know whether the Court can reject this as a frivolous Plea.

L. C. J. Surely we may, and frequently do.

Mr. *Att. Gen.* You do it every Day; 'tis a frequent Motion: If a frivolous Plea be put in, before it be entred upon Record as a Plea, the Court may refuſe it, if they ſee Cauſe.

Mr. *Juſt. Allybone.* Truly if it may be, this appears to me a frivolous Plea.

Mr. *Juſt. Powell.* I do not know how the Court can reject any Plea that the Party will put in, if he will ſtand by it, as they ſay they will here; and I cannot think this a frivolous Plea, it concerning the Privilege of Peers, and Lords of Parliament.

Mr. *Juſt. Allybone.* Brother *Powell*, I would be as tender of the Privileges of Parliament, and ſpeak with as much Reſpect of the Privileges of the Peerage, as any body elſe; but for the Matter of the Plea, truly it appears to me, that the Peers are named in it only for Faſhion ſake, and it is frivolous.

Mr. *Juſt. Powell.* The Matter of the Plea, except only their being ſaid to be Peers and Lords of Parliament, was ſpoke to before, but it was only *obiter*, and by way of Motion; but now it may come before us for our Judicial Determination.

Mr. *Juſt. Allybone.* Pray let the Plea be read again. [*Which was done.*

Mr. *Juſt. Allybone.* This Plea is no more but that which has been denied already upon ſolemn Debate; and if it be in the Power of the Court to reject any Plea, ſurely we ought to reject this. Indeed I know not what Power we have to reject a Plea; but if we have Power, this ought to be rejected.

Mr. *Juſt. Powell.* I declare my Opinion; I am for receiving the Plea, and conſidering of it.

Mr. *Juſt. Holloway.* I think as this Caſe is, this Plea ought not to be received, but rejected, becauſe 'tis no more than what has been denied already. I am not aſhamed to ſay, that I ſhould be very glad and ready to do all things that are conſiſtent with my Duty, to ſhew Reſpect to my Lords the Biſhops, ſome of whom are my particular Friends; but I am upon my Oath, and muſt go according to the Courſe of Law.

L. C. J. We have aſked, and informed ourſelves from the Bar, whether we may or can reject a Plea; and truly what they have ſaid, hath ſatisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be ſaid on both Sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Biſhops muſt plead over.

Mr. *Att. Gen.* We pray they may plead in chief.

Clerk. My Lord Archbiſhop of *Canterbury*, is your Grace guilty of the Matter charged upon you in this Information, or not guilty?

Archbiſhop of Cant. Not guilty.

Clerk. My Lord Biſhop of St. *Aſaph*, is your Lordſhip guilty of the Matter charged upon you in this Information, or not guilty?

Biſhop of St. Aſaph. Not guilty.

Clerk. My Lord Biſhop of *Ely*, is your Lordſhip guilty of the Matter charged upon you in this Information, or not guilty?

Biſhop of Ely. Not guilty.

Clerk. My Lord Biſhop of *Chicheſter*, is your Lordſhip guilty of the Matter charged upon you in this Information, or not guilty?

Biſhop of Chicheſter. Not guilty.

Clerk. My Lord Biſhop of *Bath* and *Wells*, is your Lordſhip guilty of the Matter charged upon you in this Information, or not guilty?

Biſhop of Bath and Wells. Not guilty.

Clerk. My Lord Biſhop of *Peterborough*, is your Lordſhip guilty of the Matter charged upon you in this Information, or not guilty?

Biſhop of Peterborough. Not guilty.

Clerk. My Lord Biſhop of *Briſtol*, is your Lordſhip guilty of the Matter charged upon you in this Information, or not guilty?

Biſhop of Briſtol. Not guilty.

Mr. *Att. Gen.* My Lord, I pray the Clerk may join Iſſue on the Behalf of the King, ſo that we may come to Trial; and we would have theſe Gentlemen take Notice, that we intend to try this Cauſe on this Day Fortnight; and we pray Liberty of the Court, that we may try it at Bar.

L. C. J. Are you not too haſty in that Motion, Mr. Attorney?

Mr. *Att. Gen.* My Lord, we ſhould indeed make it the Motion of another Day; but we do now tell them this *ex abundanti*, becauſe my Lords the Biſhops are now here, and will, I ſuppoſe, take Notice, that we do intend to move it another Day.

Mr. *Soll. Gen.* We now give them Notice, that we intend to move.

Sir *Robert Sawyer.* For that you need not trouble yourſelves; we are very deſirous it ſhould be tried at Bar, and that as ſoon as you pleaſe.

Mr. *Att. Gen.* Well then you take Notice it will be tried this Day Fortnight.

L. C. J. Well, what ſhall we do with my Lords the Biſhops?

Mr. *Att. Gen.* They are Bailable, no queſtion of it, my Lord, if they pleaſe.

L. C. J. Then, my Lords, we are ready to bail you, if you pleaſe.

Sir *Robert Sawyer.* We deſire your Lordſhip would be pleaſed to take their own Recognizance.

L. C. J. What ſay you, Mr. Attorney? I think that may do well enough.

Mr. *Att. Gen.* My Lord, with all my Heart; we will do it.

L. C. J. In what Penalty ſhall we take it?

Mr. *At. Gen.* One thouſand Pound I think, my Lord, his Grace, and five hundred Pounds a-piece the reſt.

Sir *Robert Sawyer.* What Neceſſity is there for ſo much?

Mr. *Att. Gen.* Look you, Sir *Robert Sawyer*, to ſhew you that we do inſiſt upon nothing that ſhall look like Hardſhip, what my Lords have been pleaſed to offer concerning taking their own Recognizance, we agree to, and what Sums the Court pleaſes.

Mr. *Soll. Gen.* It is all one to us; we leave it wholly to the Court.

Sir *Robert Sawyer.* Only I have one thing more to beg of your Lordſhip, on the Behalf of my Lords the Biſhops, that you will pleaſe to order, that in the Return of the Jury there may be forty-eight returned.

Mr. *Att. Gen.* I tell you what we will do; Sir *Samuel Aſtry* ſhall have the Freeholders Book, if you pleaſe, and ſhall return twenty-four.

Sir *Robert Sawyer.* Eight and forty has been always the Courſe, when the Jury is returned by Sir *Samuel Aſtry.*

Mr. *Soll. Gen.* My Lord, I pray the Officer may return the Jury, according as is uſual in Caſes of this Nature.

Mr. *Att. Gen.* Do you admit of a Trial at Bar, Gentlemen?

Sir *Robert Sawyer.* Yes, and try it when you will.

L. C. J. They ſay it ſhall be this Day Fortnight, and let there be a Jury according to the uſual Courſe.

Sir *Robert Sawyer.* We pray it may be in the Preſence of the Attorneys or Sollicitors on both Sides.

L. C. J. What is the uſual Courſe, Sir *Samuel Aſtry?* Do you uſe to return twenty-four, or forty-eight, and then ſtrike out twelve a-piece, which I perceive they deſire for the Defendants?

Sir *Samuel Aſtry.* My Lord, the Courſe is both ways, and then it may be as your Lordſhip and the Court will pleaſe to order it.

L. C. J. Then take forty-eight, that is the faireſt.

Mr. Att. Gen. We agree to it; we desire nothing but a fair Jury.

Sir *Reb. Sawyer.* Nor we neither; try it when you will.

L. C. J. Take a Recognizance of his Grace my Lord of *Canterbury* in 200 *l.* and the rest of my Lords in 100 *l.* a-piece.

Mr. Att. Gen. What your Lordship pleases for that, we submit to it.

Clerk. My Lord of *Canterbury*, your Grace acknowledges to owe unto our Sovereign Lord the King the Sum of 200 *l.* upon Condition that your Grace shall appear in this Court on this Day Fortnight, and so from Day to Day, till you shall be discharged by the Court, and not to depart without Leave of the Court. Is your Grace contented?

Archbish. of Canterbury. I do acknowledge it.

Clerk. My Lord Bishop of St. *Asaph*, you acknowledge to owe unto our Sovereign Lord the King the Sum of 100 *l.* upon Condition that your Lordship shall appear in this Court on this Day Fortnight, and so from Day to Day, until you shall be discharged by the Court, and not to depart without Leave of the Court. Is your Lordship contented?

Bish. of St. Asaph. I do acknowledge it.

[*The like Recognizances were taken of all the rest of the Bishops, and then the Court arose.*]

FRIDAY, *June 29th*, 1688.

Clerk. CRIER, make Proclamation thrice.

Crier. O yes! O yes! O yes! Our Sovereign Lord the King streightly charges and commands every one to keep Silence, upon Pain of Imprisonment.

Clerk of the Crown. Call the Defendants.

Crier. William Lord Archbishop of *Canterbury.*—*Archbish.* Here.

Crier. William Lord Bishop of St. *Asaph.*—*Bish. of St. Asaph.* Here.

[*And so the rest of the Bishops were called, and answered severally.*]

Clerk. Gardez votres Challenges.

Swear Sir *Roger Langley.*

Crier. Take the Book Sir *Roger.* You shall well and truly try this Issue between our Sovereign Lord the King and *William* Lord Archbishop of *Canterbury*, and others, according to your Evidence. So help you God.

The same Oath was administered to all the Jury, whose Names follow, viz.

Sir *Roger Langley*, Bar.	*Jeoffery Nightingale*, Esq.	*Nicholas Grice*, Esq.
Sir *William Hill*, Knt.	*William Withers*, Esq.	*Michael Arnold*, Esq.
Roger Jennings, Esq.	*William Avery*, Esq.	*Thomas Done*, Esq.
Thomas Harriot, Esq.	*Thomas Austin*, Esq.	*Rich. Shoreditch*, Esq.

Clerk. You Gentlemen of the Jury who are sworn, hearken to the Record: Sir *Thomas Powys*, Knight, his Majesty's *Attorney-General*, has exhibited an Information, which does set forth as followeth,

ff. *MEMORANDUM*, That Sir *Thomas Powys*, Knt. *Attorney-General* of our Lord the King, who for our said Lord the King in this Behalf prosecutes, came here in his own Person into the Court of our said Lord the King, before the King himself at *Westminster*, on *Friday* next after the Morrow of the *Holy Trinity* in this Term; and on the Behalf of our said Lord the King, giveth the Court here to understand and be informed, That our said Lord the King, out of his signal Clemency, and gracious Intention towards the Subjects of his Kingdom of *England*, by his Royal Prerogative, on the 4th Day of *April*, in the third Year of the Reign of our said Lord the King, at *Westminster* in the County of *Middlesex*, did publish his Royal Declaration, entituled *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience*, bearing Date the same Day and Year, sealed with the Great Seal of *England*; in which Declaration is contained, *James R. prout in the first Declaration before recited.*

And the said *Attorney General* of our said Lord the King, on Behalf of our said Lord the King, further giveth the Court here to understand and be informed, That afterwards, to wit, on the 27th Day of *April*, in the fourth Year of the Reign of our said Lord the King, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, our said Lord the King, out of his like Clemency, and gracious Intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, did publish his other Royal Declaration, entituled, *His Majesty's Gracious Declaration*, bearing Date the same Day and Year last mentioned, sealed with his Great Seal of *England*; in which Declaration is contained, *James R. Our Conduct has been such*, &c. *prout in the second Declaration before recited.*

Which said Royal Declaration of our said Lord the King last mentioned, our said Lord the King afterwards, to wit, on the 30th Day of *April*, in the fourth Year of his Reign aforesaid, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, did cause to be printed and published throughout all *England*; and for the more solemn Declaring, Notification, and Manifestation of his Royal Grace, Favour, and Bounty towards all his Liege People, specified in the Declaration last mentioned, afterwards, to wit, on the 4th Day of *May*, in the fourth Year of his Reign, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, our said Lord the King in due manner did order as followeth.

At the Court at Whitehall, *4th of* May, 1688.

By the King's most Excellent Majesty, and the Lords of his Majesty's most Honourable Privy-Council.

'IT is this Day ordered by his Majesty in Council, That his Majesty's Gracious Declaration, bearing Date the twenty-seventh of *April* last, be read at the usual Time of Divine Service, upon the twentieth and twenty-seventh of this Month, in all Churches and Chapels within the Cities of *London* and *Westminster*, and ten Miles thereabout; and upon the third and tenth of *June* next, in all other Churches and Chapels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several respective Dioceses, to be read accordingly.

'W. BRIDGMAN.'

And further, the said *Attorney General* of our said Lord the King, on behalf of our said Lord the King, giveth the Court here to understand and be informed, that after the making of the said Order, to wit, on the 18th Day of *May*, in the fourth Year of the Reign of our said Lord the King, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, *William* Archbishop of *Canterbury*, of *Lambeth* in the County of *Surry*; *William* Bishop of St. *Asaph*, of St. *Asaph* in the County of *Flint*; *Francis* Bishop of *Ely*, of the Parish of St. *Andrew Holbourn* in the County of *Middlesex*; *John* Bishop of *Chichester*, of *Chichester* in the County of *Sussex*; *Thomas* Bishop of *Bath* and *Wells*, of the City of *Wells* in the County of *Somerset*; *Thomas* Bishop of *Peterborough*, of the Parish of St. *Andrew Holbourn* in the County of *Middlesex*; and *Jonathan* Bishop of *Bristol*, of the City of *Bristol*, *did consult and conspire among themselves to diminish the Regal Authority, and Royal Prerogative, Power and Government of our said Lord the King*, in the Premises, and to infringe and elude the said Order; *and in Prosecution and Execution of the Conspiracy aforesaid*, They the said *William* Archbishop of *Canterbury*, *William* Bishop of St. *Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath* and *Wells*, *Thomas* Bishop of *Peterborough*, and *Jonathan* Bishop of *Bristol*, on the said eighteenth Day of *May*, in the fourth Year of the Reign of our said Lord the King aforesaid, *with Force and Arms*, &c. at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, *falsly, unlawfully, maliciously, seditiously, and scandalously did frame, compose and write, and caused to be framed, composed and written, a certain false, feigned, malicious, pernicious and seditious Libel in Writing, concerning our said Lord the King, and his Royal Declaration and Order aforesaid*, (*under pretence of a Petition*) and the same false, feigned, malicious, pernicious and seditious Libel, by them the aforesaid *William* Archbishop of *Canterbury*, *William* Bishop of St. *Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath* and *Wells*, *Thomas* Bishop of *Peterborough*, and *Jonathan* Bishop of *Bristol*, with their own Hands respectively being subscribed, on the Day and Year, and in the Place last mentioned, *in the Presence of our said Lord the King, with Force and Arms*, &c. *did publish and cause to be published*; in which said false, feigned, malicious, pernicious and seditious Libel is contained, *The humble Petition*, &c. *prout before in the Petition, to these Words* [*reasonable Construction*] in manifest contempt of our said Lord the King, and of the Laws of this Kingdom, to the evil Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said *Attorney General* of our said Lord the King, on Behalf of our said Lord the King, prays the Advice of the Court here in the Premises, and due Process of Law to be made out against the aforesaid *William* Archbishop of *Canterbury*, *William* Bishop of St. *Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath* and *Wells*, *Thomas* Bishop of *Peterborough*, and *Jonathan* Bishop of *Bristol*, in this Behalf, to answer our said Lord the King in and concerning the Premises, &c.

T. POWYS.
W. WILLIAMS.

To this Information the Defendants have pleaded Not guilty, and for their Trial have put themselves upon their Country, and his Majesty's *Attorney General* likewise, which Country you are. Your Charge is to enquire whether the Defendants, or any of them, are guilty of the Matter contained in this Information that hath been read unto you, or not guilty. If you find them, or any of them guilty, you are to say so; and if you find them, or any of them, not guilty, you are to say so, and hear your Evidence. Crier, make Proclamation.

Cryer. O-yes! If any one will give Evidence on Behalf of our Sovereign Lord the King, against the Defendants, of the Matters whereof they are impeached, let them come forth, and they shall be heard.

Mr. *Wright.* May it please your Lordship, and you Gentlemen of the Jury, this is an Information exhibited by his Majesty's *Attorney General* against the most Reverend my Lord Archbishop of *Canterbury*, and six other Honourable and Noble Bishops in the Information mentioned: And the Information sets forth, That the King, out of his Clemency and benign Intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing Date the fourth Day of *April*, in the third Year of his Reign, entituled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience*; and that afterwards, the twenty-seventh of *April*, in the fourth Year of his Reign, he published another Declaration, both which have been read to you; and for the further Manifestation and Notification of his Grace in the said Declaration, bearing Date the twenty-seventh of *April* last, his Majesty did order, that the said Declaration should be read on the twentieth and twenty-seventh of *May* in the Cities of *London* and *Westminster*, and ten Miles about; and on the third and tenth of *June* throughout the whole Kingdom: And that the Right Reverend the Bishops should send the said Declaration to be distributed throughout their respective Dioceses, to be read accordingly. But that the said Archbishop and Bishops the eighteenth of *May*, in the said fourth Year of his said Majesty's Reign, having conspired and consulted among themselves to diminish the King's Power and Prerogative, did falsly, unlawfully, maliciously, and scandalously make, compose, and write a false, scandalous, malicious and seditious Libel, under pretence of a Petition; which Libel they did publish in the Presence of the said King; the Contents of which Libel you have likewise heard read. To this they have pleaded not guilty: You, Gentlemen, are Judges of the Fact; if we prove this Fact, you are to find them guilty.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewise opened to you at the Bar; but before we go to our Evidence, perhaps it may not be amiss for us, that are of Counsel for the King, now in the Beginning of this Cause, to settle the Question right before you, as well to tell you what my Lords the Bishops are not prosecuted for, as what they are. First, I am to tell you, and I believe you cannot yourselves but observe, that my Lords are not prosecuted as Bishops, nor much less are they prosecuted for any Point or Matter of Religion, but they are prosecuted as Subjects of this Kingdom, and only for a Temporal Crime, as those that have injured and affronted the King to his very Face; for it is said to be done in his own Presence. In the next Place, they are not prosecuted for any Nonfeasance, or not doing or omitting to do any thing, but as they are Actors, for censuring of his Majesty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government: And I cannot omit here to take Notice, that there is not any one thing that the Law is more jealous of, or does more carefully provide for the Prevention and

Puniſhment of, than all Accuſations and Arraignments of the Government. No Man is allowed to accuſe even the moſt inferiour Magiſtrate of any Miſbehaviour in his Office, unleſs it be in a legal Courſe, though the Fact is true. No Man may ſay of a Juſtice of Peace to his Face, that he is unjuſt in his Office. No Man may tell a Judge, either by Word or Petition, you have given an unjuſt, or an ill Judgment, and I will not obey it; it is againſt the Rules and Law of the Kingdom, or the like. No Man may ſay of the great Men of the Nation, much leſs of the great Officers of the Kingdom, that they do act unreaſonably or unjuſtly, or the like; leaſt of all may any Man ſay any ſuch thing of the King; for theſe Matters tend to poſſeſs the People, that the Government is ill adminiſtred; and the Conſequence of that is, to ſet them upon deſiring a Reformation; and what that tends to, and will end in, we have all had a ſad and too dear bought Experience: The laſt Age will abundantly ſatisfy us, whither ſuch a Thing does tend. Men are to take their proper Remedies for Redreſs of any Grievances they lie under, and the Law has provided ſufficiently for that. Theſe things are ſo very well known to all Men of the Law, and indeed to all the People of *England* of any Underſtanding, that I need not, nor will not, ſtand any longer upon it, but come to the Matter that is now before you, Gentlemen, to be tried. The Fact that we have laid we muſt prove, rather to keep the Formality of a Trial, then to pretend to inform you, or tell you what you do not know: It is publickly notorious to the whole World; but becauſe we muſt go on in the regular Methods of Law, we ſhall prove the Facts in the Order they are laid in the Information. Firſt, we take Notice, that his Majeſty, of his great Clemency and Goodneſs to his People, and out of his Deſire that all his Subjects might live eaſily under him, (of which I think never Prince gave greater or more plain Evidence of his Intentions that Way) the fourth of *April*, 1687, he did iſſue forth his Royal Declaration for Liberty of Conſcience. This Matter, without all Queſtion, was welcome to all his People that ſtood in need of it; and thoſe that did not could not but ſay, the Thing in the Nature of it was very juſt and gracious; but preſently it muſt be ſurmiſed, that the King was not in Earneſt, and would not, nor could not, make good his Promiſe: But to take away all Surmiſes, his Majeſty was pleaſed by his Declaration of the twenty-ſeventh of *April* laſt, not only to repeat his former Declaration, but likewiſe to renew his former Promiſes to his People, and to aſſure them that he ſtill was, and yet is, of the ſame Opinion that he had at firſt declared himſelf to be of; nay, we further ſhew you, that to the End that this thing might be known to all his People, even to the meaneſt Men, who, it may be, were not willing or able to buy the Declaration, and that the King himſelf might be under higher Obligations, if it were poſſible, than his own Word, he was deſirous it ſhould be repeated in the Churches, and read in that ſacred Place, that all his People might hear what he had promiſed, and given his own ſacred Word for; and he himſelf might be under the ſolemn Tie and Obligation to keep his Word, by remembring that his Promiſes had, by his own Command, been publiſhed in the Time of Divine Service, in the Houſe of God; and thereupon was the Order of Council made, that has been likewiſe read to you, which does direct, that it ſhould be read in all the Churches and Chapels in the Kingdom; and you have heard, and we ſhall prove, what a Return his Majeſty has had for this Grace and Kindneſs of his: You'll find, when they come to read that which they call a Petition, all their Thanks his Majeſty had for his Favour and Goodneſs to his People, 'tis only hard Words, and a heavy Accuſation, ſuch as a private Perſon would be little able to bear. I will not aggravate the Matter, but only ſay thus much, that his Majeſty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was repreſented for all that as a Prince of the greateſt Cruelty, before his Acceſſion to the Crown, by his Enemies, is now accuſed by his Friends for this Effect of his Mercy. My Lord, and Gentlemen of the Jury, his Majeſty reſented this ill Uſage ſo far, that he has ordered, and thought fit to have a publick Vindication of his Honour in this Matter, by this Trial; and we ſhall go on to our Proofs, and we do not doubt but you will do his Majeſty (as you do all other Perſons) Right.

Mr. Sol. Gen. My Lord, we will go on to prove the Parts of this Information; and we will proceed according to the Method which Mr. *Attorney* has opened, and which is purſuant to the Order of the Facts laid in the Information. Give us the firſt Declaration under the Great Seal; the Declaration of the 4th of *April*, 1687.

[*The Declaration was delivered into the Court.*]

Mr. Sol. Gen. Read the Date of it firſt.

Clerk reads. *Given at Our Court at* Whitehall, *the 4th Day of* April, 1678, *and in the third Year of Our Reign.*

Mr. Sol. Gen. Read the Title of it, Sir.

Clerk. It is entituled, *His Majeſty's Gracious Declaration to all his loving Subjects for Liberty of Conſcience.*

Sir *Rob. Sawyer.* Is it under Seal? Is the Great Seal to it?

Mr. Sol. Gen. Give it down to Sir *Robert Sawyer*, that he may ſee it; for I would have every thing as clear as poſſible.——Sir *Robert Sawyer*, will you have it read?

Sir *Rob. Sawyer.* No, we would ſave as much of the Time of the Court as may be.

Mr. Sol Gen. Then pray put in the ſecond Declaration of the 27th of *April* laſt.

Clerk reads. *Given at Our Court at* Whitehall, *the 27th Day of* April, 1688, *in the fourth Year of Our Reign*; and it is entituled, *His Majeſty's Gracious Declaration.*

Sir *Rob. Sawyer.* Is that under the Great Seal too?

Clerk. Yes it is.

Mr. Sol. Gen. Deliver that down likewiſe, that they may ſee it.

Sir *Rob. Sawyer.* We are ſatisfied, you need not read it.

Mr. Sol. Gen. Then where is the Order of Council for the reading of it?

Mr. Att. Gen. Swear Sir *John Nicholas*.----There he is.

[Sir *John Nicholas* ſworn.]

L. C. J. Come Mr. *Attorney*, what do you aſk Sir *John Nicholas?*

Mr. Sol. Gen. Hand the Order to Sir *John Nicholas*----------Is that the Order of Council, Sir *John?*

Sir *John Nicholas.* The Book, Sir, is not in my Cuſtody.----There is the Regiſter that keeps it, he has it here to produce.

Mr. Sol. Gen. Swear Mr. *Gantlett.* [Mr. *Gantlett* ſworn

Mr. Sol. Gen. Is that the Council-Book?

Mr. *Gantlett.* Yes, this is the Council-Book.

Mr. Sol. Gen. Then turn to the Order of the fourth of *May*, the King's Order of Council for the reading the Declaration.

Mr. *Gantlett.* There it is, Sir.

[*The Book delivered into Court.*]

Mr. Sol. Gen. Read it, I pray.

Clerk reads. *At the Court at* White-hall, *the fourth of* May, 1683----and ſo reads the Order of Council.

Mr. Sol. Gen. My Lord, we have one Thing that is mentioned in the Information, that this Declaration was printed; if that be denied, we will call *Henry Hills*, his Majeſty's Printer, becauſe we would prove all our Information as it is laid.

L. C. J. You muſt do ſo, Mr. *Sollicitor*; you muſt prove the whole Declaration.

Mr. Sol. Gen. Crier, call *Henry Hills.*

[*He was called, but did not preſently appear.*]

Mr. Sol. Gen. Call Mr. *Bridgman*.----Though theſe Declarations prove themſelves, we have them here printed----But ſwear Mr. *Bridgman.*

[Mr. *Bridgman* ſworn.]

Mr. Sol. Gen. Shew Mr. *Bridgman* the two Declarations.

L. C. J. What do you aſk him?

Mr. Sol. Gen. We aſk you, Sir, if the two Declarations were printed?

Mr. *Bridgman.* What Declarations do you mean, Mr. *Sollicitor?*

Mr. Sol. Gen. You know what Declarations I mean well enough; but we'll aſk you particularly. You know the Declaration that was made the 4th of *April*, in the third Year of the King--------was it printed?

Mr. *Bridgman.* Yes, it was printed by the King's Order.

Mr. Sol. Gen. Was that of the 27th of *April* in the fourth Year of the King, printed?

Mr. *Bridgman.* Yes, they were both printed by the King's Order.

Mr. Att. Gen. Then the next Thing in Courſe is the Biſhops Paper.

Sir *Rob. Sawyer.* Mr. *Bridgman*, pray let me aſk you one Queſtion; Did you ever compare the Print with that under Seal?

Mr. *Bridgman.* I did not compare them, Sir *Robert Sawyer.*

Mr. Sol. Gen. He does ſwear they were printed by the King's Order.

Sir *Rob. Sawyer.* Good Mr. *Sollicitor*, give me Leave to aſk him a Queſtion.-------Can you ſwear then that they are the ſame?

Mr. *Bridgman.* I was not aſked that Queſtion, Sir.

Mr. Sol. Gen. Come then, Mr. *Bridgman*, I'll aſk you-----Do you believe they are the ſame?

Sir *Rob. Sawyer.* Is that an Anſwer to my Queſtion?

Mr. Sol. Gen. We muſt aſk him Queſtions as well as you, Sir *Robert.* -----What ſay you, Do you believe it to be the ſame?

L. C. J. You hear Mr. *Sollicitor*'s Queſtion, anſwer it, Mr. *Bridgman.*

Mr. *Bridgman.* Yes, my Lord, I do believe it.

L. C. J. Well, that's enough.

Mr. Att. Gen. If there were Occaſion, we have them here compared, and they are the ſame.

Sir *Rob. Sawyer.* With Submiſſion, my Lord, in all theſe Caſes, if they will prove any Fact that is laid in an Information, they muſt prove it by thoſe that know it of their own Knowledge.----Do you know it to be the ſame?

Mr. Sol. Gen. That's very well, Sir.

Sir *Robert Sawyer.* Ay, ſo it is, Mr. *Sollicitor.* It is a wonderful thing, my Lord, that we cannot be permitted to aſk a Queſtion.---------Do you know it to be the ſame, Mr. *Bridgman*, I aſk you again?

Mr. *Bridgman.* I have not compared them, I tell you, Sir *Robert Sawyer.*

Sir *Rob. Sawyer.* Then that is no Proof.

L. C. J. Would you have a Man ſwear above his Belief? He tells you he believes it is the ſame.

Sir *Rob. Sawyer.* Is that Proof of an Information?

L. C. J. Well, you'll have your Time to make your Objections by and by.

Mr. Att. Gen. Then ſwear Sir *John Nicholas.*

Sir *John Nicholas.* I am ſworn already.

Mr. Att. Gen. I ſee you have a Paper in your Hand, Sir *John Nicholas*; Pray who had you that Paper from?

Sir *John Nicholas.* I will give you an Account of it as well as I can.

Mr. *Pollexfen.* Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the Printing this Declaration.

Mr. Att. Gen. Where is Mr. *Hills?*

Mr. Juſt. *Allybone.* They have laid, that it was printed by the King's Order; and it is ſuch a Matter, Mr. *Solliciter*, as you may clear, if you will, ſure.

Mr. Sol. Gen. There is Mr. *Hills*; now I ſee him.

L. C. J. I was going to give Order, that you ſhould ſend to the Printing-houſe for him.

Mr. Juſt. *Allybone.* They may put this Matter out of Doubt too, if they will, on the other Side; for I ſee they have a Copy in Print, and there's the Original; they may compare them if they pleaſe.

Mr. Sol. Gen. I am very glad to hear ſuch a ſtrong Objection.

Sir *Rob. Sawyer.* We would clear the Way for you, Mr. *Solliciter.*

Mr. Sol. Gen. No, you put Straws in our Way; we ſhall be able enough to clear it without your Help. Swear Mr. *Hills*, and young Mr. *Graham* here.

[*Hills* and *Graham* ſworn.]

Mr. Sol. Gen. Mr. *Graham*, did you compare any of theſe printed Declarations with the Original?

Graham. Yes, I did compare ſome of them, and did make Amendments as I went along.

Mr. Sol. Gen. Shew one that you have compar'd with the Original.

Mr. Att. Gen. Hills is here himſelf, we'll aſk him. Are you ſworn, Sir?

Crier. He is ſworn.

Mr. Att. Gen. Pray, were the King's Declarations for Liberty of Conſcience printed, both of them?

Hills. Ay, an't pleaſe you, Sir.

Mr. Att. Gen. You printed them, I think?

Hills. Yes, I did print them.

Sir *Rob. Sawyer.* Mr. *Hills*, you ſay they were printed: Upon your Oath, after they were printed, did you examine them with the Original under

under Seal?-------*Hills.* They were examined before they were printed.

Sir *Rob. Sawyer.* Did you examine them?

Hills. I did not, here's one that did.

Mr. Sol. Gen. Who is that?——*Hills.* It is Mr. *Williams* here.

Mr. Sol. Gen. Swear him. [*Williams ſworn.*

Mr. Sol. Gen. Do you hear, *Williams?* Do you know that the King's Declarations for Liberty of Conſcience; two of them, one of the 4th of *April*, and the other of the 27th of *April* were printed?

Williams. Yes, my Lord.

Mr. Sol. Gen. Did you examine them after they were printed, by the Copy they were printed from?——*Williams.* I did.

Mr. Sol. Gen. Where had you the Copy? Who had you it from?

Williams. I had it from Mr. *Hills.*

Sir *Rob. Sawyer.* Mr. *Williams*, did you examine them with the Original under the Great Seal?-----*Williams.* The firſt Declaration I did.

Sir *Rob. Sawyer.* The ſecond Declaration is the main.

Williams. The ſecond was compos'd by the firſt.

Sir *Rob. Sawyer.* Why, is there no more in the ſecond Declaration than there was in the firſt?——*Williams.* Yes, there is, Sir.

Mr. *Rob. Sawyer.* Did you examine that with the Original under the Great Seal?----*Williams.* No, I did not.

Mr. Sol. Gen. Can any one tell who did examine it under the Great Seal?

Mr. *Finch.* Pray, what did you examine it by, Mr. *Williams?*

Williams. By a Copy that I receiv'd from Mr. *Hills.*

Mr. Att. Gen. Then we will go on; and we deſire Sir *John Nicholas* to give an Account where he had that Paper that he has in his Hand?

Mr. *Finch.* My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. Att. Gen. He ſays he had it from Mr. *Hills.*

Mr. *Finch.* Pray, Mr. *Hills*, what did you examine that Copy by which you gave to Mr. *Williams?*

Hills. I had the Copy from Mr. *Bridgman.*

Mr. *Finch.* Did you examine it with the Original under the Great Seal?

Hills. I did not examine it, I had it from Mr. *Bridgman.*

Mr. *Finch.* What, was it under Seal?

Mr. *Bridgman.* It was the Original ſigned by the King.

Mr. *Finch.* But I aſk you, was it under Seal?

Mr. *Bridgman.* Not under the Great Seal it was not, it was the very Declaration the King ſigned.

Sir *Rob. Sawyer.* But it ought to be compared with the Original, or it is no good Proof that it is the ſame.

Mr. Sol. Gen. Sir *Robert Sawyer*, you underſtand Collation better, ſure, you ſhould be aſham'd of ſuch weak Objections as this.

Williams. We never bring our Proof to the Great Seal.

Sir *Rob. Sawyer.* But if you will have it Proof at Law, you muſt have it compared with the Original.

Mr. Sol. Gen. Do you think there is any great Streſs to be laid upon that? We only ſay it was printed.

Sir *Rob. Sawyer.* But you have made it part of your Information, and therefore you muſt prove it.

L. C. J. I think there's Proof enough of that; there needs no ſuch Nicety.

Mr. *Pollexfen.* Well, my Lord, we muſt ſubmit, let them go on, we won't ſtand upon this.

Mr. Att. Gen. Then pray let me go on. Where had you that Paper, Sir *John Nicholas?*

Sir *John Nicholas.* I had this Paper from the King's Hand.

L. C. J. Put it in.

Mr. Sol. Gen. Who had you it from, do you ſay?

Sir *John Nicholas.* From the King.

Mr. Sol. Gen. About what Time had you it from the King, Sir?

Sir *John Nicholas.* I had it twice from the King.

Mr. Sol. Gen. When was the firſt Time, Sir?

Sir *John Nicholas.* The firſt Time was in the Council, the 8th of this Month.

Mr. Sol. Gen. What became of it afterwards?

Sir *John Nicholas.* The King had it from me the 12th, and the 13th I had it from the King again.

Mr. Sol. Gen. Pray, deliver it this way into the Court: We will now go on, and prove the Biſhops Hands to it. This is the Paper upon which we bring this Information: Gentlemen, it is all the Hand-writing of my Lord Archbiſhop, and ſigned by him and the reſt of the Biſhops.

Mr. Att. Gen. I ſuppoſe my Lords the Biſhops will not put us to prove it, they will own their Hands.

L. C. J. Yes, Mr. *Attorney*, their Counſel will put you to prove it; I perceive your beſt way is to aſk nothing of them.

Mr. Att. Gen. My Lord, we will deſire nothing of them. We will go on to our Proofs. Call Sir *Thomas Exton*, Sir *Richard Raynes*, Mr. *Brooks*, Mr. *Recorder*, and Mr. *William Middleton.*

[*Sir* Thomas Exton *appeared, and was ſworn.*

L. C. J. What do you aſk Sir *Thomas Exton?*

Mr. Att. Gen. Pray convey that Paper to Sir *Thomas Exton.*

Mr. Sol. Gen. Shew that Paper to Sir *Thomas Exton.*——Sir *Thomas*, I would aſk you one Queſtion: Do you know the Hand-writing of my Lord Archbiſhop of *Canterbury?*

Sir *Tho. Exton.* I'll give your Lordſhip what Account I can.

Mr. Sol. Gen. Pray, Sir, anſwer my Queſtion; Do you know his Hand-writing?

Sir *Tho. Exton.* I never ſaw him write five Times in my Life.

Mr. Sol. Gen. But I aſk you, upon your Oath, do you believe that to be his Hand-writing?

Sir *Tho. Exton.* I do believe this may be of his Hand-writing.

Mr. Sol. Gen. Do you believe all the Body of it to be of his Hand-writing, or only part of it?

Sir *Tho. Exton.* I muſt believe it to be ſo, for I have ſeen ſome of his Hand-writing, and this is very like it.

Mr. Sol. Gen. What ſay you to the Name? Do you believe it to be his Hand-writing?—— Sir *Tho. Exton.* Yes, Yes, I do.

Mr. Sol. Gen. Do you know any of the reſt of the Names that are upon that Paper?----Sir *Tho. Exton.* No, I do not.

L. C. J. Do you for the Defendants aſk Sir *Thomas Exton* any Queſtion?

Sir *Rob. Sawyer.* No, my Lord.

Mr. Att. Gen. Then call Sir *Richard Raynes.*

Sir *Tho. Exton.* My Lord, Sir *Richard Raynes* has been ſick this Month, and has not been at the Commons.

Mr. Sol. Gen. We have no need of him. Call Mr. *Brooks.*

[Mr. *Brooks* ſworn.]

Mr. Att. Gen. Pray ſhew Mr. *Brooks* that Paper.

Mr. Sol. Gen. Mr. *Brooks*, I aſk you this Queſtion, Do you know my Lord Archbiſhop's Hand-writing?——Mr. *Brooks.* Yes, my Lord.

Mr. Att. Gen. Pray look upon that Paper; do you take that to be my Lord Archbiſhop's Hand?

Mr. *Brooks.* Yes, my Lord, I do believe it to be my Lord Archbiſhop's Hand.

Mr. Att. Gen. What ſay you to the whole Body of the Paper?

Mr. *Brooks.* I do believe it to be his Hand.

Mr. Att. Gen. What do you ſay to his Name there?

Mr. *Brooks.* I do believe this Name is his Hand-writing.

Mr. Sol. Gen. Call Mr. *William Middleton.*

Mr. Att. Gen. Pray, Mr. *Brooks*, don't go away, but look upon the Names of the Biſhop of St. *Aſaph*, and my Lord of *Ely.*

Mr. Sol. Gen. Do you know my Lord Biſhop of St. *Aſaph*'s Hand-writing?

Mr. *Brooks.* I have ſeen my Lord Archbiſhop of *Canterbury*, and the Biſhop of St. *Aſaph*'s Hand-writing, and I do believe this is his Hand.

Mr. Sol. Gen. Look you upon the Name of my Lord of *Ely*; do you know his Hand-writing?

Mr. *Brooks.* My Lord, I am not ſo well acquainted with my Lord of *Ely*'s Writing.

Mr. Sol. Gen. But have you ſeen his Writing?

Mr. *Brooks.* Yes, I have.

Mr. Sol. Gen. Is that his Writing do you think?

Mr. *Brooks.* It is like it.

Mr. Sol. Gen. Do you believe it to be his Hand?

Mr. *Brooks.* Truly I do believe it.

Sir *George Treby.* Did you ever ſee him write?—Mr. *Brooks.* No, Sir.

Mr. Sol. Gen. But he has ſeen his Writing.

Sir *George Treby.* How do you know that it was his Hand-writing that you ſaw?-----Mr. *Brooks.* Becauſe he own'd it.

L. C. J. How do you know it, do you ſay?

Mr. *Brooks.* I know it, I ſay, becauſe I have ſeen a Letter that he writ to another Perſon, which he afterwards own'd.

L. C. J. What did he own, Mr. *Brooks?*

Mr. *Brooks.* That he wrote a Letter to another Perſon, which I ſaw.

Sir *George Treby.* To whom, Sir?

Sir *Rob. Sawyer.* Have you the Letter here, Sir?

Mr. *Brooks.* No, Sir, the Letter was writ to my Lord Biſhop of *Oxford.*

Sir *Geo. Treby.* Can you tell what was in that Letter?

Mr. Att. Gen. What is that to this Queſtion? You aſk him how he knows his Hand-writing; and, ſays he, I did not ſee him write, but I have ſeen a Letter of his to the Lord Biſhop of *Oxford.*

L. C. J. And he does ſay, my Lord of *Ely* own'd it to be his Hand that is there.

Mr. Sol. Gen. No, my Lord, that's a Miſtake, he own'd a Letter that he had writ to the Biſhop of *Oxford* to be his Hand-writing, and by Compariſon of this with that, ſays he, I take this to be his Hand-writing.

Mr. *Brooks.* That is my Meaning, my Lord.

Mr. Sol. Gen. Pray, ſpeak out, and tell us what are the Reaſons that make you ſay you believe this to be the Biſhop of *Ely*'s Writing.

Mr. *Brooks.* Becauſe it reſembles a Letter that I have by me of his Writing to the Biſhop of *Oxford.*

Mr. Sol. Gen. And you ſay he own'd that Letter to be his?

Mr. *Brooks.* My Lord Biſhop of *Oxford* did anſwer it, and I waited upon the Biſhop of *Ely* with the Anſwer, and he did own it.

Sir *George Treby.* How did he own it, Sir?

Mr. *Brooks.* I had ſome Communication with my Lord of *Ely*, about the Subſtance of that Letter, and therefore I apprehended he own'd it.

Mr. Juſt. *Powell.* That's a ſtrange Inference, Mr. *Sollicitor*, to prove a Man's Hand.

Mr. Att. Gen. We have more Evidence; but let this go as far as it can.

Mr. *S. Pemberton.* Certainly, my Lord, you will never ſuffer ſuch a Witneſs as this?

L. C. J. Brother *Pemberton*, I ſuppoſe they can prove it otherwiſe, or elſe this is not Evidence.

Mr. Juſt. *Powell.* So they had need, for it is a ſtrange Inference of Mr. *Sollicitor*, that this is a Proof of my Lord of *Ely*'s Hand-writing.

Mr. Juſt. *Holl.* The Biſhop of *Oxon* was dead before any of this Matter came in Agitation.

Mr. Sol. Gen. My Lord, we will bring other Proofs.——Call Mr. *Chetwood* and Mr. *Smith.* [Mr. *Chetwood* and Mr. *Smith* ſworn.

Mr. *Sol. Gen.* Mr. *Chetwood*, we would know of you if you know my Lord Biſhop of *Ely*'s Hand-writing?

Mr. *Chetwood.* I never ſaw him write.

Mr. Sol. Gen. That's not an Anſwer to my Queſtion: Do you know his Hand-writing?-----Mr. *Chetwood.* I do not certainly know it.

Mr. Sol. Gen. Have you ſeen any of it?

Mr. *Chetwood.* I have ſeen my Lord of *Ely*'s Writing, that has been ſaid to be his.

L. C. J. But ſurely you had better take a Witneſs that has ſeen him write.

Mr. Juſt. *Powell.* I think 'tis hardly poſſible for a Man to prove his Hand, that has not ſeen him write.

L. C. J. I think 'tis better Proof indeed, to bring ſome that has ſeen him write.

Mr. *Chetwood.* My Lord, 'tis a long Time ſince I ſaw my Lord of *Ely*'s Writing.

L. C. J. Pray bring ſome other Proof, if you have it.

Biſhop of *Peterborough.* My Lord, we are here as Criminals before your Lordſhip, and we are proſecuted with great Zeal: I beg your Lordſhip that you will not be of Counſel againſt us, to direct them what Evidence they ſhall give.

L. C. J.

L. C. J. My Lord of *Peterborough*, I hope I have not behaved myſelf any otherwiſe hitherto than as becomes me: I was ſaying this (and I think I ſaid it for your Lordſhip's Advantage), that this was not ſufficient Proof; and I think, if your Lordſhip obſerved what I ſaid, it was for you, and not againſt you.

Biſh. of *Peterborough*. It was to direct them againſt us, how they ſhould give Evidence.

Mr. *S. Pemberton*. Pray, my Lord of *Peterborough*, ſit down, you'll have no Wrong done you.

Sir *Rob. Sawyer*. We that are of Counſel will take Care of that; and pray, my Lord, will you pleaſe to paſs it by?

L. C. J. We are not uſed to be ſo ſerv'd, and I will not be uſed ſo.

Mr. Sol. Gen. If your Lordſhip pleaſes to paſs that by; for what your Lordſhip ſaid was in Favour of my Lords the Biſhops; but I ſee they do not take it ſo.

Mr. Att. Gen. Pray, Mr. *Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-writing?

Mr. *Chetwood*. I do believe it is.

Sir *Rob. Sawyer*. That's very well, when he ſays he never ſaw him write.

Mr. Juſt. *Powell*. What is the Reaſon of that Belief of his I would fain know?—Mr. *Chetwood*. I have formerly ſeen his Hand, I think it was his; but I never ſaw my Lord of *Ely* write his Hand.

Sir *Rob. Sawyer*. Then the Queſtion is, whether this be Evidence?

Mr. *Finch*. How do you know that that which you ſaw formerly was my Lord of *Ely*'s Hand?—Mr. *Chetwood*. I have no ſuch Certainty as poſitively to ſwear that that was his Hand.

Mr. Sol. Gen. We will go on to other Proofs, and if we want better Evidence at the End, we will argue with them.

Mr. *Chetwood*. I am not certain that what I ſaw was my Lord of *Ely*'s Hand-writing, becauſe I never ſaw him write.

Mr. Sol. Gen. You do very well to ſhew your good Affection.

Mr. Att. Gen. Mr. *Smith*, I would aſk you this Queſtion, Do you know my Lord of *Ely*'s Hand-writing?—Mr. *Smith*. I have ſeen it often.

Mr. Att. Gen. Look upon the Name of my Lord of *Ely* in that Paper; do you believe it to be my Lord's Hand-writing, or no?—Mr. *Smith*. I did not ſee him write it, Sir; I cannot tell whether it is or no.

L. C. J. Did you ever ſee his Name?

Mr. *Smith*. Yes, but it was a great while ago, and here are but ſeven Letters, and I cannot judge by that: I was better acquainted with his Hand-writing heretofore.

Mr. Sol. Gen. Pray, Sir, anſwer me; Do you believe it to be his Writing, or do you not?

Mr. *Smith*. I believe it may, for I did not ſee him write it.

Mr. Sol. Gen. But my Queſtion is, Do you believe it, or do you not?

Mr. *Smith*. I ſay I was better acquainted with it heretofore than I am now.

Mr. Sol. Gen. But pray anſwer my Queſtion: Do you believe that to be my Lord of *Ely*'s Hand-writing, or do you not?

Mr. *Smith*. I believe it may, Sir.

Sir *Rob. Sawyer*. Why do you believe it?—Mr. *Smith*. I have no other Reaſon to believe it, but becauſe I have ſeen ſomething like it.

Mr. Juſt. *Powell*. How long ago is it ſince you ſaw him write?

Mr. *Smith*. I have not ſeen him write, ſo as to take Notice of it, for ſome Years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, becauſe there was more Letters to judge by.

[Mr. *Middleton* ſworn.]

L. C. J. Here's Mr. *Middleton*, what do you call him for?

Mr. Sol. Gen. To prove many of their Hands.

Mr. Att. Gen. Pray ſhew him that Paper.

Mr. Sol. Gen. Firſt, Mr. *Middleton*, do you know my Lord Archbiſhop's Hand-writing?

Mr. *Middleton*. I have ſeen his Grace's Hand-writing.

Mr. Sol. Gen. Do you believe it to be his?

Mr. *Middleton*. It is very like it.

Mr. Sol. Gen. But do you believe it, or do you not?

Mr. *Middleton*. I do believe it.

Mr. Sol. Gen. Do you know my Lord Biſhop of St. *Aſaph*'s Hand-writing?—Mr. *Middleton*. I never ſaw it as I know of.

Mr. Sol. Gen. What do you ſay to my Lord of *Ely*? His Name is next.

Mr. *Middleton*. It is like his Lordſhip's Hand.

Mr. Sol. Gen. Do you believe it, or do you not?

Mr. *Middleton*. It is like it, that's all I can ſay.

Mr. Sol. Gen. Cannot you tell whether you believe it, or not believe it?

Mr. *Middleton*. I do believe it is his Hand.

Mr. Sol. Gen. Did you ever ſee him write? For I would clear this Matter beyond Exception.

Mr. *Middleton*. I have ſeen his Lordſhip write, but I never ſtood by him ſo near as to ſee him make his Letters.

Mr. Sol. Gen. Is that his Hand-writing?

Mr. *Middleton*. It is like it, I believe it is his.

Mr. Sol. Gen. You did dot guide his Hand I believe.——Do you know my Lord of *Chicheſter*'s Hand-writing?

Mr. *Middleton*. Sir, I am acquainted with none of their Hands, but with my Lord of *Canterbury*'s, and my Lord of *Ely*'s.

Mr. Sol. Gen. Do you know my Lord of *Peterborough*'s Hand-writing?

Mr. *Middleton*. I had my Lord of *Peterborough*'s Writing two Years ago for ſome Money, but I cannot ſay this is his.

Mr. Sol. Gen. Do you believe it to be his?

Mr. *Middleton*. I never took Notice of it ſo much as to ſay, I believe it to be like it; I never ſaw it but once.

Mr. Sol. Gen. Do you know any other of the Names there? What ſay you to the Biſhop of *Briſtol*'s Name?

Mr. *Middleton*. I ſaw once my Lord of *Briſtol*'s Hand-writing.

Mr. Sol. Gen. What ſay you to that Writing there?

Mr. *Middleton*. It is like it.

Mr. Sol. Gen. Do you believe it to be his, or no?

Mr. *Middleton*. Truly, that I cannot ſay, for I never ſaw it but once.

L. C. J. You never ſaw him write, did you?

Mr. *Middleton*. No, my Lord, I never did.

Mr. Sol. Gen. Then we will call Sir *Thomas Pinfold*, and Mr. *Clavel*——Sir *Thomas Pinfold* is there, ſwear him.

[Sir *Thomas Pinfold* ſworn.]

Mr. Sol. Gen. Sir *Thomas Pinfold*, do you know my Lord Biſhop of *Peterborough*'s Hand-writing?

Sir *T. Pinfold*. Truly, not very well; I never ſaw but one Letter from him in my Life: Shew me his Hand, and I will tell you—[*Which was done,*]

Mr. Sol. Gen. Well, Sir, what ſay you to it?

Sir *T. Pinfold*. Then upon my Oath, I ſay, I cannot well tell upon my own Knowledge that it is his Hand.

Mr. Sol. Gen. I aſk you, do you believe it to be his Hand?

Sir *T. Pinfold*. Sir, upon the Oath that I have taken I will anſwer you, that upon this Account, that I have heard there was a Paper delivered by my Lords the Biſhops to the King, and this Paper that you offer me, I ſuppoſe to be the ſame; upon that Score I do believe it, but upon any other Score I cannot tell what to ſay.

Mr. Sol. Gen. I aſk you upon your Oath, Sir, do you believe it is his Hand-writing or no?

Sir *T. Pinfold*. Sir, I have anſwered you already, that upon my own Knowledge I cannot ſay it is his Hand-writing; but becauſe I have heard of ſuch a Paper, I do believe it may be his.

L. C. J. Did you ever ſee my Lord Biſhop write?

Sir *T. Pinfold*. I have been in his Chamber ſeveral Times when he has been writing, but I had more Manners than to look upon what he writ.

L. C. J. Did you never ſee him write his Name?

Sir *T. Pinfold*. I do not know that I ever ſaw him write his Name, but I have ſeen him writing, I ſay, and ſo my Lord Biſhop may have ſeen me writing, but I believe he does not know my Hand.

Mr. Sol. Gen. You have ſeen him write you ſay?

Sir *T. Pinfold*. I tell you, Mr. *Sollicitor*, I have been in his Chamber when he has been writing, but I had more Manners than to look over him.

Mr. Juſt. *Powell*. Then you did never ſee any of that Writing?

Sir *T. Pinfold*. I cannot ſay I did, my Lord.

Mr. Att. Gen. Pray did you never ſee any of his Writing but that Letter you ſpeak of?—Sir *T. Pinfold*. No, not that I remember.

Mr. Juſt. *Powell*. Mr. *Sollicitor*, you muſt call other Witneſſes, for this does not prove any thing.

Mr. Att. Gen. We will go on——Swear Mr. *Clavel*.

[Mr. *Clavel* ſworn.]

Mr. Sol. Gen. Do you know my Lord Biſhop of *Peterborough*'s Hand-writing, or no?—Mr. *Clavel*. I have ſeen it many Times.

Mr. Att. Gen. Do you know it when you ſee it?

Mr. *Clavel*. I believe I do, Sir.

Mr. Sol. Gen. Pray look upon that Paper, and upon your Oath tell us, Do you believe that Name to be his Writing or no?

Mr. *Clavel*. I do believe it is, my Lord.

Mr. Att. Gen. Pray look upon the reſt of the Hands there, do you know any of the other Names?—Mr. *Clavel*. No, I do not.

Mr. Att. Gen. Have you ever ſeen any of their Writing?—Mr. *Clavel*. It is probable I may have ſeen ſome, but do not now remember it.

Mr. Sol. Gen. I think you are a Bookſeller, Mr. *Clavel?*

Mr. *Clavel*. Yes, I am ſo, Sir.

Mr. Sol. Gen. I ſuppoſe you have had ſome Dealings with them in the Way of your Trade. Did you never ſee any of their Writing?

Mr. *Clavel*. I have ſeen the Names of ſome of them, but it is ſo long ſince, that I cannot remember.

L. C. J. Did you ever ſee my Lord of *Peterborough* write?

Mr. *Clavel*. I cannot tell whether I ever ſaw him write his Name or no; but I have had ſeveral Letters from my Lord of *Peterborough*.

Mr. Sol. Gen. Is that his Hand-writing?

Mr. *Clavel*. I cannot ſay it is, I believe it is.

Mr. Sol. Gen. You have had Letters from him you ſay?

Mr. *Clavel*. Yes, and it ſeems to be like his Hand.

Mr. *Pollexfen*. But you never ſaw him write his Hand you ſay?

Mr. *Clavel*. I cannot ſay I ever did.

Mr. Sol. Gen. Theſe Letters that you have received from my Lord of *Peterborough*, did he own them? Do you think they were counterfeit, or of his own Hand-writing?

Mr. *Clavel*. I ſuppoſe he has owned them, Sir.

Mr. Juſt. *Powell*. But you muſt anſwer directly, Sir, Did he own them?

Mr. Sol. Gen. What did thoſe Letters concern? Were they about Books, or what?—Mr. *Clavel*. They were ſometimes about one Buſineſs, ſometimes about another.

Mr. Sol. Gen. Was the ſubject Matter of any of theſe Letters about Money, and was it paid you? Did you receive, or did you give any Account of it?—Mr. *Clavel*. They were about ſeveral Buſineſſes.

L. C. J. Look you, Mr. *Clavel*, you muſt give us as particular Account as you can.

Mr. Sol. Gen. Pray, Sir, upon thoſe Letters were the Things done that thoſe Letters required?—Mr. *Clavel*. Yes, they were.

Mr. Sol. Gen. Did you do your Part?—Mr. *Clavel*. Yes, I did.

Mr. Sol. Gen. Now, I would aſk you, Do you believe that Name of my Lord Biſhop of *Peterborough* to be the Hand-writing of my Lord Biſhop?

Mr. *Clavel*. I believe it is.

Mr. Juſt. *Powell*. Do you know that thoſe Letters that you ſay you received from my Lord, were of my Lord's own Hand-writing? Do you ſwear that?—Mr. *Clavel*. My Lord, I cannot ſwear that.

Mr. *Finch*. Do you know whether the Letters that you received, as you ſay, were written by my Lord himſelf, or by his Secretary?

Mr. *Clavel*. I have received Letters from him, and his Secretary too.

Sir. *George Treby*. But were you preſent with him when he writ any Letters with his own Hand?

Mr. Sol. Gen. You do not mean a Letter to yourſelf ſure, Sir *George?*

Sir *George Treby*. No, Sir, I ſay any Letters.

Mr. *Clavel*. I have been preſent with my Lord often, but I cannot ſay I have ſeen my Lord write.

L. C. J.

L. C. J. He has here told you, he has had ſeveral Letters of my Lord's own Hand, and from his Secretary too.

Mr. Juſt. *Powell.* He has ſaid it, but you ſee he ſays he never ſaw him write.

Mr. Sol. Gen. We have given Evidence againſt my Lord Archbiſhop, Lord Biſhop of *Ely*, St. *Aſaph*, *Peterborough*, and *Briſtol*.

Mr. Juſt. *Powell.* Certainly, Mr. *Sollicitor*, you miſtake——But go on——

Mr. Sol. Gen. We have given Evidence I ſay againſt them, Sir, but whether it be ſufficient Evidence, we ſhall argue by and bye——Call Mr. *Hooper* and Mr. *Chetwood* again. [Mr. *Chetwood* appeared.

Mr. Sol. Gen. Do you know the Hand-writing of my Lord Biſhop of *Bath* and *Wells?*

Mr. *Chetwood.* I have ſeen it twice or thrice, but it is a conſiderable Time ſince I did ſee it.

Mr. Sol. Gen. Do you believe that is his Hand-writing?

Mr. *Chetwood.* I never ſaw him write his Name in my Life.

Mr. Sol. Gen. Pray look upon the Name, and tell us what you believe of it.

Mr. *Chetwood.* I believe it may, but I do not certainly know it to be his Hand; I rather believe it is my Lord Biſhop of *Bath* and *Wells* his Hand, than I believe that other to be my Lord of *Peterborough*'s.

Sir *George Treby.* Do you believe that to be my Lord of *Peterborough*'s Hand, or no?

Mr. *Chetwood.* I ſay, I rather believe that this is the Biſhop of *Bath* and *Wells* his Writing, than that which is above it or below it, to be their Writing; but truly I do not diſtinctly know my Lord Biſhop of *Bath* and *Wells* his Hand.

Mr. Sol. Gen. Call Mr. *Hooper.*

L. C. J. You are very lame in this Matter.

Mr. Sol. Gen. The Witneſſes are unwilling, and we muſt find out the Truth as well as we can. [Mr. *Hooper* did not appear.

Mr. Sol. Gen. Call Mr. *James* and Mr. *Powell.*

[Mr. *James* appeared and was ſworn.

Mr. Sol. Gen. Do you know my Lord Biſhop of *Briſtol*'s Writing, Mr. *James?*

Mr. *James.* Yes, I believe I do, but I am not ſo certain, becauſe my Lord writes ſeveral Times ſeveral Hands.

Mr. Sol. Gen. Shew him the Paper: Is that my Lord of *Briſtol*'s Hand?

Mr. *James.* I cannot ſay it is or no.

Mr. Sol. Gen. What do you believe?

Mr. *James.* It looks like his Hand, and that's all I can ſay.

Mr. Sol. Gen. But pray hearken, and anſwer to what I aſk you; you are prepared for one Queſtion it may be, and I ſhall ask you another: Upon your Oath, Do you believe it to be the Hand-writing of my Lord of *Briſtol?*

Mr. *James.* Upon my Oath, I can only ſay it looks like it, that's all.

L. C. J. Did you ever ſee him write?

Mr. *James.* Yes, my Lord, I have ſeen his Hand-writing, ſeveral Times, and it is like his Hand-writing, that is all I can ſay.

Mr. Sol. Gen. Sir, remember you are upon your Oath, and anſwer my Queſtion.

Mr. *James.* Upon my Oath, I know no more than that, Sir *William Williams.*

Mr. Sol. Gen. I ask you, Sir, whether you believe it to be his Hand or not?

Mr. *James.* My Lord, it looks like his Hand, and it may be his Hand.

Mr. Att. Gen. But you do think and believe one way or other: What do you believe?

Mr. *James.* It may be his Hand for what I know, and it may not.

Mr. Sol. Gen. It may be your Hand.

Mr. *James.* No, Sir, it cannot be mine, I am ſure.

Mr. Sol. Gen. What do you believe?

Mr. *James.* I believe it may be his Hand, or it may not be his Hand, that is all I can ſay.

L. C. J. Come, Sir, you muſt anſwer fairly. Do you believe it to be his Hand, or do you not?

Mr. *James.* Yes, I do believe it.

Mr. Att. Gen. You are very hard to believe, methinks.

Mr. *James.* No, I am not.

Mr. Sol. Gen. You do very well now, Mr. *James*; when you do well, we'll commend you.

Mr. Att. Gen. Call Mr. *Nathaniel Powell.* [Mr. *Powell* was ſworn.

Mr. Sol. Gen. Pray, Sir, let's know what's your Name?

Mr. *Powell.* My Name is *Nathaniel Powell.*

Mr. Sol. Gen. Pray do you know the Hand-writing of my Lord Biſhop of *Chicheſter?*

Mr. *Powell.* I have not ſeen the Paper, Sir.

Mr. Sol. Gen. Do you know his Hand-writing?

Mr. *Powell.* Yes, I believe I do.

Mr. *Sol. Gen.* Look upon that Name of his.

Mr. *Powell.* I did not ſee my Lord write that.

Mr. Sol. Gen. Who ſays you did? No body asks that of you; how you anſwer! Pray Sir, remember your Oath, and anſwer ſeriouſly, Do you believe it to be his Writing or no?

Mr. *Powell.* I believe it is like my Lord's Hand-writing, but I never did ſee him write it.----*Mr. Sol. Gen.* No body ſays you did.

Mr. *Powell.* Therefore I cannot ſwear poſitively it is his Hand.

Mr. Sol. Gen. We do not ask that neither.

Mr. *Powell.* I cannot tell whether it be his Hand or no.

L. C. J. Sir, you muſt anſwer the Queſtion directly and ſeriouſly: Do you believe it, or do you not believe it?

Mr. *Powell.* I cannot tell what to believe in the Caſe.

Mr. Sol. Gen. Then I aſk you another Queſtion, upon your Oath, Do you believe it is not his Hand?

Mr. *Powell.* I cannot ſay that neither.

Mr. Sol. Gen. Once again, I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind judge of you.

Mr. *Powell.* I tell you, Sir, I cannot tell what to believe.

Mr. Sol. Gen. My Lord, if theſe Things be endured, there will be an End of all Teſtimony, if Witneſſes do not anſwer fairly to the Queſtions that are aſked them.

Mr. Juſt. *Powell.* Truly to me; for a Man to ſwear his Belief in ſuch a Matter, is an extraordinary Thing.

Mr. Sol. Gen. He is obliged to anſwer Queſtions when they are fairly put to him.

Mr. *Pollexfen.* I think that is a hard Queſtion, not to be anſwered.

Mr. Sol. Gen. Make your Exceptions to the Evidence if you pleaſe.

L. C. J. Firſt he ſays, he knows his Hand; then he ſays, he has ſeen him write; and then he ſays, he did not ſee him write this; but he ſhuffles, he won't anſwer whether he believes it or not.

Mr. *Pollexfen.* The Queſtion is, Whether Belief in any Caſe be Evidence?

Mr. Sol. Gen. If they have a Mind to a Bill of Exceptions upon that Point, let them ſeal their Bill, and we'll argue it with them when they will; in the mean Time we'll go on, and that which we now pray, my Lord, is, That this Paper may be read.

Mr. Att. Gen. We have given ſufficient Evidence ſure to have it read, therefore we deſire it may be read.

Mr. Serj. *Levinz.* My Lord, before this Paper be read, we hope you will let us be heard to it: We think that what they deſire (to have this Paper read) ought not to be: For, what is all the Proof that they have given of this Paper? They have a Proof by Compariſon of Hands, which in a criminal Caſe ought not to be received: And beſides, my Lord, what is that Compariſon of Hands that they have offered? Some Perſons come here and ſay, they cannot tell whether it be their Hands, they believe it may or may not, for aught they know; how ſhall we convict any Man upon ſuch a Teſtimony as this? Can we have our Remedy againſt him for Perjury, for ſaying, he believes it to be our Hand? Therefore here is not any Evidence to charge us. For firſt, It is only a Compariſon of Hands; and ſecondly, That Compariſon is proved in ſuch an uncertain Manner: Some of them tell you, they do not know what to believe; another tells you, I believe it is rather ſuch a Lord's Hand, than the others are ſuch a Lord's Hand; I believe 'tis rather his Hand than that above it, or that below it. What ſort of Proof is all this? Therefore we pray it may not be read, till they prove it better.

Mr. S. *Pemberton.* Pray, my Lord, ſpare me a Word or two in this Matter for Evidence ſake; there is a great Deal of Reaſon we ſhould take Exceptions to the Evidence that has been given: For truly, I think I never heard ſuch a Sort of Evidence given before. It is a Caſe of as great Concernment as ever was in *Weſtminſter-Hall*; and for them to come to prove Hands only by thoſe that ſaw Letters, but never ſaw the Perſons write, this, I hope, will not amount to ſo much as a Compariſon of Hands. Your Lordſhip knows, that in every petty Cauſe, where it depends upon the Compariſon of Hands, they uſe to bring ſome of the Party's Hand-writing which may be ſworn to, to be the Party's own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury may look upon it, and ſee if it be right; and never was there any ſuch a Thing as this admitted in any poor petty Cauſe, that is but of the Value of forty Shillings. And therefore as to this Evidence, Firſt, We ſay Compariſon of Hands ought not to be given at all in the Caſes of Criminals; and I believe it was never heard of that it ſhould. In the next Place, if it be admitted to be Evidence, yet it is not ſuch an Evidence, as that by Compariſon of Hands the Jury can take Notice of it; for in ſuch Manner of Proofs by Compariſon of Hands, the Uſage is, that the Witneſs is firſt aſked, concerning the Writing he produces, Did you ſee this writ by the Defendant, whoſe Hand they would prove? If he anſwers, Yes, I did, then ſhould the Jury upon Compariſon of what the Witneſs ſwears to, with the Paper that is to be proved, judge whether thoſe Hands be ſo like as to induce them to believe that the ſame Perſon writ both; and not that the Witneſs ſhould ſay, I had a Letter from ſuch a Perſon, and that is like the Hand of that Letter, therefore I believe it to be his Hand: My Lord, I hope this ſhall never be admitted for Evidence in this Court.

L. C. J. I do take it, that the Witneſs himſelf is judge of the Compariſon; for if he does know the Party's Hand, and a Paper be offered him to prove the Party's Hand, he is to compare it in his own Mind.

Mr. S. *Pemberton.* It never was admitted to be ſo, that I know of, my Lord, or ever read of.

Mr. Sol. Gen. You may remember ſeveral Caſes about that, particularly *Sidney*'s Caſe.

Mr. *Pollexfen.* Pray, my Lord, hear me a little as to that: It is a Point of very great Moment, whether in the Caſe of a Miſdemeanor, either in an Indictment or Information, it be good Evidence to offer Compariſon of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery againſt my Lady *Carr*, appears in *Syderfin*'s *Reports:* They went to prove her Letters written by her to *Cox*; the Court rejected it, and gave their Judgment here, that it was no Evidence; and that for this Reaſon, becauſe of the evil Conſequences of it: For, ſaid they, it is an eaſy Matter for any Man's Hand to be counterfeited; that they ſure will agree, for frequent daily Experience ſhews how eaſily that may be done: Is it not eaſy then to cut any Man down in the World, by proving it like his Hand? And proving that likeneſs by comparing it with ſomething that he hath formerly ſeen? This ſtrikes mighty deep; the honeſteſt Man in the World, and the moſt innocent may be deſtroyed, and yet no Fault to be found in the Jury or in the Judges; if the Law were ſo, it would be an unreaſonable Law. Next, my Lord, for the Caſe of *Sidney*, that was a Caſe of Treaſon. Now in the Caſe of Treaſon there is always other Evidence brought; and this Evidence comes in but as a collateral Evidence, to ſtrengthen the other; but in this Caſe it is the ſingle Evidence, for aught that appears, for there is nothing more, for aught I can ſee, in the Caſe, but whether this were their Hands, and proved only by what another believes: Now ſhall any be condemned by another's Belief without Proof? Surely, my Lord, that was never Evidence yet to convict any one; ſo that their Proof fails in both Points; for firſt, it ought to be conſidered, whether Compariſon of Hands be Evidence in a Caſe of Miſdemeanor? And next, if it be Evidence, whether you will take it, that the Belief of a Man that brings nothing to compare with it, or never ſaw the Party write, but has received Letters, and ſays, This is like it, and therefore he believes it to be his Hand, be good Evidence as a Compariſon of Hands.

Mr. S. *Pemberton.* My Lord, they are pleaſed to mention-----

Mr. Sol. Gen. Mr. Serjeant, you have been heard already, and you are not to reply upon us; or if you would, we muſt be heard firſt.

Mr. *S. Pemberton.* I would only ſpeak to that Caſe of *Sidney:* My Lord, that Caſe differs from this *toto Cœlo*, the Writing was found in his Poſſeſſion, in his Study; there was the Proof that nailed him.

Mr. Sol. Gen. You ſhall ſee how we'll apply it by and bye.

Mr. Att. Gen. Pray, my Lord, favour me a Word in this Matter: That there is ſtronger and weaker Evidence, no Man doubts; but that which theſe Gentlemen ſay, that in this Caſe there is no Evidence, muſt needs be a Miſtake. If they mean that it is not ſo ſtrong an Evidence as is poſſible to be given, I agree with them, it is not: For if we had brought three or four Men that had ſeen them write this very Paper, and put their Names to it, that had been a ſtronger Evidence than this that we have given; but whether we do not give ſuch a ſort of Evidence as may induce the Jury to believe that this is their Paper, and their Hands to it, we ſubmit. They ſay, this is ſuch a Method as never was taken; but I admire that that ſhould be ſaid by Men of their Experience and Knowledge in the Law; for is there any thing more uſual, or any other Courſe taken for the Proof of Hands, than for a Witneſs to ſay, He knows the Hand of the Party very well, for he has often ſeen his Hand-writing, or received Letters from him? And if you ſhew him the Thing that you would prove to be his Hand, and he ſays, I do believe this to be his Hand, for this Reaſon, becauſe I have had other Things of his Writing; certainly, in the Experience of any Man that has practiſed, this is an Evidence that is given every Day, and allowed for Evidence. For the Caſe of Mr. *Sidney*, which your Lordſhip has heard mentioned, it is certainly very appoſite to this Purpoſe; it is inſiſted upon and pretended, That that was Evidence, becauſe it was found in his Study: But without all doubt, that would not be the Reaſon: For may not a Book of another Man's writing be found in my Study? And he inſiſted upon it in his own Defence: But the Anſwer was, That it ſhould be left as the Queſtion, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing: And ſo in this Caſe, though it be not ſo ſtrong Evidence as if we had brought thoſe that had ſeen them write it; yet Evidence it is, and whether it be ſufficient to ſatisfy the Jury, may be a Queſtion; but no Queſtion, it is good Evidence in Law.

Mr. Sol. Gen. It is a wonderful Thing, they ſay, that ſuch Evidence ſhould be offered: But truly, my Lord, it is a much ſtranger Thing to hear Mr. Serjeant *Pemberton* ſay, it was never done before; and then to make that Remark to your Lordſhip upon the Caſe of *Sidney*, which I'll put to your Lordſhip and the Court as a Caſe, and let him contradict me if he can; and then we ſhall ſee how far it goes. *Sidney* was indicted for High-Treaſon; and the Treaſon inſiſted upon was, a Writing ſuppoſed to be his, it being found in his Study: The Queſtion was, Whether it was his Hand-writing or no? There was no poſitive Evidence that it was his Hand-writing; there was no Evidence produc'd that prov'd it to be his Hand-writing; for there was no one that ſwore that they ſaw him write it; there was nothing proved but the Similitude of Hands. Ay, but, ſays Mr. Serjeant *Pemberton*, it was found in his Study. Will Mr. Serjeant *Pemberton* be content, that all the Libels that are found in his Study, ſhall, for that Reaſon, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them? I think he will make a ſevere Declaration againſt that, and he would have very good Reaſon for it: Certainly that which was Evidence in one Man's Caſe, will be Evidence in another. God forbid there ſhould be any ſuch Diſtinction in Law; and therefore I conclude, that this is good Evidence.

Mr. *S. Pemberton.* The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court, which were ſworn to be of his Hand-writing.

Mr. Sol. Gen. My Lord, I was by all the Time; for I was ordered to attend him in the *Tower*; and therefore I can tell what paſſed as well as any body. My Lord, they proved no more as to that Libel, but only by Compariſon of Hands; they had no other Proof in that Caſe, but by comparing the Hand-writing; and that was inſiſted upon to be a mighty fallible Thing: That which they would have for us to compare, Paper with Paper, it is true, would make the Proof ſomewhat ſtronger, if we could, in ſuch a Caſe as this, be able to produce ſuch Evidence: But I appeal to your Lordſhip, and ſhall leave it to the Jury, to conſider which is better Evidence; theſe Men that have been produced, that have been converſant with theſe Lords, and acquainted with their Hand-writing, and who (as your Lordſhip ſees) are not willing Men to give Evidence, they avoid it as much as they can; and they ſwear it all to be the Hand-writing of the Archbiſhop of *Canterbury*, as they believe; which is as far as any Man can ſwear. One ſays, the whole Body of the Paper is my Lord of *Canterbury*'s Hand, and he knows it very well; ſo that we are not upon a ſingle Name, but a whole Paper that contains many Lines; and this is as much as can be proved by any one that did not ſee the Thing written. Then, my Lord, for the reſt of the Company, the Evidence is not ſo ſtrong againſt every one of them, as it is againſt my Lord Archbiſhop; but is ſtrong enough certainly to convict them of what we accuſe them of: And pray, my Lord, what was the Objection in *Sidney*'s Caſe, but what has been mentioned here? That any Man's Hand might be counterfeited. I remember in that Caſe, there was one Mr. *Wharton*, a young Gentleman, then in the Court, that undertook to the Court, that he would counterfeit that Hand preſently; and he that was to ſwear the Compariſon, ſhould not know which was the one, and which was the other; which certainly was a ſtronger Caſe than this: And I ſee ſome of the Gentlemen that are now ſtanding at the Bar, who preſſed this Matter very hard againſt Mr. *Sidney*, and Mr. *Sidney* loſt his Life upon that Compariſon of Hands; though Mr. *Wharton* did teſtify how eaſy a Matter it was to have a Man's Hand counterfeited, and we all know was a Man of Value and Quality; ſo there is a Precedent for Mr. Serjeant *Pemberton*, that never heard of this Law before. They ſay the proving of Similitude of Hands is no Evidence, unleſs you prove the actual Writing; what a Condition then will *England* be in, when Witneſſes are dead? Is it not the moſt common Practice that can be, to produce Witneſſes to prove ſuch Men are dead, whoſe Names are ſet as Witneſſes to Deeds; and they ſwear, they believe it to be the Hand-writing of thoſe Witneſſes? Can there be any greater Evidence of ſuch a Caſe, unleſs it be the Confeſſion of the Party himſelf? My Lord, we are now only upon reading this Paper. We have been heard, and they have been heard; now we pray the Paper may be read.

Mr. *Recorder.* We pray it may be read.

Mr. Serj. *Levinz.* If your Lordſhip pleaſe-----

Mr. Sol. Gen. We are not to be replied upon, Mr. Serjeant.

L. C. J. You have ſpoke Brother *Levinz*, and you have ſpoke, Brother *Pemberton*, and I would willingly hear you what you have to ſay; but we muſt not have vying and revying, for then we ſhall have no End.

Mr. Serj. *Levinz.* I would offer your Lordſhip ſome new Matter, which has not been touched upon yet, why it is not to be read:

L. C. J. What's that, Brother?

Mr. Serj. *Levinz:* All the Proof that has been given, whatſoever it amounts to, has been only of its being written, but no Proof has been given of its being written in the County of *Middleſex*, where the Information is laid, and the Matter is local.

Mr. Sol. Gen. Firſt read it, and then make your Objection.

Mr. *Recorder.* My Lord, as to the Evidence that has been given, I would only put your Lordſhip in Mind of one Caſe; and that was the Caſe of Sir *Samuel Barnardiſton:* And the great Evidence there, was the Proof of its being his Hand-writing; and that being proved, was ſufficient to convict him of a Libel; for they could not believe Sir *Samuel Barnardiſton* was guilty of making Libels, unleſs they were proved to be his Hand-writing.

Sir *Rob. Sawyer.* He owned them to be his Hand-writing.

L. C. J. If you do expect my Opinion in it, whether this be good Evidence, and whether this Paper be proved or no, I am ready to give it.

Mr. *Finch.* My Lord, I deſire to be heard before the Opinion of the Court be given.

Mr. Sol. Gen. If there be not Proof enough to induce the Jury to believe this is their Paper, yet ſure there is enough to read it.

Sir *Rob. Sawyer.* My Lord, we have not been heard to this yet.

Mr. Sol. Gen. Why, is this fit to be ſuffered?

L. C. J. Mr. *Sollicitor*, I am always willing to hear Mr. *Finch.*

Mr. Sol. Gen. But I hope your Lordſhip, and the Court, are not to be complimented into an unuſual Thing!

Mr. *S. Pemberton.* It is not a Compliment, but Right and Juſtice.

Mr. Sol. Gen. Certainly it is Right and Juſtice, that there ſhould be ſome Limits put to Men's ſpeaking, that we may know when to have an End.

Sir *Rob. Sawyer.* Mr. *Sollicitor* does miſtake the Right, my Lord, for we deſire to be heard to this Point, as not having ſpoke to it yet.

Mr. Sol. Gen. Pray, Sir, let me make my Objection to your being heard: For I believe you and I have been chid ſeveral Times, for ſpeaking over and over the ſame Thing.

Sir *Rob. Sawyer.* This that we now offer, is not to the ſame Point that we have ſpoken to already.

Mr. Sol. Gen. We are now ſpeaking to the reading of the Paper, and you have ſpoken to it already.

Sir *Rob. Sawyer.* If the Court will pleaſe to hear us, we have that to offer againſt the reading of the Paper, which has not been offered yet.

L. C. J. Sir *Robert Sawyer*, I take it, it is in the Breaſt of the Court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a Side to ſpeak what they will, the Court may very well depend upon the Learning of thoſe three or four, that they ſay what can be ſaid upon the Point, and that's enough; but if ſix or ſeven deſire to be heard over and over to the ſame Thing, certainly the Court may ſtop at three or four, if they will.

Sir *Rob. Sawyer.* This is a new Objection that none of us have been heard to yet.

Mr. *Finch.* My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Privilege which Mr. *Sollicitor* claims of making Objections, and not receiving an Anſwer.

Mr. Sol. Gen. What a fine Declamation you have now made! I never claimed any ſuch Right; but I oppoſe your being heard over and over to the ſame Thing.

Mr. Att. Gen. Pray, my Lord, let's come to ſome Iſſue in this Matter.

L. C. J. I will hear you; but I would not have you introduce it with a Reflection upon the King's Counſel.

Mr. Sol. Gen. My Lord, if you impoſe that upon him, you ſtop his Mouth; for ſome Men cannot ſpeak without Reflection.

L. C. J. On the other Side, pray, Mr. *Sollicitor*, give us leave to hear fairly what they have to ſay; for I perceive he cannot offer to ſpeak, but you preſently ſtop his Mouth.

Mr. *Finch.* My Lord, that which I was going to ſay, is another Matter than any thing that has been yet offered: We ſay, that this Paper ought not to be read; for that they are obliged by Law to prove their Information; and conſequently, having laid a particular Place where the Thing was done in the Information, they ought to prove that this was done in that place. The Evidence that they have given, is of my Lords the Biſhops writing this Paper; and they have laid it to be done in *Middleſex*. And this, with Submiſſion to your Lordſhip, is local; and they muſt prove it to be written in *Middleſex*, where they have laid it, or elſe they fail in their Proof. This is another Objection, which as yet hath not been ſpoken to: That if there be a Proof of their Hand-writing, yet there is no Proof where that Hand was written; and therefore they are not yet got ſo far, as to have it read againſt my Lords.

Mr. Att. Gen. For that Point, my Lord, we ſay, This would have been as properly ſaid after the Paper had been read, when they come to make Objections againſt our Proof, by way of Defence: And, with Submiſſion, it had been more proper then, than it is now: For what are we now doing? My Lord, we are proving that ſuch a Paper was ſubſcribed by my Lords the Biſhops; and Sir *John Nicholas* gives you an Account, that he had it from his Majeſty at the Council; and that certainly is in the County of *Middleſex*; and it will concern you to prove that it was written elſewhere.

Mr. *S. Pemberton.* That's very well, Mr. *Attorney*; ſure you do not think as you ſpeak!

Mr. Att. Gen. Here is a Paper compoſed and written by you, that Sir *John*

John Nicholas says he had from his Majesty: How he came by it, I suppose you will tell us by and bye. This is your Hand writing, that I think we have proved sufficiently; this is found in the County of *Middlesex*, and you come and tell us, that we must prove that it was written in the County of *Middlesex*; and it is taken to be written where it was found, unless you prove the contrary.

Mr. *S. Pemberton.* That's pretty Doctrine indeed, and very new.

Mr. Sol. Gen. My Lord, here's an Objection made too timely: We are now upon reading of this Paper; and the Question is, Whether it shall be read, or not be read? Surely we have given Evidence enough to induce the Court to read it; and it is another Question, that will come time enough afterwards, where it was written?

L. C. J. Truly, I do not think it was proper for you to stand upon the Place where it was written as yet.

Mr. *S. Levinz.* When we are upon an Information of a Fact in *Middlesex*, will you hear them give Evidence of a Fact in *Yorkshire?*

Mr. Sol. Gen. We are not to be driven by these Gentlemen; we are to be directed by the Court.

L. C. J. I think truly it is yet too early to make this Objection.

Mr. *S. Pemberton.* Surely, my Lord, this is our Time to oppose the reading of it, as not proved.

Mr. Just. *Powell.* Mr. *Sollicitor*, I think you have not sufficiently proved this Paper to be subscribed by my Lords the Bishops.

Mr. Sol. Gen. Not to read it, Sir?

Mr. Just. *Powell.* No, not to read it; it is too slender a Proof for such a Case. I grant you, in Civil Actions a slender Proof is sufficient to make out a Man's Hand, by a Letter to a Tradesman, or a Correspondent, or the like; but in Criminal Causes, such as this, if such a Proof be allowed, where is the Safety of your Life, or any Man's Life here?

Mr. Sol. Gen. We tell you a Case where it was allowed; and that is Mr. *Sidney*'s Case; a Case of Treason, and printed by Authority: We tell you nothing but what was done t'other Day.

L. C. J. I tell you what I say to it: I think truly there is Proof enough to have it read, and I am not ashamed, nor afraid to say it; for I know I speak with the Law. Say what you will of Criminal Cases, and the Danger of People's Lives, there were more Danger to the Government, if such Proof were not allowed to be good.

Mr. Just. *Powell.* I think there is no Danger to the Government at all, in requiring good Proof against Offenders.

L. C. J. Here's my Lord Archbishop and the Bishop of St. *Asaph*, and my Lord of *Ely*, their Hands are proved: It is proved to be my Lord Archbishop's Writing by Mr. *Brookes*, and he proves my Lord of *Ely*'s Hand by Comparison, and so my Lord of St. *Asaph*'s. Now, Brother *Pemberton*, there's an Answer to your Objection, it being proved that it is all my Lord Archbishop's Hand. Then they come and say, We'll prove the Hands of the others by Comparison; and for that they bring you Witnesses that say, they have received Letters from them, and seen their Hand-writing several times; and comparing what they have seen with this very Paper, says the Witness, I do believe it to be his Hand. Can there be a greater Evidence, or a fuller?

Mr *S. Pemberton.* Admit it be a full Evidence against my Lord Archbishop, what's that to the rest? There's no Evidence against them.

Mr. Just. *Allybone.* Brother *Pemberton*, as to the Objection you make of comparing of Hands, it is an Objection indeed, I do agree; but then consider the Inconvenience which you and Mr. *Pollexfen* do so much insist upon: If a Man should be accused by Comparison of Hands, where is he? He is in a lamentable Case; for his Hand may be so counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other Side: That may be an Objection in Matters of Fact, that will have very little Weight, if compared and set altogether: For, on the other side, where shall the Government be, if I will make Libels, and traduce the Government with Prudence and Discretion, and all the Secrecy imaginable? I'll write my Libel by myself, prove it as you can; that's a fatal Blot to the Government; and therefore the Case is not the same, nor is your Doctrine to pass for current here, because every Case depends upon its own Fact. If I take upon me to swear I know your Hand, the Inducements are to myself, how I came to know it, so as to swear it. Knowledge depends on Circumstances: I swear that I know you, but yet I may be under a Mistake; for I can have my Knowledge of you no other Way but from the Visibility of you, and another Man may be so like you, that there is a Possibility of my being mistaken; but certainly, that is Evidence, good Evidence. Now here are several Gentlemen that swear as to my Lord Archbishop's Hand-writing: I do agree, as to some of the others, that the Evidence is not so strong; for what that Man said, that he did believe it was rather such a Lord's Hand, than that which went before, or that which came after, it is of no Weight at all, and so some of the others; but it is positively proved against my Lord Archbishop and one or two more; so that that's enough to induce the reading of this Writing.

Mr. Just. *Holloway.* Good my Lord, let me give my Opinion.

L. C. J. Ay, with all my Heart, Brother.

Mr. Just. *Holloway.* My Lord, I think as this Case is, there ought to be a more strong Proof; for certainly the Proof ought to be stronger and more certain in criminal Matters, than in civil Matters: In civil Matters, we do go upon slight Proof, such as the Comparison of Hands, for proving a Deed, or a Witness's Name, and a very small Proof will induce us to read it; but in criminal Matters we ought to be more strict, and require positive and substantial Proof, that is fitting for us to have in such a Case; and without better Proof, I think, it ought not to be read.

L. C. J. You must go on to some other Proof, Mr. *Sollicitor*; for the Court is divided in their Opinions about this Proof.

Mr. Sol. Gen. Then, my Lord, we will come to the Confessions of my Lords the Bishops; and I hope that will be believed by all Mankind.

Mr. Att. Gen. Truly, my Lord, we did forbear that Evidence, and would not have proceeded this Way, if we had had fair Play on the other Side.

Sir *Rob. Sawyer.* Mr. *Attorney*, give us Leave to defend our Clients all the Ways we can: I think we do nothing but what is fair; the Court you see is divided, therefore we did not without Reason insist upon it.

L. C. J. You must go on as you can, for they will put you upon it.

Mr. Att. Gen. Swear Mr. *Blathwayt.*

[Mr. *Blathwayt* sworn.]

Mr. Sol. Gen. Pray hand the Writing to him. [*The Writing shewn to him.*

Mr. Sol. Gen. Have you seen that Writing formerly, Sir?

Mr. *Blathwayt.* Yes, Sir.

Mr. Sol. Gen. What did you hear my Lord Archbishop say about that Paper?

Mr. Att. Gen. And the rest of my Lords the Bishops?

Mr. Sol. Gen. First we'll ask, as to my Lord Archbishop; Did he own it to be his Hand-writing?

Mr. *Blathwayt.* My Lord, I believe this to be the Paper that my Lord Archbishop did own to be subscribed by him.

Mr. Sol. Gen. When was it owned by him?

Mr. *Blathwayt.* On the Council-day, the 8th of this Month.

Mr. Sol. Gen. Where was it owned? because we would obviate that Objection of the County.

Mr. *Blathwayt.* It was at the Council-Table at *Whitehall.*

Mr. Sol. Gen. What say you to the Bishop of St. *Asaph?* Did he own it?

Mr. *Blathwayt.* Yes, all my Lords the Bishops did own it.

Mr. Sol. Gen. Name them particularly. What say you of the Bishop of *Ely?*—Mr. *Blathwayt.* In the same manner, my Lord.

Mr. Sol. Gen. The Bishop of *Chichester?*

Mr. *Blathwayt.* In the same manner.

Mr. Sol. Gen. The Bishop of *Bath* and *Wells?*

Mr. *Blathwayt.* Yes, my Lord.

Mr. Sol. Gen. The Bishop of *Peterborough?*

Mr. *Blathwayt.* Yes, my Lord.

Mr. Sol. Gen. And the Bishop of *Bristol?*

Mr. *Blathwayt.* Yes, my Lord.

Mr. Sol. Gen. So, we have proved they all owned it.

Mr. Just. *Holloway.* Could not this have been done at first, and saved all this Trouble?

Sir *Rob. Sawyer.* Have you done with Mr. *Blathwayt*, Mr. *Attorney*, that we may ask him some Questions?

Mr. Att. Gen. Ask him what you will.

Mr. *S. Pemberton.* Pray Mr. *Blathwayt*, upon what Occasion did they own it? You are sworn to tell the whole Truth: Pray tell all your Knowledge, and the whole Confession that they made.

Mr. *Blathwayt.* My Lord, I am called here by a *Subpœna* to answer on Behalf of the King; my Lord, I am ready to do my Duty, and I beg of your Lordship that you would please to tell me what is my Duty; for whatsoever I shall answer, I shall speak the Truth in.

Mr. *S. Pemberton.* There is nothing desired, but that you would speak the Truth.

Mr. *Blathwayt.* My Lord, I am easily guided by your Lordship what I ought to answer to.

L. C. J. What is it you ask him, Brother *Pemberton?*

Mr. *S. Pemberton.* We desire Mr. *Blathwayt* to tell the whole Discourse that passed at the Council, when he says my Lords the Bishops own'd this Paper.

Mr. Sol. Gen. That's a very pretty Thing indeed!

L. C. J. Look you, Mr. *Blathwayt*, you must answer them what they ask you, unless it be an ensnaring Question, and that the Court will take Care of.

Mr. *Blathwayt.* If your Lordship please to ask me any Question, I shall readily answer it.

L. C. J. You must answer them.

Mr. *S. Pemberton.* We ask you upon what Occasion they came to own their Hands? what Discourse was made to them, and what they answered?—Mr. *Blathwayt.* My Lord, I beg your Lordship's Directions.

L. C. J. Come, tell it, Sir.

Mr. *Blathwayt.* My Lord, the Occasion was this: This Paper was read in Council, and I had the Honour to read it before the King; and it having been read before his Grace the Archbishop, and my Lords the Bishops, they were asked, whether they did own that Paper? And, my Lord, they did own it.

Sir *Robert Sawyer.* Mr. *Blathwayt*, was that the first Time that my Lords the Bishops came in?—Mr. *Blathwayt.* Sir, I was not asked that Question.

L. C. J. What would you have, Sir *Robert Sawyer?*

Sir *R. Sawyer.* We would have an Account what passed at the Council?

L. C. J. Would you have all the Discourse betwixt the Council and my Lords the Bishops?

Mr. *S. Pemberton.* All that relates to their Accusation, my Lord, their whole Confession, and what was said to them.

Mr. Att. Gen. Do you think, Mr. *Serjeant*, that when we call a Witness, you are at Liberty to examine him to every impertinent thing?

Mr. Sol. Gen. My Lord, we desire they may only ask reasonable and proper Questions.

Mr. *S. Pemberton.* Mr. *Solliciter*, he is sworn to answer, and tell the whole Truth, and that's all we ask of him.

Sir *Robert Sawyer.* Sir, I will ask you a plain Question upon your Oath; Did not my Lord Archbishop, and the rest of my Lords the Bishops, at first refuse to own it, or to answer whether it were their Hands or not?

Mr. Sol. Gen. That is not a fair Question, Sir *Rob. Sawyer*; 'tis a leading Question.

Mr. *S. Pemberton.* Then I ask you in short, What did they refuse? I am sure that is a fair Question; for God forbid that any should hinder the King's Evidence from telling Truth.

Sir *Robert Sawyer.* And God forbid that half Evidence should condemn any Man.

L. C. J. God forbid the Truth should be concealed any way.

Mr. *S. Pemberton.* Pray, Sir, when they were first asked, whether that was their Hands or not, what Answer did they give?

Mr. *Blathwayt.* Sir, I have begg'd the Favour of my Lords the Judges to tell me what I am to answer, and what Questions are proper for me to answer to?

L. C. J. You must answer any Questions that are not ensnaring Questions.

Sir *Rob. Sawyer.* Mr. *Blathwayt*, you are upon your Oath to testify the Truth.

Mr. *Blathwayt.*

Mr. *Blathwayt.* Sir, I am not acquainted with the Methods of Law; I desire my Lords the Judges would instruct me.

Mr. Just. *Allybone.* Answer to the Question that they ask you.

L. C. J. We observe what they ask you; we'll take Care that they ask you nothing but what they should.

Mr. *Blathwayt.* I desire the Question may be repeated.

Mr. *S. Pemberton.* When they were first asked if it were their Hands, what Answer did they give the King?

Mr. *Blathwayt.* His Grace the Archbishop and my Lords the Bishops at first did not immediately answer whether the Paper were theirs or no.

Mr. *S. Pemberton.* What did they say?

Mr. *Blathwayt.* They said, they did humbly hope if they were put to answer, no Advantage should be taken against them.

Mr. *S. Pemberton.* What did they say farther at that Time concerning his Majesty's Pleasure?

Mr. Sol. Gen. That's a leading Question, Mr. Serjeant *Pemberton*; you cannot leave your Way of leading Witnesses.

Mr. *S. Pemberton.* It is a very strange thing; if we ask a Question that's general, that's excepted to: if we ask any Question in particular, then they find Fault with us, that it is a leading Question; so that we can never ask a Question that will please them. Pray, Mr. *Blathwayt*, what did they say concerning the King's Pleasure, whether they would answer if the King commanded them?

Mr. *S. Trinder.* How can it be material what they said?

L. C. J. It is material that it should be asked, and that it should be answered.

Mr. *S. Levinz.* You are to tell the whole Truth, Sir. Pray tell us what did my Lords the Bishops say about submitting to the King's Pleasure.

Mr. Sol. Gen. What is that to the Purpose?

Mr. *Pollexfen.* Mr *Sollicitor*, his Oath is to tell the Truth, and the whole Truth, and therefore he must answer my Question.

Mr. *S. Pemberton.* You are mighty loth, Mr. *Sollicitor*, to let us hear the Truth: I would not willingly lead him in any thing; and I cannot see that this is any leading Question, unless his Oath be against Law, which says he is to tell the whole Truth.

Mr. Att. Gen. My Lord, I do beg your Lordship's Favour of a Word in this Thing. It is certain if they ask any thing that shall take off the Evidence that was first given, that it is not true, I cannot oppose it; but if they ask Questions only to enflame, and to possess People with foolish Notions and strange Conceits, that is not to the Fact that we are now trying——

Sir *Rob. Sawyer.* 'Tis only to have the Truth out that we do it.

Mr. *S. Pemberton.* There is no body here that will be enflamed, Mr. *Attorney*; I have asked a fair Question, the Court has ruled it so.

Mr. *Blathwayt.* I shall readily answer any Question that the Court thinks fit.

Mr. *S. Pemberton.* Sir, by the Oath you have taken you are to tell the whole Truth.

L. C. J. Is he to tell you all that was done at the Council-Board that Day?

Mr. *S. Pemberton.* No, my Lord, only what passed there about my Lords the Bishops Confession of the whole of that Matter.

Mr. *Blathwayt.* There has been so much said betwen the asking of the Question and this Time, that I desire it may be repeated, that I may know what to answer to.

Mr. *S. Pemberton.* I ask you in short, Sir, What did my Lords the Bishops say at the Time of their appearing in Council concerning the King's Pleasure, whether they should answer or not?

Mr. *Blathwayt.* The first Time my Lords the Bishops came into the Council, they were asked the Question, whether they did own that Paper? They did immediately answer, They humbly hoped, as they stood there as Criminals, his Majesty would not take the Advantage against them; but however they would obey his Majesty's Command.

Sir *Rob. Sawyer.* Were they commanded to withdraw?

Mr. *Blathwayt.* Yes; thereupon they were commanded to withdraw, which they did.

Mr. *S. Pemberton.* When they came in again, what Questions were asked them?

Mr. *Blathwayt.* They came in several times, more than twice, I have reason to remark this, that they did so: Do you mean the second Time, Sir?----Mr. *S. Pemberton.* Yes, Sir.

Mr. *Blathwayt.* The second Time they seemed unwilling to own the Paper.

Sir *Robert Sawyer.* And what did they do the third Time?

Mr. *S. Pemberton.* But first let us know what more was done the second Time.

Sir *George Treby.* How was that Unwillingness of theirs overcome?

Mr. *S. Pemberton.* When they express'd their Unwillingness, what did they say farther?

Mr. *Blathwayt.* If I remember right, they said as they did the first Time, they humbly hoped his Majesty would not take Advantage against them.

Mr. *S. Pemberton.* Then what did they say the third Time?

Sir *Robert Sawyer.* Pray were they asked whether they published it?

Mr. *Blathwayt.* As to the publishing it, it was laid before them, and I think they were asked the Question, whether they published it?

Sir *Robert Sawyer.* And what Answer did they make?

Mr. *Blathwayt.* I remember his Grace, and my Lords the Bishops, did not own they had published it, but they denied it.

Sir *George Treby* After they discovered their Unwillingness the second Time, what followed next?

Mr. *Blathwayt.* They did withdraw after the second Attendance.

Mr. *S. Levinz.* But what was said to them? Was that all that was said to them the second Time?

Mr. *Blathwayt.* I have said two Things already, that they were unwilling to answer, and that they denied the publishing.

L. C. J. This is a strange Usage of a Witness, to put him to tell every thing that was said.

Mr. *S. Pemberton.* I would ask you this Question, Sir, When they came in the second Time, whether they did desire to know if it were his Majesty's Command that they should own it?

L. C. J. That I must not permit you to ask, Brother; that is to lead the Witness.

Mr. *S. Pemberton.* My Lord, he will not answer general Questions; I have asked him all along general Questions, and I cannot get an Answer from him to them.

Mr. *Blathwayt.* I am ready to answer any Questions that the Court thinks I should answer; I am not backward to answer according to my Duty.

L. C. J. Let one of you ask a Question at a time, and not chop in one upon another.

Mr. S. Sol. Gen. In all the Trials that ever I have been in, in all the Cases of Criminals, the King's Witnesses used to be treated with Respect, and not to be fallen upon in this manner.

L. C. J. He shall be sure to have all Respect paid him.

Mr. Sol. Gen. He is in Office under the King.

Mr. *S. Pemberton.* I do not think that Mr. *Blathwayt* does believe I would shew him any Disrespect more than he would shew me.

Mr. Att. Gen. I beg one Word, my Lord.

L. C. J. Mr. *Attorney*, what do you say?

Mr. Att. Gen. My Lord, I say I do oppose the asking of this Question. not but that every Man has a Right to cross-examine a Witness, but if they ask such a Question, let them tell us what Use they would make of it.

L. C. J. Mr. *Attorney-General*, for that Matter-----

Mr. *S. Pemberton.* My Lord, if you please, I'll give Mr. *Attorney* an Answer.

L. C. J. Brother *Pemberton*, I was speaking to Mr. *Attorney*, and pray hear me; I will not ask you what Use you'll make of the Question you ask; but do you ask fair and regular Questions, and I'll take Care you shall have an Answer to them.

Mr. *S. Pemberton.* I will deal plainly with the Court, and tell you what Use we intend to make of our Question. If they answered under a Promise from his Majesty, that it should not be given in Evidence against them, I hope they shall not take Advantage of it.

Mr. Sol. Gen. I say that it is a very unmannerly Question; but however it shall be answered.

Mr. *S. Pemberton.* Why so, Mr. *Sollicitor?*

Mr. Sol. Gen. My Lord, it is to put something upon the King, which I dare hardly name.

L. C. J. We do not know what Answer will be made to it yet, but it does look like an odd kind of Question.

Mr. Sol. Gen. If Men will be so pressing, I, for the King, desire the Question may be entred.

Sir. *Robert Sawyer.* What do you mean, Mr. *Sollicitor?*

Mr. Sol. Gen. I know very well what I mean, Sir; I desire the Question may be recorded in Court.

Mr. *S. Pemberton.* Record what you will; I am not afraid of you, Mr. *Sollicitor.*

Mr. Sol. Gen. Are you afraid of the Law?

Mr. *S. Pemberton.* No, nor of you neither.

L. C. J. Pray be quiet, Gentlemen.

Mr. Att. Gen. Pray, Mr. *Blathwayt*, answer, whether there was any Promise made to my Lords the Bishops from the King?

Mr. *Blathwayt.* My Lord, I take the Question to be, whether the King was pleased to make my Lords the Bishops any Promise of not taking Advantage of what Answer they made?

Mr. Att Gen. That is the Question.

Mr. *Blathwayt.* As that Question is stated, there was no such made.

L. C. J. Look you, he tells you there was no such Promise made. There is an Answer to your Question, Brother.

Mr. *S. Levinz.* We made no such Question; but the Question I would ask is this:——

Mr. Sol. Gen. For the Satisfaction of the Court, repeat what you said just now, Mr. *Blathwayt.*

Mr. *Blathwayt.* I take the Question to be, whether the King made any Promise to my Lords the Bishops, that no Advantage should be taken of what they said? And I said, the King made no such Promise.

Mr. *S. Pemberton.* We did not ask you the Question, but we only told you what Use we would have made of another Question.

Mr. *Pollexfen.* Mr. *Blathwayt*, I see you can very well distinguish what Questions are to be answered. I ask you in short, upon your Oath, when they were first called in, what was said to them, and what was answered by them?

L. C. J. Here has been a great deal of Wrangling, but this is a fair Question, and may reduce us to Order again. Tell us over again from the Beginning, what passed when my noble Lords the Bishops came in the first, second, and third Time, when they were examined about this Paper?

Mr. *Blathwayt.* My Lord, I shall comply with your Lordship's Directions. I apprehend I am to answer together concerning the first, second, and third Comings of my Lords the Bishops into the Council. The first Time, as I said before, the Lords the Bishops were unwilling to own the Paper, and did say, they humbly hoped his Majesty would not take Advantage against them, but that they were ready to obey his Command. The second Time they were called in they did repeat it again, that they hoped his Majesty would not take Advantage against them: After that there was mention made of the Paper being published, I remember my Lords the Bishops said they had not published it----

Sir *Robert Sawyer.* Is that all?

Mr. Sol. Gen. You have no Mind to hear all, I think.

L. C. J. How did you expect to be answered your Questions, if you interrupt them? Go on, Mr. *Blathwayt.*

Mr. *Blathwayt.* Sir, I said last, that they having prayed the King that no Advantage might be taken against them for what they should say, there was no mention made of the Paper its being published, and my Lords the Bishops did say they had not published it; and his Grace my Lord Archbishop said it was written with his own Hand, and that he had not made use of his Clerk.

Sir *Rob. Sawyer.* Is that all you can remember that passed at that Time?

Mr. *Blathwayt.* This is the Substance of what I remember.

L. C. J. Was this the third Time?

Mr. *Blathwayt*, No, that was the second Time, my Lord.

Mr. *Pollexfen.* If there be not some Order in this Evidence, my Lord, we shall not be able to observe any thing upon it.----Pray what was done afterwards?

Mr. *Blathwayt.*

Mr. *Blathwayt.* My Lord Chancellor, upon their coming in, did require them to anſwer, whether they did own that Paper or not? My Lords the Biſhops did own the Paper.

Mr. *Pollexfen.* Do you remember in what Words or Expreſſions, as near as you can, they did own it?

Mr. Sol. Gen. Is this a Practice to be endured?

Mr. *Finch.* Why? He may apprehend and take that to be an owning of it, which was not.

Mr. Sol. Gen. Has not he ſworn the Manner of it, and almoſt the very Words?

Mr. Serj. *Levinz.* We deſire nothing of him but that he will tell us what Words they ſaid when they owned it.

Mr. *Blathwayt.* It was the third Time that they came in that they owned it.

Mr. *S. Pemberton.* Why? What did they ſay?

Mr. *Blathwayt.* My Lord Chancellor required them to anſwer, whether they owned the Paper or no.

Mr. *S. Pemberton.* What did they ſay then?

Mr. *Blathwayt.* As near as I can remember, his Grace and the Lords the Biſhops did own the Paper.

Mr. *S. Pemberton.* What Words did they own it in? Tell the Manner of it.

Mr. Sol. Gen. What's this to the Purpoſe?

Mr. *Finch.* Mr. *Blathwayt*, did you take Notes of what paſſed there?

Mr. *Blathwayt.* I anſwer, Sir, I did not take Notes, for I attended the King at his Elbow, and did not take Notes. Mr. *Finch*, you know the Manner of the Council in ſuch Caſes very well.

Mr. Att. Gen. Then we aſk you for the King, becauſe they ſhall not enflame People by ſuch an Expreſſion, In what Words did they own it, if you can remember?

Mr. *Blathwayt.* Sir, I have declared my Memory as well as I can; whether the other Clerks come to be examined, if they can tell any more, let them.

Mr. Sol. Gen. But we will have no Diſcourſe to enflame the World: Did the King promiſe or declare that no Advantage ſhould be taken of their Confeſſion?

L. C. J. I would aſk him that Queſtion, What was the Manner that my Lord Chancellor expreſs'd himſelf in to them, when they came in the third Time?

Mr. *Blathwayt.* As ſoon as my Lord Chancellor had required them to declare whether they owned that Paper, as well as I remember, his Grace took the Paper in his Hand, and it was handed over, or ſhewed to my Lords the Biſhops, and they owned and declared ſo, juſt as if they ſhould lay it before the Court, juſt ſo. I do not recollect myſelf of all the Circumſtances that paſſed; I only can tell you the Subſtance.

Holding it forth to the Court.

Mr. Sol. Gen. He does not remember what they ſaid particularly.

Mr. Att. Gen. Mr. *Sollicitor*, I know well enough what they mean by the Queſtion; I know they would fain poſſeſs the World with a Belief that there was ſuch a Promiſe made them, and yet they are proſecuted notwithſtanding that Promiſe: Therefore I do ask you, Mr. *Blathwayt*, and for the King's Honour I muſt ask it: Did the King make any Promiſe or Declaration, that no Advantage ſhould be taken, or Uſe made of it?

Mr. *Blathwayt.* The King did not make any Promiſe or Declaration that no Advantage ſhould be taken, or Uſe made of it.

Mr. Sol. Gen. He only put them upon it, whether they did own it or not?

Mr. Att. Gen. I ask you upon your Oath, Did my Lord Archbiſhop own it to be his Hand-writing?

Mr. *Blathwayt.* Yes, he did, and ſaid he writ it with his own Hand, and would not let his Clerk write it.

Mr. Att. Gen. Did he own the whole to be his Hand-writing, or not?

Mr. *Blathwayt.* Yes, he did.

Mr. Att. Gen. Did every one of the Biſhops own their Names ſubſcribed to it?------Mr. *Blathwayt.* Yes.

Mr. Sol. Gen. Then, my Lord, we pray now that it may be read.

L. C. J. I ſuppoſe now they will be content it ſhould be read.

Mr. *Finch.* If your Lordſhip pleaſe to favour me one Word, I think it cannot yet be read; and my Objection is this------

L. C. J. I thought you had made all your Objections before, as to the reading of it.

Mr. *Finch.* Pray, my Lord, ſpare us. Here are two Parts of this Information; the one is for conſulting and Conſpiring to diminiſh the King's Royal Prerogative, and for that End they did make and write a ſeditious Libel: The other Part is, that they did publiſh this ſeditious Libel. We are hitherto upon the firſt Part, the Making and Writing of it. Both Parts are local; until they have proved the Making and Writing of it to have been in *Middleſex*, it is not Evidence upon this Information.

Mr. Sol. Gen. We have proved it written and publiſhed in *Middleſex*.

Mr. *S. Pemberton.* The Contrivance and Writing of a Libel is in itſelf penal, and they may be puniſhed for it, if they be found guilty. Now if they could give an undeniable Evidence concerning the publiſhing of it, that is nothing to this Point; but if they ſhould not give ſuch Evidence, or any Evidence at all of the Publication, yet if it be proved that it was written and contrived by them, they would be guilty for ſo much, if it be a Libel; and this we ſay is local, as well as all the reſt: And therefore we inſiſt upon it, that the Writing and Contriving muſt as well be proved to be in *Middleſex*, as the Publication, for all is local.

L. C. J. There is no publiſhing yet proved.

Mr. Serj. *Levinz.* It is true, my Lord, here is nothing of a Publication yet, with your Lordſhip's Favour; for their Anſwer to his Majeſty in Council was, that they did not publiſh it: All that is ſaid yet is, that they owned the Paper to be their Hands. My Lord, does the owning of that own that it was written in the County of *Middleſex?* or that it was contrived or made there? No ſurely, upon this Evidence the Place is clearly at large. My Lord, this might have been done in the County of *Surry*, or *Somerſet*, or any other County: Their Information is, that they did conſult and contrive to diminiſh the King's Prerogative at *Weſtminſter* in the County of *Middleſex*, and there they did write, and cauſe to be written, this Libel, and there they did publiſh it. Suppoſe it ſhould be granted that it is proved that this is the Archbiſhop's Hand-writing, and theſe are their Names to it, is there any one Evidence that any thing of this was done in *Middleſex?* And, my Lord, that is the Thing they are to prove.

Mr. *Sommers.* If your Lordſhip pleaſe, all Matters of Crime are ſo local, that if it be not proved to be done in the County where it is laid, the Party accuſed is as innocent as if he never had done the Thing; and, with Submiſſion, it is the very Point of the Information, that it be proved they are guilty of the Fact in the Place where it is laid to be done.

L. C. J. This is the ſame Thing over and over again; but I am content to hear you, Mr. *Sommers*, at any Time: I have told you my Opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollexfen.* Pray, good my Lord, ſpare us before it be read.

Mr. Juſt. *Holloway.* Mr. *Pollexfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. Att. Gen. My Lord, when this Paper is read, which we pray it may be, we will anſwer their Objections, but at preſent we ſay they are out of Time.

Mr. *Pollexfen.* Good Lord, what a ſtrange thing is this! We object againſt the reading of it, and you'll anſwer us after it is read.

Mr. Sol. Gen. Certainly, my Lord, we have done enough to prove that this is a Paper owned by them in the County of *Middleſex*, and we pray it may be read.

L. C. J. Truly I am of the ſame Mind I was before, that it is too ſoon to make the Objection, and that the Paper ought to be read.

Mr. Sol. Gen. We ſubmit to your Rule.

Mr. *Pollexfen.* If it be the Will of the Court, I have nothing to ſay.

Mr. Juſt. *Powell.* My Lord, the Contrivance and Publication are both Matters of Fact, and upon Iſſue joined, the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a Matter of Fact done in another County? And it muſt be preſumed, in favour of Innocence, not to be done in this County, but in another, except they prove it.

Mr. Att. Gen. We are not yet ripe for arguing that Point.

Mr. Sol. Gen. We are ſpeaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no; that is meerly a Matter of Law, and under the Direction of the Court; and therefore I pray, ſince it is now in your Lordſhip's Judgment, whether that Paper ſhould be read, that you would pleaſe to order it to be read.

L. C. J. I can only give you my own Opinion, let my Brothers give theirs.

Mr. Juſt. *Holloway.* There is no body againſt the reading of it, my Lord. I ſuppoſe my Brother *Powell* is not againſt it's being read.

Mr. Juſt. *Powell.* But they ſay the King's Counſel muſt make it out firſt, that the writing of it, and the conſpiring about it, was in the County of *Middleſex*, or there can be no Judgment, ſo much as to read it.

Mr. *Pollexfen.* My Lord, if the Objection be ſaved to us, we ſhall not ſo much oppoſe the reading it, only we would not be ſurprized in Point of Time.

Mr. Juſt. *Powell.* Nay, if they conſent to the reading, we have no Reaſon to hinder it.

L. C. J. Brother, I believe they know well enough what they have to ſay for their Clients; let the Paper be read.

Clerk reads. *The humble Petition of* William *Archbiſhop of* Canterbury---

Sir *Rob. Sawyer.* Read the whole Petition; pray, my Lord, that the whole may be read. Read the Top firſt, Sir, to whom it was directed.

L. C. J. Read the whole.

Clerk reads.

To the KING's Moſt Excellent Majesty.

The humble Petition of William *Archbiſhop of* Canterbury, *and of divers of the Suffragan Biſhops of that Province, now preſent with him, in Behalf of themſelves and others of their abſent Brethren, and of the Clergy of their reſpective Dioceſes,*

Humbly ſheweth;

THAT the great Averſeneſs they find in themſelves to the diſtributing and publiſhing in all their Churches your Majeſty's late Declaration for Liberty of Conſcience, proceedeth neither from any Want of Duty and Obedience to your Majeſty (our Holy Mother, the Church of *England*, being both in her Principles and in her conſtant Practice unqueſtionably Loyal; and having, to her great Honour, been more than once publickly acknowledged to be ſo by your Gracious Majeſty), nor yet from any Want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit, when that Matter ſhall be conſidered and ſettled in Parliament and Convocation; but amongſt many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a Diſpenſing Power as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the Beginning of your Majeſty's Reign; and is a Matter of ſo great Moment and Conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour or Conſcience, ſo far make themſelves Parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the Time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

Your Petitioners therefore moſt humbly and earneſtly beſeech your Majeſty, that you will be graciouſly pleaſed not to inſiſt upon their Diſtributing and Reading your Majeſty's ſaid Declaration:

And your Petitioners (as in Duty bound) ſhall ever pray, &c.

Mr. Att. Gen. My Lord, we ſhall leave our Evidence here, and hear what they can object to it.

Mr. *Finch.* Have you no farther Evidence, Mr. *Attorney?*

Mr. Att. Gen. We leave it here for the preſent.

Mr. Sol Gen. The Gentlemen of the Jury deſire to ſee the Petition.

L. C. J. Shew it them.

[*The Petition was ſhewn to the Jury.*]

Mr. *Finch.* But will you give no further Evidence, Mr. *Attorney?*

Mr. Att. Gen. I tell you, we'll leave it here, till we ſee what you ſay to it.

Mr. *Finch.* There is nothing that we ſhould ſay any thing to.

Mr. Att. Gen. Make your Advantage of it; if it be nothing, we can have nothing.

L. C. J. What ſay you for the Defendants, Gentlemen?

Mr. *Finch.* My Lord, in ſhort, we ſay, that hitherto they have totally failed; for they have not proved any Fact done by us in *Middleſex*, nor have they proved any Publication at all.

Sir *Rob. Sawyer.* They have given no Evidence of any thing.

L. C. J. Pray Gentlemen, ſpeak one at once, and then we ſhall underſtand the better what we hear.

Sir *Rob. Sawyer.* My Lord, we ſay, they have given no Evidence of the Conſpiring, Writing, or Publiſhing in *Middleſex:* Nay, as to the Publication, there is none at all proved.

Mr. *Finch.* Here is no Proof of any Publication, nor of the Writing or Making in *Middleſex*; ſo that there is no Proof at all againſt my Lords the Biſhops.

L. C. J. You heard what Mr. *Blathwayt* ſaid; they owned it in *Middleſex.*

Mr. *Finch.* That is not a Publication ſure, or any Evidence where it was done.

Mr. Serj. *Levinz.* Suppoſe, my Lord, that I own in *Middleſex*, that I robb'd a Man in *Yorkſhire*, will that make me guilty in *Middleſex?*

Mr. Att. Gen. But if you had ſtole a Horſe in *Yorkſhire*, and had that Horſe in *Middleſex*, and owned it, I doubt it would go hard with you in *Middleſex.*

Mr. Sol. Gen. Mr. Serjeant thinks he has put a very home Compariſon; but we ſhall ſhew how little ſignificant it is by and bye.

Mr. Serj. *Levinz.* My Lord, in the firſt Place, we inſiſt upon it; here is no Proof in this Caſe at all, as to the doing of any Fact at all in the County of *Middleſex:* In the next Place, this Information and Petition do not agree; for they have brought an Information, and ſet forth, that my Lords the Biſhops, under pretence of a Petition, did make a Libel, and they have ſet forth no Petition at all; all the petitionary Part is omitted. If I will take part of a Man's Words, and not the Whole, and make a Libel of that Part, certainly that is very diſingenuous and injurious: For that Part that I omit may alter the Senſe of the whole. They here ought to ſet forth the Petition, with the Direction to the King, and the Prayer at the End, whereby it will appear what the whole is, and what was deſired by their Petition. But, my Lord, to make this Matter a little more clear, whatſoever they ſay of its being my Lord Archbiſhop's Hand, we ſhall prove that if it were ſo, it could not be done in *Middleſex*; for we ſhall prove that my Lord of *Canterbury* hath not been in *Middleſex* for three or four Months before.

Sir *Reb. Sawyer.* Pray let the Information be read, then you will ſee the Variance.

Mr. Att. Gen. There is not the latter Part, we acknowledge, in the Information.

Mr. Sol. Gen. There may be, and is, a *ſic continetur*, and there is no Objection in that at all.

L. C. J. It is *ſic continetur*, and that's------

Sir *Reb. Sawyer.* The Truth of it is, this Information hath made a very deformed Thing of it, has left it neither Head nor Tail: They ſtile it a Petition, but it is without any Direction to any body, and without any Prayer for any thing; and without thoſe two it cannot be told what it is.

Mr. Juſt. *Allybone.* Sir *Robert Sawyer*, if I miſtake not, it is ſaid only under pretence of a Petition.

Sir *Rob. Sawyer.* There may be more in the Paper than in the Information; and if all were in, one Part might explain another.

Mr. Sol. Gen. So there may be more; and I wonder to hear that Objection from Sir *Robert Sawyer*, who has exhibited ſo many Informations for Libels in Pieces taken out of Books.

Mr. *Recorder.* All that we alledge in the Information is contained in the Paper, and that's enough for our Purpoſe; we are not bound to recite the whole.

L. C. J. Indeed I think it is no material Objection at all.

Mr. *S. Pemberton.* Truly I think it is very material in this Caſe: Here's a Petition that is preferred to his Majeſty; take the whole Petition together, and, ſay they, it is a reaſonable Petition; chop off the Direction and the Prayer, and then here's nothing but the Body of a Petition, without Beginning or Ending; or if a Man will ſay any thing concerning the King, and do it by way of Petition to himſelf, that will alter the Caſe mightily from a Paper ſpread about, that ſhould contain only the Body of the Petition, and nothing elſe.

Sir *Rob. Sawyer.* Pray read that Part of the Information.

Mr. *Pollexfen.* If ſo be there be an Information, and that Information charges a Man with a pretended Petition, and the Evidence comes and proves a Petition both Top and Bottom, that is not the Petition in the Information: for that lacking the proper parts of a Petition, is called a pretended Petition, but that which is proved, is proved a real one.

Mr. Serj. *Baldock.* My Lord, there is nothing in this Objection, as this Record hath it.

Mr. Att. Gen. Pray, my Lord, give us Leave to ſtate it on our Side, as they have done on theirs, and it will be the better underſtood upon the reading: I hope it is not come to that Paſs that they would have it. Sure theſe Gentlemen have not forgot altogether the Practice that has been ſo frequent in this Court: If there be an Information for a Libel, is there any thing more frequent, than only to recite the material Part? Sure they may ſay, in ſuch a Libel is contained ſo and ſo, without ſetting forth the whole Book.

Mr. Sol. Gen. How many Trials have we had here, wherein there has been only a Clauſe taken out of a Book? as particularly, *Baxter*'s Bible, and *Johnſon*'s Book, and all by Virtue of a *ſic continetur.*

Mr. *Finch.* That comes not up to our Objection here.

Mr. Juſt. *Powell.* Let us hear the Record read, and then we can judge of it.

Sir *Rob. Sawyer.* We pray, Sir, the Information may be read.

Mr. Att. Gen. We are here upon all Occaſions chopp'd in upon, and I do not know how they come to take this Liberty; I am ſure other People had it not in former Times, when theſe Gentlemen ſtood where we do: As ſoon as ever we offer to ſpeak, preſently there are two or three upon us.

L. C. J. Let me hear them, Mr. *Attorney*, make their Objection, and let the Record be read, and that will anſwer that Objection.

Mr. Att. Gen. My Lord, as for that other thing, they come and tell us, we have ſet forth a Petition; we ſay no ſuch thing; in the Information we ſay, you compoſed a certain Libel *pretenſu Petitionis*, in which are contained ſuch and ſuch Things; and now I pray let it be read.

Mr. Sol. Gen. Pray, my Lord, hear me a little firſt: Take the Information as we have laid it, and I believe there are twenty Precedents that I could give you in an Inſtant of late Days Practice: So was the Information againſt Mr. *Baxter*; ſo was the Information againſt Mr. *Johnſon*; ſo was the Information againſt Dr. *Eades*; and ſo was the Information againſt Sir *Samuel Barnardiſton.* They are all in this Form, *ſic continetur*; ſo that as for that Matter, we are well enough. But here's another thing, ſay they, You do not ſet out the Petition; we ſay, it is a Libel, and it is not the Name we rely on, but there is ſuch a Libel; ſo we in our Information call it: If it be not a Libel, then are they very innocent; and whether it be or no, is now in Judgment before your Lordſhip; but if it be as we ſay, then it is not the ſpeaking ill Things in the Body of a Petition, and then giving it a good Title, and concluding it with a good Prayer at the End of it: 'Tis not, I ſay, any of theſe that will ſweeten this Crime, nor alter, nor alleviate it at all; if there be that which is ſeditious and libellous in the Body of it, call the Paper what you will, and ſmooth it with a Preamble, or a Concluſion, that will not make it any thing leſs a Libel; theſe Things are plain and manifeſt. We ſay there is ſuch a Thing done, a Libel made, *pretenſu Petitionis*, do you call it what you will: but we ſay, theſe, and theſe Things are a Libel upon the King and the Government: We have proved our Caſe, we have proved there was ſuch a Paper under their Hands; we have proved it was owned in *Middleſex*, and then we are in your Judgment, whether this be not Evidence ſufficient to convict the Defendants?

L. C. J. But they do make an Objection about the writing and contriving of it, that it is not proved to be in *Middleſex.*

Mr. Serj. *Trinder.* My Lord, our Information does not go with a continued Clauſe, that they framed a Libel, *ut ſequitur in hæc verba*, but we only ſay, they made a Libel *pretenſu Petitionis*; and then we ſay, *In quo quidem Libello continetur* ſo and ſo; we do not tie ourſelves up to a particular Recital of all that's in the Paper.

L. C. J. Read the Record.

Clerk. Reads.

Ipſi iidem Willielmus Archiepiſcopus Cantuarienſis (and the reſt) *dicto decimo octavo die* Maii, *Anno Regni Dicti Domini Regis nunc quarto ſupradicto, vi & armis, &c. apud* Weſtmonaſterium *prædictum in Comitatu* Middleſexiæ *prædicto* illicite malitioſe ſeditioſe & ſcandaloſe quoddam falſum fictum pernitioſum & ſeditioſum Libellum in ſcriptis de eodem Domino Rege & Regali Declaratione & Ordine prædictis pretenſu Petitionis fabricaverunt compoſuerunt & ſcripſerunt & fabricari componi & ſcribi cauſaverunt, *& eundem falſum fictum malitioſum pernitioſum & ſeditioſum Libellum per ipſos prædictos* Willielmum Archiepiſcopum Cantuarienſem (and the reſt) *manibus ſuis propriis reſpective ſubſcriptum die anno & loco ultimo mentionatis* in præſentia dicti Domini Regis nunc vi & armis, &c. publicaverunt & publicari cauſaverunt; *in quo quidem falſo ficto malitioſo pernitioſo & ſeditioſo Libello continetur.* The humble Petition of, *&c.*-----

Mr. Serj. *Levinz.* It is quite another thing; that which is produced, from that which is in the Information, by this leaving out a Part; for here is the Prayer omitted, and the Direction.

Mr. Sol. Gen. Then, my Lord, I think there is nothing in the Caſe, but this mighty Objection of the County; and, ſays Mr. Serjeant *Levinz*, if my Countryman confeſſes in this County, that he ſtole a Horſe in *Yorkſhire*, you ſhall not try him in *London*, but in *Yorkſhire*, becauſe, by his own Confeſſion, the Fact is in another County.

Mr. Serj. *Levinz.* I did not put the Caſe ſo.

Mr. Sol. Gen. But take the Fact of the Caſe as it is here: My Lord, the Biſhops come in *Middleſex* and own this Paper; my Lord Archbiſhop owns it to be his Writing, and the reſt of the Biſhops own their Hands: If they had done as Mr. Serjeant's *Yorkſhire*-man did, and ſaid, We own we did this, but it was in the County of *York*, then it would have been like the Caſe that theſe Gentlemen put; but here we are in a plain Caſe of another Nature: My Lord Archbiſhop comes here in *Middleſex*, and owns that he writ the Paper, the other Biſhops they ſigned it: Now it does lie certainly in their Knowledge where this was done, and they ſhould have declared then; but they have owned it as their Paper, and the ſigning and writing of it, which is enough for us.

Mr. *Finch.* I own this to be my Paper, therefore I writ it in the County of *Middleſex:* Is that a Conſequence? I am very glad they are no better at their Inferences.

Mr. Sol. Gen. They have owned the Thing in *Middleſex* that we inſiſt upon, and they have not owned it with any Qualifications: If they had ſaid, it was done in another County, then you muſt have taken it to be as they ſaid it; then if they do not diſtinguiſh the Place of the Fact, your Lordſhip can only take it to be where they owned it; it would be ſuppoſed to be done in that Place; for when they owned the Fact, it will be ſuppoſed, if they do not ſay where it was done, that it was done where they owned it, becauſe the King can't tell where it was done; but the Evidence comes out of their own Mouths, they may give Satisfaction where it was done, for they know it; and till that be done, the Suppoſition is againſt them, that it was done in the Place where they owned it; and that is a plain Caſe, whereſoever a Man is to ſpeak of his own Fact. Indeed, if I publiſh the Writing of another Perſon which is libellous, then there muſt be a particular Proof of the Place, becauſe it is not my own Fact; but if thoſe Lords publiſh a Libel that they make themſelves, it is their own Knowledge, and in their own Power to tell where it was done, becauſe it is their own Act and Deed. It is true, if my Lords had publiſhed a Paper that was contrived by ſome of their Counſel, it had been ſome Excuſe, and they muſt only have ſuffered for that Publication in the Place where it was done; but they are here for writing this they have owned in this County, and therefore it lies upon them to prove it done elſewhere. There is another Objection, my Lord, made, that here is no Evidence of a Publication. My Lord, I take it to be a Publication in itſelf: Is it poſſible for a Man to write a Libel? to ſet his Name? and part with it? and it coming to the Hands of the King, that this is not

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a Publication? It is not their saying, we did not publish it, that will excuse them; for can there be a greater Publication in itself than this, when Men have set their Hands to it, and owned their Names? What makes the Fact in this Case? If a Deed be denied to be *factum* of such a one, what is the Proof of it, but setting the Hand and Seal, and the Delivery? There is owning the Paper, and setting their Hands is a Publication in itself, and therefore they cannot make any such Objection. My Lord, if there were Occasion, we have Authorities enough to this Purpose, and we will give them Scope enough if they will argue this Matter; and if they have any Evidence, we desire to hear what they can say to it.

Mr. Att. Gen. As for this Matter of Fact, my Lord, if I take it right, they do not controvert the Publishing, but, say they, pray make it out, where it was written or composed. I confess, this would be a Business worth the while, for all Persons that act in this Manner, and are concerned in making of Libels, to understand for their Advantage. No Man doubts in the Matter of Treason, but it is local: Then put the Case, a Man is found in *Middlesex* with a treasonable Paper in his Pocket; I do not make a Comparison, as if this was such a Paper, I hope I am not so understood; but I only put it as a Case, and that the Law is so, is beyond all Controversy; then the Man is indicted here in *Middlesex*, for framing and composing such a treasonable Libel, and he comes to be tried, and, says he, pray prove where I made and composed it; for though you found it in my Pocket in the County of *Middlesex*, yet I might do it in the County of *York*; and, upon my Word, this had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted, for making a treasonable Paper which was found in his Study; might not he have put the same Objection? Might not Mr. *Sidney* have said (it was great Pity he did not understand it), pray prove where I did it, for I did it elsewhere than in this County——

Mr. Sol. Gen. He did say it, I remember.

Mr. Att. Gen. Truly, my Lord, I would not hear any Answer given to this, for it would make the King in a very woful Case: Here is a Paper that is found in the County of *Middlesex*, and this is there owned by you to be written and subscribed by you; pray do you prove it, that it was written elsewhere.

Mr. *S. Pemberton.* My Lord, we will do it, we will be governed by Mr. *Attorney* for once.

Mr. Serj. *Levinz.* We will prove that my Lord Archbishop was not in *Middlesex* in seven Months before; and truly I think Mr. *Atterney*'s Case of a Paper found about a Man, or in his Custody, will not come up to our Case; for was this Paper found about us? Surely that is not pretended.

Mr. *S. Pemberton.* Your Lordship sees by the very Frame of the Petition, that this Petition, which they call a Libel, was made after the King's Order concerning reading this Declaration. Now we shall prove that my Lord Archbishop, whose Hand-writing they prove this to be, was not out from *Lambeth-house* in two Months before, nor till he was before the Council.

Sir *Rob. Sawyer.* Which was long after that Time when it was made.

Mr. *S. Pemberton.* So that this cannot be written in the County of *Middlesex.*

Call *Francis Nicholls.*

[Mr. *Nicholls* was sworn.]

Sir *Robert Sawyer.* Do you remember the 18th of *May* last?

Mr. *Nicholls.* Yes, Sir.

Sir *Rob. Sawyer.* Pray how was it with my Lord Archbishop of *Canterbury* at that Time; and before that, did he go abroad?

Mr. *Nicholls.* My Lord, I am very sure that my Lord his Grace of *Canterbury*, whom I have served in his Bed-chamber these seven Years never stirred out of the Gate of *Lambeth-house* since *Michaelmas* last.

Sir *Robert Sawyer.* Till when, Mr. *Nicholls?*

Mr. *Nicholls.* Not till the Time he was summoned before the Council.

Mr. *S. Pemberton.* Now I hope we have given them a full Proof that it could not be in *Middlesex.*

Call *Thomas Smith.* [Mr. *Smith* was not examined.

Mr. *Finch.* Truly, my Lord, I think that what we have proved, or what Proof we further offer of my Lord of *Canterbury*'s not being in *Middlesex* for so long a Time, is *ex abundanti*, and we need it not; for with humble Submission in Point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; because the Locality of it is Part of the Thing, they ought to prove it. In its Nature it is local, there is a Place assigned in the Information, and unless they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made Proof of that, and for Proof of Publication, I think they have offered none to your Lordship; they never did call it so yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel: It is owning the Writing, but it is not an owning where the Writing was made; but where it was written, and where it was made, is of Necessity to be proved. Before the Charge upon a Record, in a Court of Justice, can be said to be made out, it is a local Charge, and in Justice, the Locality must be proved, or the Information fails. My Lord, they have offered no Proof to it, and they have not yet gone to the second Part of the Information; for as to the Publication of it, there is not a Tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever think that the answering a Question, and owning a Paper at the Council-Table, upon a Question put by the King himself, was a Publication of a Libel.

Mr. Serj. *Baldock.* Pray, my Lord, hear me a Word to that: Tho' the Thing be never so local, yet there must be some Place where a Thing that was done, was done. Then if nothing else appears but what was done in *Westminster*, in the County of *Middlesex*, unless they shew the contrary, that must be the very Place where it was done.

Mr. Sol. Gen. Here is a great deal of Prevarication in this Matter, and I would observe to your Lordship how they do use the Court ill in it: Pray, my Lord, what is it we are upon? We are proving that these seven Lords, the Bishops, signed this Paper; and I think we have proved it sufficiently out of their own Mouths: But, say they, it was not signed in the County of *Middlesex*, but in the County of *Surry*. All this is but Imagination, and they would have the Court to imagine it too: For how do they prove it? They would have your Lordship and the Jury believe, that it was signed elsewhere, because my Lord Archbishop has not been out of his House in some Months before: It is all but Inference, and Argument, and Imagination. But still, Gentlemen, do you answer what I objected to you? Does it not lie in their Power to shew where it was signed? Here are six more, besides the Archbishop, where was it signed by them? Here are six of the Bishops, that it does not appear where they signed it; but they confess at *Whitehall*, in *Middlesex*, that they did set their Hands.——

Mr. Serj. *Levinz.* Ay, they did so, and what then?

Mr. Sol. Gen. Ay, and ay too; if they did so, the Presumption and common Intendment upon such Evidence is, that it was done in the Place where it was owned; and the rather, for that Reason that I said before, that it lies in their Knowledge; and therefore it is incumbent upon them to prove, that it was not in the County of *Middlesex:* So that this Objection I take rather to be an Invention of the Counsel than the Truth of the Fact, because they that can make this out, do not. And as to what they say of my Lord Archbishop, that he has not been out of Doors for so long, who can prove such a Thing? Certainly my Lord was able to come, for any thing that appears; he has been here twice, and he was able to come to the Council-Board: But when all is done, my Lord Archbishop is certainly able to put this Matter out of Doubt; for he may easily prove it, if the Fact be so; and that will satisfy the Court and every body, that it was signed by him at *Lambeth*, if he designs to deal sincerely with your Lordship and the Court, and the Jury; but certainly it is not to be proved by a Circumstance, such a one as this is, but he ought to give your Lordship and the Jury Satisfaction about this Fact: He ought to say, 'Tis true, I did sign it, but it was at *Lambeth house*; that indeed would be a down-right Stroke to us: But to go upon a Supposition, that because my Lord Archbishop was not out of his House for so long together, therefore they are all not guilty, is a very hard and foreign Inference. My Lord, there's another Matter that they insist upon; and that is about the Publication; that is as plain as any thing can be, that here is a full Proof of a Publication; for if the Paper be Libellous, wherever that Paper is, that is a Publishing; wherever the Paper travels, how far soever it goes, it is a Publication of it by these Persons that signed it. I believe no body thinks that this should fly into the King's Hand, but somebody brought it to him; and certainly, my Lord, if your opinion should be, that this Paper is Libellous, then wherever it is, it is a Publishing, which is our Offence; wherever it is found, it is a Publication; for there is the Mistake of these Gentlemen, they fancy, that unless there was a Publick Delivery of this Paper abroad, nothing can be a Publication; but I rely upon it, they setting their Names to it, made it their Paper; and wherever it was afterwards found, that did follow the Paper wherever it went, and was a Publication of it, it was in their Power, being their own Contrivance; it was made and formed by themselves, and no body will believe, when it was their own Hands that they put to it, that any body else could have any Power over it: For aught appears, no body else was at work about it, and when there were so many learned Prelates that had signed such a Paper, no one can believe they would let it go out of their Hands, but by their Consent and Direction: Is not this a Proof of the Publishing? Do they give your Lordships any Evidence that they had stifled this Paper? If they had so done, they had said something; but will any body believe that this Thing was done in vain? Can any body assign a Reason why so solemn a Thing as this should be done to no End and Purpose? Why a Paper should be framed that rails at the King's two Declarations? Why a Paper that gives Reasons why they could not read it in their Churches, and signed with such Solemnity by all these Noble Lords, we submit this to you in point of Law; and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middlesex*, there is a Publication of that Libel. I shall mention to your Lordship that Case of *Williams*, which is reported in the second Part of *Rolle*'s *Reports*; Mr. *Finch* made use of it in the Case of *Sidney*; it was the great Case relied upon, and that guided and governed that Case (as I apprehend) from the Verdict and Judgment that was given in it. This Case was 15 *Jacobi*. It seems *Williams* was a Barrister of the *Inner Temple*, and it seems, being an high Catholick for Opinion and Judgment, he was expelled the House; and he being so expelled (being a sort of a *Virtuoso*) wrote a Book called *Balaam*'s *Ass*; and therein he makes use of the Prophet *Daniel*, and he makes Application of it according to his own particular Fancy. He writes there, that this World was near at an End; and he said, Those ill Days were come that that Prophecy spoke of; and because of the Impurity of Prince, and Priest, and People, and other Things that happened, those were the worst of Days, and therefore the last; and that certainly we had the worst Prince that ever was in the World: When he wrote this Book, what does he do? He was a little more close than my Lords the Bishops, and pins it up, or seals it up, and it was brought to the King; and what is this more than the Case before your Lordship? They indeed say, I do this by way of Advice to the King; so said he, I do this by way of Advice to the King, for God forbid that any of this should happen to the King; and so what he does, was by way of Advice, and he prayed God to avert it from him. Here was as good a Prayer as there is in this Paper, and there was a good Design; he made use of the Prophet *Daniel*, and applied his Words. Well, what was done upon it? This was never published; for the Question was before the Court, whether this sealing of it up, and not delivering it to any other body, were a Publication? The Court was of Opinion, that the very Writing of it was a Publication; they did not value the Delivery of it to the Prince, but it was proved he writ it, and that made it Treason. My Lord, we have Cases enough in my Lord *Hobart* for this Matter; Sir *Baptist Hicks*'s Case, and my Lady *Hatton*'s Case; there was only a Letter sealed up and delivered to the Party.

L. C. J. You need not trouble yourself about that, Mr. *Solliciter.*

Mr. Sol. Gen. If the Case then be thus, I take it, it will turn upon this Fact; they have given your Lordship no Proof where this Paper was Signed by them: Here are seven Persons that had a Hand in it, and here is only one Person whom they have insisted upon to be infirm, and kept his

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Houſe for a great while together. We ſay the Publiſhing follows the Libel wherever it goes; the Libel is in the County of *Middleſex*, they have confeſſed it in the County of *Middleſex*, and they did not diſtinguiſh when it was done. Then if they will not diſtinguiſh upon the Evidence, no Man ought to diſtinguiſh, but ought to preſume it was done in that Place where they owned it.

Mr. Att. Gen I did not apprehend we were got ſo far, that they oppoſed us in the Publication.

Sir *Rob. Sawyer.* Yes, we did, for you have given no Evidence of it.

Mr. Att. Gen. Surely, my Lord, for that we have given a ſufficient Evidence, and they have given ſome Proof of it, as to my Lord Archbiſhop; that becauſe he had not been from *Lambeth*, therefore he did not publiſh, nor could cauſe it to be publiſhed; for your Lordſhip ſees by this Information, they are not only to anſwer the *Publicavit*, but alſo the *Publicari cauſavit*; for do you doubt, Gentlemen, of the Law in this Caſe, that if I compoſe a Libel in *Surry*, for Example, and ſend a Perſon over into *Middleſex*, I am not guilty of the Publiſhing?

Sir *Robert Sawyer.* That is not your Caſe, Mr. *Attorney.*

Mr. *Finch.* That were clear if it were ſo, but it is not ſo.

Mr. Att. Gen. My Lord Archbiſhop's Caſe ſignifies nothing, if we ſhew it was publiſhed in *Middleſex*, and you give no Evidence to the contrary but it might be there; and I am ſure as to the reſt of my Lords the Biſhops, there is no Evidence at all given. Here is a Petition that we ſay is a Libel; they, it may be, will make that a Queſtion: This is delivered to the King's own Hand in the County of *Middleſex*, and there are as many Caſes as any one Man can name, that this amounts to a Publication by the Party; for if I ſend a Letter by the Poſt ſealed, that no body can ſee but the Party himſelf, and he that writ it, it is adjudged over and over again it is a Libel.

Mr. Juſt. *Powell.* That you need not labour, Mr. *Attorney*, for that's the Caſe of *Williams* of *Eſſex*; but how do you apply it to the Caſe now before us?

Mr. Att. Gen. That's an Anſwer to their Objection as to the Publication.

Mr. Juſt. *Powell.* But what ſay you to the firſt Part? You have not proved that it was written in *Middleſex.*

Mr. Att. Gen. There is the Caſe of *Barrow* and *Lewellin* in *Hobart*, and likewiſe the Caſe of Sir *Baptiſt Hicks*, which is reported both in *Hobart* and in *Popham*; and in *Popham*, towards the End of the Caſe, there is a remarkable Paſſage. Says that Caſe, If it ſhould not be puniſhable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, becauſe he can be no Witneſs for himſelf, and it is only known betwixt them two; but a Witneſs for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. Juſt. *Powell.* You need not labour that Point, I'll tell you, Mr. *Attorney*; for the Law is very clear in that Point, I think, if you bring it home to your Caſe.

Mr. Att. Gen. Then here's the Caſe, in ſhort, my Lord; that my Lords the Biſhops have cauſed to be made and written this Petition, they are made Parties to it by ſetting their Names, and this is a continued Act: Whatſoever is written there is my Lord Archbiſhop's Writing, wherever it goes, as I'll put a Caſe that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middleſex*, it is a continued Act, and makes all but one Felony, and I ſhall be tried here in *Middleſex* for it. If a Man write a Thing in one County, and it is ſent and diſperſed in another County, that ſtill continues to be his Fact, though it may be the firſt Part was not in the ſame County with the other: But ſuppoſe all this while that Part ſhould not affect my Lord of *Canterbury*, the cauſing it to be publiſhed does.

Mr. Juſt. *Powell.* Do you think, Mr. *Attorney*, that writing in one County is ſuch a continued Act, that he may be ſaid to write it in another County?

Mr. Att. Gen. Sir, I take it, where there is a complicated Crime of writing and publiſhing a Libel, and the beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be tried in either County.

L. C. J. It is all one Act of Libelling, as they ſay.

Mr. Juſt. *Holloway.* In Caſes of Felony 'tis ſo; taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. Juſt. *Powell.* But in that Caſe they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. Sol. Gen. Suppoſe that my Lords the Biſhops ſigned this Paper in another County, and my Lord Archbiſhop conſents to have it ſent into *Middleſex*, is not this a Cauſing it to be publiſhed in another County?

Mr. Juſt. *Powell.* Yes, it may be, if you prove his Conſent.

Mr. Sol. Gen. Then ſuppoſe further, which may very well conſiſt with my Lord Archbiſhop's Evidence of his not being out of *Lambeth* in ſo long Time, the reſt of the Biſhops might ſign it in *Middleſex*, or it may be in that Place; and then they carry it by my Lord's Conſent over hither into this County; Is not this a Cauſing it to be publiſhed? The Delivery with his Conſent certainly is a Proof of that, for our Information goes two ways; for Making, Contriving, Writing and Publiſhing, that's one; and then for cauſing it to be Made, Contrived and Publiſhed, that's the other. And if I prove that he cauſed it to be publiſhed, he may be found guilty as to that Part, and not guilty as to the other; for the Information is not ſo entire, but that the King has his Choice. If the Archbiſhop had not ſigned it, or written it, but had cauſed it to be publiſhed, he may be found guilty of ſo much: But if he be guilty of any one of theſe things, it is enough; and if he be guilty of none of the other things laid in the Information, yet if he be guilty of cauſing it to be publiſhed, by his conſenting that the reſt of the Biſhops ſhould do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought againſt what we have proved, that he did not conſent?

Mr. Juſt. *Powell.* But where was this Conſent of his given, Mr. *Sollicitor?*

Mr. Sol. Gen. Pray, good Sir, give me your Favour, I think I am in a plain Caſe.

Mr. *S. Pemberton.* So you are truly.

Mr. Sol. Gen. Why, good Sir, you ought to make out the Locality, if you'll take Advantage of it.

Mr. *S. Pemberton.* That's very well, indeed! This is the firſt Time I ever heard that Doctrine.

Mr. Sol. Gen. I cannot help that, but certainly the Law is plain: We have proved there was ſuch a Fact as this was done; and they do not go about to prove that it was done elſewhere than where we have laid it; for if they did, their Witneſſes would be croſs-examined by us; and then we know what would become of them, then the Truth of the Matter would come out: Therefore I would make all this *conſtare.* The Archbiſhop might be at *Lambeth*, and yet guilty in *Middleſex*, by his Concurrence with what was done in *Middleſex:* And I ſay, my Lord, this is natural, upon the Evidence that has been given, becauſe when they were interrogated at the Council, and confeſſed the Paper to be theirs, they made no ſuch Explanation of their Confeſſion, of which they can make any Advantage in their Defence. Here has been nobody produced that proves any thing to be done out of *Middleſex*; ſo that ſtill if he's guilty of the Fact proved, he muſt be guilty in *Middleſex.*

Mr. Serj. *Baldock.* And it does not appear, in this Caſe, but that my Lord Archbiſhop might write the ſame Thing in *Middleſex*, though he was at *Lambeth* ſo long as the Witneſs ſpeaks of.

Mr. Juſt. *Powell.* How do you make out that, Brother?

Mr. Serj. *Baldock.* He might do it when he came over to the Council.

Sir *Rob. Sawyer.* He muſt do it after it was preſented.

Mr. Serj. *Baldock.* Might he not be ſo long here on this Side the Water, as to make ſuch a ſhort Thing as this, before it was delivered? Half of a Quarter of an Hour would have done it.

L. C. J. That's a Thing not to be preſumed, Brother, eſpecially ſince he is proved not to have been in *Middleſex* ſo long together.

Sir *Rob. Sawyer.* Mr. Serjeant is mightily miſtaken, for it is not pretended, that it was delivered at the Time when the Archbiſhop, and my Lords the Biſhops, were before the Council.

Mr. Recorder. Either the Making and Contriving, or the Publiſhing of this Libel will do upon this Information; for they ſhall be taken to be one continued complicated Act, and then the Party may be tried in either of the Counties, as the King will; as in the Caſe of Treaſon, it has been over and over again adjudged, that if a Man does one Act of Treaſon in one County, and afterwards goes into another County, and does another Act of Treaſon, the Jury of either of the Counties may enquire of the Fact done in the other. If they then ſhould take thoſe two as ſeveral Acts, they were ſeveral Offences, and they may be found guilty of the one and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Caſe, the Jury of this County may take Notice of the Publication which was here, as certainly they may, if they will agree, as the Law certainly is, that the Writing of a Letter will be a ſufficient Publication, if the Matter be libellous. And there are Multitudes of Precedents for that; and that the bare ſetting of a Man's Hand has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a ſimilar Caſe: Suppoſe a Man write a ſcandalous Letter from *London*, to a Judge or Magiſtrate in *Exeter*, and ſends it by the Poſt, and the Letter is received from the Poſt at *Exeter*, and there opened; would any Man make a Queſtion whether the Gentleman that ſent the Letter may not be indicted and proſecuted for a Libel at *Exeter*, where the Libel was received?

Sir *Bartholomew Shower.*

Mr. Juſt. *Powell.* There's no Queſtion of that, Mr. *Recorder*; that comes not home to the Fact in our Caſe: Undoubtedly in the Caſe that you put, the Law is as you ſaid, but it is far different from this Caſe.

L. C. J. There's nobody oppoſes the Publication, but the framing of it, where it was made.

Mr. Recorder. Suppoſing then the Party were at *Exeter*, and he were interrogated before the Magiſtrate, whether it were his Hand or no, and he ſhould own it to be his Hand, can any body doubt whether his owning that to be his Hand, would be a ſufficient Evidence to prove a Publication?

Mr. Juſt. *Powell.* But is that any Evidence where it was written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter?*

L. C. J. They do not deny the Publication.

Sir *Robert Sawyer.* We do deny that there was any Publication; and they have proved no Place where it was made.

Mr. Sol. Gen. My Lord, we are not for turning my Lords the Biſhops out of the Way of proof that is uſual in ſuch Caſes; let them take it if they will, that this was contrived and made in *Surry.* But can they publiſh it in *Middleſex*, without committing an Offence? and that is it we ſtand upon: We are not for laying a greater Load upon my Lords the Biſhops than our Proof will anſwer.

Sir *Robert Sawyer.* We thank you for your Compliment, Mr. *Sollicitor.*

Mr. Sol. Gen. Is this a fair Way of interrupting us when we are ſpeaking? Durſt any one have ſerved you ſo when you were in the King's Service? We would make our Duty as eaſy as we can to my Lords the Biſhops, and it may be eaſier than other Men would have made it. But, my Lord, let it be a doubtful Caſe, that we cannot tell which County it was made and contrived in, if it were made and contrived in another County; yet when they brought it into *Middleſex*, there was a Publication in *Middleſex*; and if my Lord of *Canterbury* conſented to it, and if he cauſed it to be publiſhed, how came any body ever to get him off from that cauſing of it to be publiſhed? Here is a Paper that muſt be ſuppoſed to be my Lord Archbiſhop's Paper: Now either the World muſt look upon it to be an Impoſture put upon my Lords the Biſhops, or a real Paper made by them. If it were an Impoſture and an Affront put upon the Biſhops, they ought to make it out for their own Vindication, and to prove themſelves innocent: If they do that, they do well, and they ought to have Satisfaction made them by thoſe that have ſo highly injured them; and the King cannot be better pleaſed, I am ſure, than to find them ſo: But if Men will look one way and act another, they muſt expect to be dealt with accordingly. Will any Man that has heard this Evidence, and ſees that theſe

Gentlemen

Gentlemen will not go the right Way to work to prove their own Innocence, believe them to be not guilty? 'Tis plain they contrived it and ſigned it; for can any one imagine that they ſet their Hands to a Paper that was not formed and contrived by themſelves? Then let it go, That this was done in another County, and we cannot puniſh the Writing of it in this County; yet ſtill they are guilty of cauſing it to be publiſhed in this County, and for that we may puniſh them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir *Robert Sawyer.* We oppoſe that, Sir.

Mr. Sol. Gen. You oppoſe it! I know you'll oppoſe common Senſe; we don't ſpeak to you, we ſpeak to the Court. We are content with what is plain, and do not deſire to inſiſt upon any ſtrained Conſtruction: We ſay this is natural Evidence for us; if this thing be a Libel, as we ſay it is, then the cauſing it to be publiſhed is an Offence. The Publication, we ſay, was here in *Middleſex*, and of that there is a clear Evidence, becauſe it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Cuſtody, without their Conſent: This, we ſay, is a clear Evidence of cauſing it to be publiſhed, let the reſt go as it will, becauſe we will take the eaſieſt part of the Caſe, and not go upon Strains.

Mr. Serj. *Trinder.* The greateſt Queſtion is, I think, now come to the publiſhing—

L. C. J. The Court is of Opinion, that its coming to the King is a publiſhing.

Mr. Juſt. *Powell.* Ay, my Lord, if it be proved to be done by them.

Mr. S. *Pemberton.* Before the Court deliver their Opinion, we deſire to be heard.

L. C. J. Brother, you ſhall be heard in good Time, but let them make an end on the other Side, and when the King's Counſel have done, we'll hear you.

Mr. Serj. *Trinder.* My Lord, upon the Queſtion of Publiſhing, it has been inſiſted upon, and the Court ſeems to be very much of the ſame Opinion, that the Writing of it is a publiſhing: That it is without Controverſy, if the Writing of it fell out to be in *Middleſex*, where the Information is laid; but that they would not have to be ſo by Argument, becauſe the Archbiſhop had kept in at *Lambeth* ſo long. But, ſuppoſe that it were ſo as they would have it, that is only as to the Archbiſhop, he being the Writer of it; but yet, notwithſtanding that, the other ſix might ſubſcribe it in *Middleſex*, taking it, that there is ſuch a Face in their Argument as they would have it.

Mr. Sol. Gen. We will lay no greater Load on the other ſix than we do upon my Lord Archbiſhop, and we ſay, they are all guilty of the Publication in *Middleſex*.

Mr. Serj. *Trinder.* Pray, Sir, ſpare me. This Paper was in the Archbiſhop's Cuſtody and Power, he taking of it himſelf; and regularly it could not have come out of his Cuſtody, in common Suppoſition, but it muſt come with his Conſent. It was afterwards in the power of the other ſix, they had it to ſubſcribe; whereas the Subſcription was *non conſtat*; they, it may be, can prove it themſelves, but I will only deduce this Argument; That if it after comes into *Middleſex*, it muſt be taken by Preſumption to be ſubſcribed by them there, and publiſhed; it muſt be taken by Preſumption ſo to be.

L. C. J. No, Brother, we ought not to do any thing by Preſumption here.

Mr. Juſt. *Powell.* No, no, by no means, we muſt not go upon Preſumptions but Proofs.

L. C. J. I will not preſume it to be made in *Middleſex.*

Mr. Serj. *Trinder.* But it is proved to be publiſhed in *Middleſex.*

Sir *Rob. Sawyer.* My Lord, with Submiſſion, there is no Evidence of the Publication.

Mr. Att. Gen. That the Court is to judge of.

Sir *Rob. Sawyer.* Pray, good my Lord, what Inſtance of a Publication have they given?

Mr. Sol. Gen. The Court has heard the Evidence, we leave it there.

Sir *Rob. Sawyer.* Was it their owning and acknowledging it was their Hands, when the King asked them the Queſtion at the Council-Table? Surely the King's Counſel won't pretend that was a Publication, when it was done at the King's Command! It was certainly the King that publiſhed it then, and not my Lords the Biſhops.

Mr. Att. Gen. Well ſaid.

Sir *Rob. Sawyer.* Don't you remember that, when Mr. *Blathwayt* ſaid the King gave it to be read, and it was ſhewed to the Biſhops?

L. C. J. I remember what Evidence Mr. *Blathwayt* gave of the Paſſages at the Council-Board very well, and I know what Mr. *Attorney* did preſs about the King's promiſing to take no Advantage.

Mr. Att. Gen. My Lord, Mr. *Attorney* is on the other Side, he did not preſs it.

L. C. J. Sir *Robert Sawyer*, I mean; I beg both your Pardons, Gentlemen, I think I have done Injury to you both.

Sir *Rob. Sawyer.* My Lord, we ſay there is no Evidence at all, that ever this was ſent to the King by the Archbiſhop, or any of my Lords the Biſhops: And as for the Caſes that they have put, they might have put five hundred Caſes, and all nothing to the purpoſe.

Mr. Sol. Gen. So they might, and done juſt as others had done before them.

Sir *Rob. Sawyer.* And ſo are theſe; for here is the Queſtion, We are in a Caſe where the Publication is that which makes it a Crime: Now I would have them, if they can, put me any ſuch Caſe, and then apply it to this. In *Williams*'s Caſe, the Queſtion is quite otherwiſe, and ſo in any Caſe of Treaſon it muſt be: Wherever there is an Overt-Act proved, it is the treaſonable Intention, and the ill Mind of the Traitor, that is the Crime; and the Treaſon (the Overt-Act) is only to be the Evidence of it. In that Caſe of *Williams*, with Submiſſion, my Lord, the Publication was not at all neceſſary, but the very ſecreteſt Act that could be done by him (if it were an Act) is an Evidence of the Mind; and ſo the ſending of the Book to the King himſelf, though nobody elſe did ſee it, was an Evidence of the Crime of Treaſon, yet it could not be called a Publication. But in the other Caſe of Sir *Baptiſt Hicks*, which was in the *Star-Chamber*, about ſending a Letter of Challenge, it was plainly reſolved that it was no Publication of the Letter, and that was not the Ground of the Judgment given againſt him there, that it was the Publication of a Libel, but the very Fact was a particular Offence; for, ſaid the Court there, if you will ſend a Letter to a private Man, and that is a Letter that will provoke him to break the Peace, that is an Offence puniſhable in the *Star-Chamber*; but that is not the Reaſon which is alledged, becauſe no Action will lie for want of Proof, but quite the contrary; becauſe they may produce the Porter or Party that brought it, and prove it that it came from this Man's Hands; and I do not queſtion but that in the *King*'s-*Bench* at this Day, if a Man will write a Letter privately, to provoke another Man to fight, there will lie an Information, but not for a Libel; for there it will be neceſſary for to make an Offence, that there may be a Publication; for that is the very Form of the Crime, and upon that Ground were all thoſe Judgments againſt Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Perſon, or to make a Petition to the King concerning another Perſon, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them ſcandalouſly, with a provoking and reviling Language, that is a Publication; and ſo if I write a Letter to one Man of another; if there be Scandal in a Letter, that is a Publication of a Libel; and that is the Difference that has been always taken, where it is eſſential to make it a Libel, that there be a Publication, ſuch a Publication muſt be proved; and the Delivery of a Letter to a Man that concerns himſelf, is no Publication; but in this Caſe they have not ſo much as proved that it was delivered to the King.

Mr. S. *Pemberton.* My Lord, with your Lordſhip's Leave, I take it, that they have given no manner of Evidence of a Publication; to ſay, the Writing and ſubſcribing of their Names to a Paper, is a Publication of that Paper, is ſuch a Doctrine truly as I never heard before. Suppoſing this Paper had lain in my Study, ſubſcribed by me, but never went further; would this have been a Publication? They never ſaid any ſuch thing. As to *Algernoon Sidney*'s Caſe, there was no Colour for it, that it ſhould be a Publication; but it was an Overt-Act of Treaſon to compoſe ſuch a Book. They have proved by our Confeſſion here, that we have ſubſcribed this Paper; they would take it now, that therefore it muſt be preſumed we ſent this to the King, and ſo furniſe us into an Information for making and publiſhing a Libel, which we ſent to the King; but they do not prove it all. My Lord, there are a thouſand Ways that it might come into *Middleſex*, and perhaps come to the King's Hands too, without our Knowledge of Delivery; and ſure you will not preſume theſe noble Perſons, without Evidence, to be guilty of ſuch an Offence as this is ſuggeſted to be! So that, my Lord, and Gentlemen of the Jury, 'tis impoſſible for you to find this a Publication in *Middleſex*; and for the other Thing (the writing this Paper) they that would make it an Offence, muſt prove where it was done.

Mr. Serj. *Levinz.* My Lord, The Anſwer that I ſhall give to what has been ſaid on the other Side, is very ſhort: The Caſes that have been cited are all Law, but not one Tittle to this Purpoſe. In Sir *Baptiſt Hick*'s Caſe, and *Williams*'s Caſe, it was proved they all ſent them to the Places whither they were directed; but is there a Tittle of Proof that theſe Biſhops ſent it here? In all thoſe Caſes they muſt ſend it either by a Porter or a Carrier, and they ſend it as their own Act; and when it comes there, by their ſending, that is ſufficient Proof of their Act in the Place whither it is ſent: And for *Sidney*'s Caſe, there was Treaſon in the very Libel and Book that he made; and he was not indicted for Publiſhing, but for Treaſon, in the Place where it was found, becauſe it was found in his Poſſeſſion: But was this ever in my Lord Archbiſhop's Poſſeſſion in *Middleſex*, or the reſt of the Biſhop's, and were they publiſhing of it? If it had, then it had been their Act clearly: But that is the Thing wherein they are defective, that they do not prove that my Lords the Biſhops ſent or brought it here; but upon the Queſtion aſked them by the King, they acknowledged it to be their Hands: So that, my Lord, there is no Proof of any Fact done here, but an Acknowledgment of a Fact done, nobody knows where, upon the King's Queſtion here in *Middleſex:* Is that any Proof of this Information?

Mr. *Finch.* Pray, my Lord, ſpare me a Word on the ſame Side; let us ſee what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Biſhops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middleſex*, and the Publication of that Libel. And what is therefore inferred from thence? Why, having proved that the King brought the Paper to the Council-Table, and the Biſhops owned their Hands; therefore, Firſt, the Biſhops made this Libel in *Middleſex*. Secondly, they brought it to the Council-Table, and publiſhed it at the Council-Table, or elſe there is no Proof at all: For here is nothing of Evidence given of any Fact, but becauſe they acknowledged it, therefore they made it, therefore they gave it to the King in *Middleſex:* This were good Evidence if they had had the Help of a Suppoſition to make it good; but they want that, nor muſt any ſuch thing be admitted; but I think they are ſuch groſs, falſe Conſequences, that I doubt not you'll be of Opinion, here's no Proof of a Publication in *Middleſex*, and then there is no Proof at all againſt my Lords the Biſhops.

Mr. *Pollexfen.* I muſt confeſs, I hear them ſay, two Acts prove a Publication in this Caſe; the one is, the Writing of the Libel, and the Subſcribing. If ſo, then I think, upon the Evidence that has been given, the Court muſt needs be ſatisfied, that the Writing of it was in *Surrey:* The next is their owning their Hands: for there is no Act done that appears, or any Evidence againſt them of any Act done, from the Time of the Writing, to the Time that they were aſked, is this your Hand? Surely no Man would ever think this to be a Publication, where one is aſked by Authority, whether ſuch a Paper be his Hand, and he acknowledges it in Anſwer to that Queſtion! To turn this to be a Crime, I think it can never be done, nor never was before. Then there is nothing in the Caſe, that they can hold to for Evidence, and Proof againſt my Lords the Biſhops, but the Writing; and that is apparent to have been in *Surrey*, or otherwiſe they muſt hold that the Anſwer to the King's Queſtion, This is my Hand, is a Publication. But truly, my Lord, I think neither of theſe will do: But, my Lord, to me this is a great Evidence in itſelf againſt the Proof of a Publication, the Care and Warineſs that has been uſed, that there ſhould be nothing at all of this Matter known, from the Time that it was written, to the Time that they came to be examined and ſummoned to appear as Offenders. My Lord, the Nature of Libels is to

publiſh and proclaim Scandal and Defamation, or elſe it loſes its End, and conſequently its Name. This as it ſtands upon their Evidence, is a monſtrous Proof for my Lords the Biſhops, againſt the King's Counſel; for it ſeems 'tis a very private Matter, ſo cautiouſly and warily carried, that there is not any Evidence of the Fact, but only the Names of the Perſons that writ it, till they come to be examined by the greateſt Authority, Is this your Hand? And then they own it ſo to be. How can this be taken to be a Publication? And it will be a Thing of wonderful Conſequence, if an Anſwer to a Queſtion put by Authority, ſhould amount to a Crime, as it would in this Caſe: That would be, as if Authority, that ſhould be employed to do Right, would be turned to do the greateſt Wrong; for it is the Duty of all Men to anſwer when examined by a lawful Authority, and it would never be offered at, ſure, in any other Caſe. If a Man comes before a Magiſtrate, and confeſſes any thing, that indeed is Evidence, but is not a Crime; for there is a great deal of Difference between Evidence and the Crime; but that this ſhould be both an Evidence and a Crime too, is, I think, a very ſtrange Conſtruction; and for the other Part (the writing of it) I ſuppoſe the Court is ſatisfied that it was in another County.

Sir *George Treby.* I deſire your Lordſhip to ſpare me a Word, which I think has not been obſerved by the Counſel that have ſpoke before. The Queſtion that remains, is, Whether my Lords the Biſhops did publiſh this Paper? This is a Matter of Fact that lies upon the Proſecutors to prove. Now I think they are ſo far from being proved that the Biſhops did publiſh it, that, on the contrary, they have proved that their Lordſhips did not publiſh it. The Evidence they have offered for this Matter is a Confeſſion. This Confeſſion is teſtified by Mr. *Blathwayt*, and he ſays the Biſhops were aſked at the Council whether they did ſubſcribe and publiſh this Paper, and that their Anſwer was, that they did ſubſcribe, but not publiſh it.

Now a Confeſſion muſt be taken together, and muſt be admitted to be entirely true by them that produce it; they ſhall never be allowed to take out and uſe one Piece, and wave the reſt.

Why then by this Evidence of Confeſſion, taken as it ought, it appears that the Biſhops, though they did ſubſcribe, did not publiſh the Paper: So that, I ſay, the King's Counſel have hereby plainly proved, that the Biſhops did not publiſh this Paper, and yet this is the only Evidence upon which they would infer that they did publiſh it.

Mr. Att Gen. Look you, it does lie upon you, Gentlemen, to prove it was done elſewhere than in *Middleſex.*

Mr. *Finch.* Sure *Mr. Attorney* is in Jeſt!

Mr. Att. Gen. No, I am in good Earneſt; all the Proof that we have given has been in *Middleſex*, and you can beſt tell whether you did it in *Midaleſex* or no.

Mr. *Finch.* My Lord, we have done as to this Objection; for we ſay they have not proved their Caſe.

L. C. J. Mr. *Finch*, you may obſerve (and I am ſure you do obſerve as well as any Body in all Caſes), but I ſay, you may obſerve that they are off of every thing but cauſing it to be publiſhed; now that does lie upon the King's Counſel to prove, that my Lords the Biſhops did cauſe it to be publiſhed; for their owning their Hands does not amount to Publication.

Mr. *S. Pemberton.* My Lord, we are upon this Point with them, whether here be any Evidence of a Publication at all?

Mr. Juſt. *Powell.* Pray let us clear this firſt; for if there be no Publication, there can be no cauſing of it to be publiſhed.

Mr. Att. Gen. My Lord, if you think fit, we ſhall go on, and reſerve this Point till afterwards.

Mr. Sol. Gen. They may make Objections, if they think fit.

L. C. J. So they may, and they ſay if theſe Objections are with us, we need go no farther.

Mr. *S. Pemberton.* But, my Lord, if they be not with us, we have a Reſerve to give a farther Anſwer to it, and to offer Evidence againſt the Evidence they have offered.

Mr. Sol. Gen. With all our Hearts, give in Evidence what you can.

Mr. Att. Gen. Then pray, my Lord, let us go on to anſwer this Objection.

L. C. J. Pray do, *Mr. Attorney.*

Mr. Att. Gen. My Lord and Gentlemen of the Jury, I would firſt obſerve how far we have gone. That there was ſuch a Paper written is clear beyond all Queſtion, and written by my Lord Archbiſhop of *Canterbury*, and that it was ſigned by the reſt of the Biſhops, but not in the County of *Middleſex*, and that this Paper was publiſhed, is agreed on all Hands.

Mr. Juſt. *Hol.* No, they do not agree to that.

Mr. Att. Gen. Do I ſay it was publiſhed by them? But there was ſuch a Paper publiſhed.

Mr. *S. Pemberton.* No, we ſay it was never publiſhed at all.

L. C. J. Pray, Brother *Pemberton*, be quiet; if Mr. *Attorney* in opening does ſay any thing that he ought not to ſay, I will correct him, as I would do any Body that does not open Things right as they are proved; but pray don't you that are at the Bar interrupt one another, it is unbecoming Men of your Profeſſion to be chopping in and ſnapping at one another.———Go on, Mr. *Attorney.*

Mr. Att. Gen. I ſay, that the Paper is proved to be written and ſigned by my Lords the Biſhops; that I take for granted; and that the Paper ſo ſigned and written is now publiſhed to the World, is alſo evident; but the Queſtion is, Who it was done by, or who cauſed it to be done? We are reduced to that Queſtion. Now, firſt, it is agreed on all Hands, that if I ſend a Letter to a private Man containing ſcandalous Things in it, though there is no Proof more, but that it was ſent ſealed, and received by the Party; in that Caſe it was a Fault puniſhable in the *Star-Chamber*, as a Crime: But now that this was received by the King, and written by them, there is no room for Doubt; for you hear it was produced by the King at the Council Board, and they aſked upon it, If it were their Hands? That the King did receive it, there is no room for Queſtion, or that they did write it; but the Queſtion is, from whom the King had it? I am ſure they muſt ſhew that ſomebody elſe did it; and unleſs they do ſhew that, I hope there is no manner of Queſtion but it came from them, and they did it; though no Man living knew any thing of this Matter, but whom they thought fit to communicate it to; yet ſtill they putting the King upon the Neceſſity of ſhewing this Power, in order to his obtaining Satisfaction for it, or elſe he muſt remain under the Indignity without Reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then muſt the King put up the higheſt Injury and Affront that perhaps a Man can give the King to his Face, by delivering a Libel into his own Hands; and if he does produce it, then ſay they, That is not our Publication. We prove it to be your Writing and Signing, and we prove it to come from the Hand of the King againſt whom it was compoſed; for we ſay it is a Libel againſt his Majeſty, his Government and Prerogative: If then all thoſe Caſes that have been cited be Law, then ſure there never was a ſtronger Caſe in the World than this; and I hope the Law goes a little farther in the Caſe of the King, than it does in the Caſe of a private Man. No Man muſt think by Policy to give private Wounds to the Government, and diſparage the Adminiſtration of it, and then, when he is called in Queſtion about it, ſays he, Pray prove that I publiſhed it, or elſe you ſhall not puniſh me for it. We prove you framed it, and writ it, and ſigned it, and we prove it came to the King's Hand, of whom it was compoſed. Muſt we produce two Witneſſes of the Delivery of it to the King? Surely there will be no need of any thing of that.

Mr. Sol. Gen. My Lord, we have reduced it now to a very narrow Queſtion; for, as Mr. *Attorney* has ſaid, my Lord, there is no Doubt but that my Lords the Biſhops are the Authors of this Paper; there is no Doubt but they ſigned it, and there is no Doubt but that their ſigning of it, though it were at *Lambeth*, as they ſay, is a Publiſhing of it: But, however, this is plain and manifeſt, that this Paper was publiſhed; and that this was publiſhed in *Middleſex*, this is as plain too: Now then there is nothing left but this Queſtion, whether my Lords the Biſhops, who framed the Thing, who wrote the Thing, who ſigned the Thing, were not the Occaſion or Cauſe of its Publication, or privy or conſenting to it? My Lord, I will reduce it to a very plain Point; for we are upon a rational Queſtion, before a rational Court, and a rational Jury, whether theſe Lords did all of them, in the County of *Surry*, conſent to the Publiſhing of this Paper in *Middleſex?* For it is publiſhed in *Middleſex* (that we ſee); and if they are guilty of that Part of the Information of cauſing it to be publiſhed, now what do they ſay to it? Say they, it is agreed, that it is publiſhed in *Middleſex*, but it is not proved to be publiſhed by us.

L. C. J. No, they do not ſay ſo; they agree it was in *Middleſex*, but not publiſhed.

Mr. Juſt. *Powell.* Mr. *Sollicitor*, they do agree it was in *Middleſex*, but not publiſhed to be ſure, nor by them,

L. C. J. Mr. *Sollicitor*, I'll tell you what they ſtand upon; they ſay you ought to prove it to be delivered to the King by the Biſhops, or ſomebody employed by them; for upon that went the Reſolution that was in *Williams*'s Caſe, that he ſent it to the King; but here is nobody that proves that it was delivered to the King in this Caſe, ſo that how it came to the King *non conſtat.*

Mr. Sol. Gen. There will be the Queſtion between us, whether this be not a Publication?

Sir *Rob. Sawyer.* Pray, Mr. *Sollicitor*, prove your Caſe before you argue it.

L. C. J. Firſt ſettle what the Caſe is, before you argue it.

Mr. Sol. Gen. My Lord, I'll put you the Caſe. Here does appear in *Middleſex* a Paper that is a Libel in itſelf, and this Libel is proved to be written and formed by theſe Perſons; this Libel coming into *Middleſex*, the Queſtion is, whether they are privy to it? I ſay, in point of Preſumption it muſt come from them.

L. C. J. I cannot ſuppoſe it; I cannot preſume any thing.

Mr. Sol. Gen. My Lord, I ſpeak of that which is a common Preſumption, a natural Preſumption, what we commonly call a violent Preſumption, which is a legal Preſumption, and has always been allowed for Evidence. Now whether there be not ſuch a Preſumption, in our Caſe, as to induce your Lordſhip and the Jury to believe that it cannot be otherwiſe; or at leaſt to put the Labour upon them, to ſhew how it came out of their Studies, and how it came to the King's Hands; for it is in their Power to ſhew the truth of this Matter, how it was; if they do not, the Preſumption will lie upon them. That the Paper came to the King, that is plain enough; and its coming to the King's Hands, is a plain Proof of a Publication in *Middleſex*; and who ſhould bring it to the King, but theſe Gentlemen in whoſe Power it was? There is no Man undertakes to ſay, he loſt it, then what elſe is to be believed, but that it came from them? I ſpeak of common Suppoſition and Belief; they may very well ſhew it, if it were not ſo. All that we can ſay in it is, here is a Paper in *Middleſex*, this you agreed was once your Paper, and in your Power, pray ſhew what became of it, it lies upon you to clear this Doubt.

Mr. Recorder. My Lord, there is but this Queſtion in the Caſe; the Queſtion is not, whether the owning it be a Publication, but, whether here be any Evidence that they did deliver it to the King? Now if they did deliver it to the King, that will be agreed to me to be a Publication.

Mr. Juſt. *Hol.* No doubt of it, if you can prove it.

Mr. Recorder. Pray, Sir, ſpare me: That they did it, you have this Evidence: firſt, that they were the Authors of this Paper by their own Confeſſion, that this was in the County of *Middleſex*, and that when they were aſked concerning it, they owned it to be their Hand-writing. Now whether you can in the leaſt queſtion, after all this, their delivering of it to the King, or that it came to the King's Hands without their Knowledge or Conſent, is that which lies before your Lordſhip for your Judgment.

L. C. J. I will aſk my Brothers their Opinion; but I muſt deal truly with you, I think it is not Evidence againſt my Lords the Biſhops.

Mr. Juſt. *Hol.* Truly I think you have failed in your Information; you have not proved any thing againſt my Lords the Biſhops in the County of *Middleſex*, and therefore the Jury muſt find them not guilty.

Mr. Att. Gen. I'll put you but one Caſe, my Lord: A Man has an Opportunity ſecretly to deliver a Libel into the King's Hands, when nobody is by, and ſo there can be no Proof of the Delivery.

Mr. Juſt. *Powell.* 'Tis a dangerous thing, Mr. *Attorney*, on the other ſide, to convict People of Crimes without Proof.

Mr.

Mr. Att. Gen. But ſhall a Man be permitted thus to affront the King, and there be no way to puniſh it?

L. C. J. Yes, there will ſure, but it will be a very ſtrange Thing if we ſhould go and preſume that theſe Lords did it, when there is no ſort of Evidence of it; 'tis that which I do aſſure you I cannot do: We muſt proceed according to Evidence, and Forms and Methods of Law; they may think what they will of me, but I always declare my Mind according to my Conſcience.

Mr. Serj. *Trinder.* But as to that other Point, whether their owning of it be a Publication, has not been particularly ſpoke to.

L. C. J. Mr. *Attorney*, and Mr. *Sollicitor*, if there were enough to raiſe Doubt in the Court, ſo as to leave it to the Jury, I would ſum up the Evidence.

Mr. Sol. Gen. My Lord, we know it is with the Court, theſe Lords inſiſted upon it, that it was a great while in their Hands; but it ſeems as far as our Evidence has gone hitherto, their Confeſſion went no farther than that it was their Paper, and we muſt not extend their Confeſſion further than it was; but I think we ſhall offer a fair Evidence that they did deliver it in the County of *Middleſex*.

L. C. J. Indeed, indeed, you ought to have gone to this, Mr. *Sollicitor*, before the Court gave their Opinions.

Mr. Sol. Gen. Pray call Mr. *Blathwayt* again. [Mr. *Blathwayt* called.

L. C. J. Mr. *Sollicitor*, unleſs you are ſure that Mr. *Blathwayt* is a Witneſs to the Publication, 'tis but ſpending the Court's Time to no Purpoſe to call him.

Mr. Sol. Gen. We are ſure of nothing, my Lord; but we muſt make uſe of our Witneſſes, according to our Inſtructions in our Briefs.

[Then Mr. *Blathwayt* appeared.

Mr. Att. Gen. Mr. *Blathwayt*, you were ſworn before?

Mr. *Blathwayt.* Yes, Sir.

Mr. Att. Gen. You were preſent when this Paper or Petition was delivered by the King, at the Council-Board?

Mr. *Blathwayt.* Yes, I was ſo, Sir.

Mr. Att. Gen. Do you remember any thing of the Biſhops acknowledging their Delivery of it to the King?

Mr. Sol. Gen. Mr. *Blathwayt*, I would aſk you, was there any mention in Diſcourſe with my Lords the Biſhops, how that Paper came into the King's Hands? Was there any mention of what it was done for, upon the Account of Religion, or how?

Mr. *Blathwayt.* I don't remember any thing of that, Mr. *Solliciter* (*at which there was a great Laughter*).

L. C. J. Pray let us have no Laughing, it is not decent; can't all this be done quietly without Noiſe? Pray, Mr. *Blathwayt*, let me aſk you, Do you remember there was any Diſcourſe how that Writing came into the King's Hands?

Mr. *Blathwayt.* I received it from the King's Hands, and I know it was preſented to him by my Lords the Biſhops.

L. C. J. How do you know it was preſented to the King?

Mr. *Blathwayt.* I heard the King ſay ſo ſeveral Times.

Mr. Sol. Gen. Pray mind my Queſtion, Sir: Firſt I ask you who produced the Paper at the Council-Table?

Mr. *Blathwayt.* The King.

Mr. Sol. Gen. What ſaid the Biſhops when that Paper was ſhewed them?

Mr. *Blathwayt.* Then, as I remember, they were asked, whether that was the Paper that they delivered to the King?

Mr. Sol. Gen. Then what ſaid the Biſhops?

Mr. *Blathwayt.* They at firſt ſcrupled to anſwer, and they ſaid it might be made uſe of to their Prejudice if they owned it.

Mr. Att. Gen. Pray, Mr. *Blathwayt*, conſider again; was that the Queſtion put to my Lords the Biſhops, whether that was the Paper that was preſented by them to the King?

Mr. *Blathwayt.* I do think, to the beſt of my Remembrance, that my Lord Chancellor did ask them to that Purpoſe, I cannot ſpeak to the very Words.

Mr. Sol. Gen. And upon this, what Anſwer did they make?

Mr. *Blathwayt.* My Lords the Biſhops ſcrupled to anſwer the firſt and ſecond Time, as I told you before, but they did own it was the Petition that they preſented to the King, to the beſt of my Remembrance.

Mr. Sol. Gen. Did the Archbiſhop do any thing to own it?

Mr. *Blathwayt.* Yes, both my Lord Archbiſhop of *Canterbury* and the reſt of the Biſhops did own all the ſame Thing.

Mr. Sol. Gen. Was this done at *Whitehall?*

Mr. *Blathwayt.* Yes, at the Council-Table.

L. C. J. Pray recollect yourſelf, and conſider what you ſay: Did they own that that was the Paper they delivered to the King?

Mr. S. *Pemberton.* Pray, my Lord, give us leave to aſk a Queſtion to clear this Matter; was the Queſtion put to them, whether it was the Paper that they delivered, or whether it were their Hands that were to it?

Mr. *Blathwayt.* My Lord, I do not exactly recollect the Words.

L. C. J. But pray tell us, if you can, what the Queſtion was?

Mr. *Blathwayt.* My Lord, I do not remember the very Words; but I think if Mr. Serjeant *Pemberton* be pleaſed to repeat his Queſtion, I ſhall give him a ſatisfactory Anſwer, as well as I can.

Mr. S. *Pemberton.* Sir, that which I aſk you is this, Whether the Queſtion that was put to my Lords the Biſhops at that Time was, Whether this was the Paper that they deliver'd to the King, or whether thoſe were their Hands that were to it?

Mr. *Blathwayt.* My Lord, I did always think that it was a plain Caſe, that that was the Paper that they deliver'd to the King; and my Lords the Biſhops did never deny but that they gave it to the King, and I had it from the King's Hands.

L. C J. But we muſt know from you (if you can tell us) what the Queſtion was that was put to my Lords the Biſhops; were they aſked, Whether thoſe were their Hands that were to that Paper? or was it, Whether they delivered that Paper to the King?

Mr. *Blathwayt.* As to the firſt Part, that they owned 'twas their Hands, that I am ſure of; but as to the other, I do not remember what the Words were.

[*At which there was a great Shout.*]

Mr. Att. Gen. Pray, Mr. *Blathwayt*, recollect yourſelf, you ſay the King produced it.------Mr. *Blathwayt.* Yes, Sir.

Mr. Att. Gen. Do you remember that the King asked them any Queſtion upon the producing of it?

Mr. *Blathwayt.* My Lord Chancellor asked them, if thoſe were not their Hands to the Petition?

Mr. Sol. Gen. Was there any other Matter in Diſcourſe, whether that was the Paper that was delivered by them to the King?

Mr. *Blathwayt.* I cannot ſo poſitively ſay what were the Words that my Lord Chancellor uſed.

Mr. Serj. *Levinz.* Pray do not twiſt a Man ſo, Mr. *Sollicitor.*

Mr. Sol. Gen. And you are not to untwiſt a Man neither, Mr. Serjeant.

Mr. Att. Gen. Do you remember that the King ſaid any thing of the Paper being delivered to him?

Mr. *Blathwayt.* The King has ſaid it ſeveral times; I believe I have heard him ſay it ten times at leaſt.

Mr. Att. Gen. Did he ſay it at that Time?

Mr. *Blathwayt.* I cannot poſitively ſay that he did, Sir.

Mr. S. *Pemberton.* He cannot anſwer it; why will you preſs it?

Mr. *Blathwayt.* My Lord, here is the Clerk of the Council that was then in waiting, he took Minutes, and perhaps can remember more than I.

Mr. Sol. Gen. Here they cry he cannot anſwer it, as if they could tell what he can anſwer better than himſelf. Pray, Mr. *Bridgman*, was there any Queſtion to this Purpoſe, either from my Lord Chancellor, or from the King, whether that was the Paper that was preſented by my Lords the Biſhops, or delivered to the King? For I ſee you are very nice as to Words, and you do very well; but was there not a Queſtion to that Purpoſe?

Mr. *Bridgman.* Sir, I do not remember; for I ſpeak to the beſt of my Remembrance in all this Matter. I ſay, I do not remember that that Queſtion was asked in thoſe very Words, but I do remember ſomething was ſaid to that Purpoſe, but by whom I cannot particularly ſay.

Sir *Rob. Sawyer.* To what Purpoſe?

Mr. Sol. Gen. It is very ſtrange that they won't let the Witneſs ſpeak, but are continually interrupting him.

Sir *Rob. Sawyer.* Mr. *Sollicitor*, no body interrupts him.

L. C. J. Why, do not I behave myſelf between you all as I ought to do? Pray, Sir *Robert Sawyer* ſit down, you cannot be contented when the Man does you no Harm.

Mr. Sol. Gen. Pray conſider, did my Lords the Biſhops ſay any thing, or was there any Diſcourſe concerning the Paper, whether it was delivered to the King or no?

Mr. *Bridgman.* Mr. *Sollicitor*, I have told you as near as I can what I do remember. I know not by whom it was ſaid, but that Queſtion, or to that Purpoſe, was asked, whether that was the Petition they delivered? but I do not remember whether the Queſtion was directly asked, or anſwered; there was ſomething about it, and ſeveral Paſſages there were; but whether ſpoken by my Lord Chancellor, or who, I cannot remember.

Mr. Sol. Gen. You ſay there was that which ſufficiently denoted a Queſtion to that Purpoſe, and they ſaid nothing againſt it.

Mr. *Bridgman.* No, there was no Denial of it.

Mr. Sol. Gen. I ſee you do not remember the Particular, nor do we deſire it of you.

Mr. *Bridgman.* They did not deny it, nor confeſs it.

Mr. Sol. Gen. Then, in your Apprehenſion, did they own that they delivered that Paper to the King?

L. C. J. You muſt not ask that, Mr. *Solliciter*, it is not a fair Queſtion to ask him what he apprehended.

Mr. Sol. Gen. He ſaid it before himſelf.

L. C. J. But his Apprehenſions are no Evidence, and it is a ſort of a leading Queſtion which we muſt not allow of.

Mr. Sol. Gen. Then if your Lordſhip do not like it, I will not aſk it; but I will ask him another Queſtion.

L. C. J. Ay, ten if you will, ſo they be fair ones.

Mr. Sol. Gen. Was it upon the firſt or ſecond Time of their being examined?

Mr. *Bridgman.* I cannot tell, it was not the firſt Time, all of it, I believe; for at the firſt Time my Lords the Biſhops made ſome Scruple of anſwering or owning any thing; and whatſoever they owned, they ſaid, they hoped it ſhould not be made uſe of to their Prejudice. I remember no Reply that was made, nor any thing farther, only my Lord Chancellor ſaid, they were not to capitulate with their Prince; but they were required to anſwer the Queſtions that were asked them.

Mr. Sol. Gen. What were thoſe Queſtions?

Mr. *Bridgman.* I have told you already, as well as I can remember.

Mr. Sol. Gen. But did you take it upon the main that they owned the Delivery of that Paper to the King?

Mr. Juſt. *Powell.* Mr. *Sollicitor*, you have been told you are to ask no ſuch Queſtions.

Sir *Rob. Sawyer.* Nor never was there ſuch wire-drawing of a Witneſs in this World before.

L. C. J. Pray ſit ſtill, Sir *Robert Sawyer*, you are not to teach us what we are to do; Mr. *Sollicitor* muſt ask Queſtions that are proper for him, and not ſuch as theſe; but the Court muſt correct him, and not you.

Mr. Sol. Gen. Mr. *Bridgman* is very cautious, and he is to be commended for it; but we would get the Truth out of him if we could. Pray, Sir, if you can remember, recollect yourſelf, whether by any Queſtion to that Purpoſe, it was believed that they did own the Delivery of the Paper to the King.

Mr. *Bridgman.* I told you, Mr. *Sollicitor*, as to that at firſt, that I do not remember the very Words of the Queſtion; but I believe there was no body doubted that that was not the Paper.

Mr. Sol. Gen. You ſpeak well in your way; but theſe Gentlemen are very unwilling you ſhould tell your Opinion.

L. C. J. His Opinion is no Evidence, therefore you muſt not ask any ſuch Queſtions, Mr. *Sollicitor*.

Mr. *Bridgman.* As ſoon as the Petition was delivered, within a few Hours after I ſaw it, the King ſhewed it to ſeveral People, and he ſaid, it was the Petition the Biſhops had delivered; he took it into his own Cuſtody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one; but notwithſtanding that, I do remember I did ſee a Copy of the Petition, within a Day or two after it was preſented about the Town.

Mr

Mr. Sol. Gen. Pray how many Days was this before the Diſcourſe in Council upon their Examination?

Mr. *Bridgman.* How many Days was what, Sir?

Mr. Sol. Gen. When the King gave the Paper to be copied?

Mr. *Bridgman.* It was upon the *Sunday.*

Mr. Sol. Gen. But you ſay, as you believe, it was in a few Hours after the Paper was delivered to the King that you did ſee it?

Mr. Juſt. *Powell.* But what makes him ſay, that this was delivered to the King, but only Hearſay?

L. C. J. Pray, Mr. *Solliciter*, will you produce that which is Evidence, and not ſpend our Time in that which is not?

Mr. Sol. Gen. My Lord, I would make no more of it than it is.

Mr. Serj. *Levinz.* 'Tis a ſhameful thing to offer ſuch things in a Court of Juſtice.

Mr. Serj. *Pemberton.* 'Tis a Practice that ought not to be endured.

L. C. J. Pray, Brothers, be quiet, or I'll turn him looſe upon you again, if you'll not be quiet: What is the Matter? Cannot you let us alone? We ſhall do every body right. Come, to ſhorten this Matter, I aſk you but this one Queſtion, and that may ſatisfy any one that has common Honeſty about him: Do you remember whether or no they were aſked, if that was the Petition that they delivered to the King?

Mr. *Bridgman.* My Lord, I have anſwered that Queſtion as directly as I can; I do not poſitively remember that that was the Queſtion.

L. C. J. Mr. *Sollicitor-General*, you muſt be ſatisfied when proper Queſtions are fairly anſwered, and therefore, pray, be quiet.

Mr. Att. Gen. However, we pray we may aſk the Clerks of the Council; it may be they may remember more—Sir *John Nicholas*, you were at the Council-Table that Day my Lords the Biſhops were examined about this Paper?

Sir *John Nicholas.* Yes, Sir, I was.

Mr. Att. Gen. Pray did you obſerve that the King produced the Petition?

Sir *John Nicholas.* No, indeed, I did not ſee it.

Mr. Att. Gen. Did you obſerve any thing that paſſed there in Diſcourſe?

Mr. Sol. Gen. Did you obſerve any Queſtions that were aſked the Biſhops, either by the King or by my Lord Chancellor?

Sir *John Nicholas.* I think my Lord Chancellor did aſk them, if that was their Hands to the Petition, and they owned it.

Mr. Sol. Gen. Do you remember whether they owned, that they delivered that Paper to the King?

L. C. J. I'll aſk you, Sir *John Nicholas*, Did my Lord Chancellor aſk them this Queſtion, Is this the Petition you delivered to the King?

Sir *John Nicholas.* I do not remember that.

[*Then there was a great Shout.*]

Mr. Sol. Gen. Here's wonderful great Rejoycing that Truth cannot prevail.

Mr. Serj. *Pemberton.* No, Mr. *Sollicitor*, Truth does prevail.

Mr. Sol. Gen. You are all very glad that Truth is ſtifled, Mr. *Serjeant.*

Mr. Serj. *Trinder.* Pray, Sir *John Nicholas*, let me aſk you one Queſtion; Was there any Diſcourſe about delivering that Petition to the King?

Sir *John Nicholas.* Indeed I do not remember it.

Mr. Sol. Gen. There's Mr. *Pepys*, we'll examine him.

[Mr. *Pepys* ſworn.]

L. C. J. Come, I'll aſk the Queſtions; Were you at the Council-Board when my Lords the Biſhops were committed?

Mr. *Pepys.* Yes, I was.

L. C. J. What were the Queſtions that were aſked, either by the King, or by my Lord Chancellor?

Mr. *Pepys.* My Lord, I would remember as well as I could; the very Words, and the very Words of the Queſtion, were, I think, My Lords, do you own this Paper? I do not remember any thing was ſpoken about the delivering; but I believe it was underſtood by every Body at the Table, that that was the Paper that they had delivered.

L. C. J. Well, have you done now? But to ſatisfy you, I'll aſk this Queſtion; Was this Queſtion aſked, My Lords, was this the Paper you delivered to the King?

Mr. *Pepys.* No, my Lord.

Mr. Att. Gen. Pray, Sir, do you remember whether the King himſelf aſked the Queſtion?

Mr. *Pepys.* You mean, I ſuppoſe, Mr. *Attorney*, that theſe were the Words, or ſomething that imported their delivering it to the King.

Mr. Att. Gen. Yes, Sir.

Mr. *Pepys.* Truly I remember nothing of that.

Mr. Sol. Gen. Did you obſerve any Diſcourſe concerning their Delivery of it to the King?

Mr. *Pepys.* Indeed, Mr. *Sollicitor*, I do not.

Mr. Att. Gen. Swear Mr. *Muſgrave.*

[Mr. *Muſgrave* ſworn.]

L. C. J. You hear the Queſtion, Sir, what ſay you to it?

Mr. *Muſgrave.* My Lord, I will give as ſhort an Account of it as I can: The firſt Time after his Majeſty had produced the Petition, and it was read at the Board, his Grace the Lord Archbiſhop of *Canterbury*, and the other Six Reverend Lords the Biſhops, were called in, and it was aſked of them, if they owned that, or if it was their Hands? My Lord Archbiſhop, in the Name of the reſt, did decline anſwering, upon the Account that they were there as Criminals, and were not obliged to ſay any thing to their own Prejudice, or that might hurt them hereafter; but if his Majeſty would command them, and if he would promiſe that no Advantage ſhould be made of whatſoever they confeſſed, then they would anſwer the Queſtion: His Majeſty made no Anſwer to that, but only ſaid he would do nothing but what was acording to Law; whereupon the Biſhops were ordered to withdraw, and being called in a ſecond Time, the Petition was ſhewn to them, and they were aſked if they did own it, or if it was their Hands? And I think my Lord Archbiſhop did then ſay, we will rely upon your Majeſty, and ſome ſuch general thing was ſaid, and then they did all own that it was their Hands: I cannot ſay the Petition was read to them.

Mr. Juſt. *Powell.* Mr. *Blathwayt*, as I remember, ſaid it was the third Time.

Mr. *Muſgrave.* It was the ſecond Time, to the beſt of my Remembrance.

L. C. J. Pray, Sir, was there any Queſtion to this Purpoſe; Is this the Paper you delivered to the King?

Mr. *Muſgrave.* I do not remember that ever any ſuch direct Queſtion was aſked.

Mr. Juſt. *Allybone.* But, as my Brother *Pemberton* did very well before diſtinguiſh, there is a great deal of Difference between the owning the Subſcription of a Paper, and between the owning of that Paper. Mr. *Pepys* did ſay that they did own the Paper, and upon my Word that will look very much like a Publication.

Mr. *Muſgrave.* I remember, my Lord, there was at the ſame Time a Queſtion aſked, becauſe ſeveral Copies had gone about the Town, whether they had publiſhed it? And my Lord Archbiſhop did ſay, he had been ſo cautious, that he had not admitted his own Secretary, but writ it all himſelf; and the reſt of the Biſhops did ſay, they did not publiſh it, nor ever gave any Copies of it.

Mr. Att. Gen. My Lord, I confeſs, now it is to be left to the Jury upon this Point, whether tho' there were not a poſitive Witneſs that was by when the thing was done, yet upon this Evidence the Jury can find any otherwiſe than that the thing was done; truly, I think, we muſt leave it as a ſtrong Caſe for the King: I could have wiſhed, indeed, for the Satisfaction of every body, that the Proof would have come up to that; but we muſt make it as ſtrong for the King, upon the Evidence given, as it will bear. Now, my Lord, take all this whole Matter together, here is a Paper compoſed, framed, and written by ſeven learned Men, and this muſt be written by ſuch Perſons, ſure for ſome Purpoſe. It is directed as a Petition to the King, and this Petition did come to the Hands of the King (for the King produces it in Council), and my Lord Archbiſhop, and the reſt of the Biſhops, owned their Hands to it. Then the Queſtion is, my Lord, whether or no there be any Room for any body living to doubt in this Caſe, that this was not delivered by my Lords the Biſhops to the King, though it be not a concluſive Evidence of a poſitive Fact; yet unleſs they ſhew ſomething on the other ſide, that may give way for a Suppoſition to the contrary, that it came out of their Hands by Surprize, or that any body elſe delivered it to the King, without their Knowledge or Conſent, here muſt needs be a very violent Preſumption that they did do it; and when nothing of that is ſaid on their ſide, can any Jury upon their Conſciences ſay, that it was not publiſhed by them? And it being found in *Middleſex*, though it might be written and compoſed in *Surrey*, yet ſurely we have given a convincing Evidence, that either they publiſhed it, or cauſed it to be publiſhed in *Middleſex.*

[*Pray call Mr.* Graham.]

Crier. He is gone out of the Hall.

Mr. Sol. Gen. My Lord, there is in Law a Preſumption that is Evidence, though there be no poſitive Proof.

Sir *Rob. Sawyer.* But not in an Information for a Libel.

Mr. Sol. Gen. This is a meer Queſtion of Fact; there is no Difficulty in the Law of it at all; for it is plain, if theſe Lords, or any of them, did conſent and agree to the publiſhing of this Paper in *Middleſex*, they are guilty of this Information; and whether they are guilty or not guilty, we do rely upon the Circumſtances proved, which are violent: Firſt, that they were the Men that contrived, and ſet their Hands to it, and ſo were the Authors of it, is undeniable; for they have owned it: Men of their Learning and Parts never did any ſuch thing in vain: And then that they were concerned in the publiſhing of it in *Middleſex*, we offer for Proof that which was ſaid by Mr. *Pepys* and Mr. *Blathwayt*, who, though they do not come directly and expreſsly to the formal Words of ſuch a Queſtion, yet they tell you, eſpecially Mr. *Blathwayt*, that they did apprehend it, and it was the Collection of all their Thoughts, and they took it for granted, as a Thing that every body was ſatisfied in, that they did deliver that Paper to the King. I muſt confeſs, and agree, there is no Proof of the Delivery of it by my Lords the Biſhops to the King; but we know very well, that it is no Wonder, when a Paper is Libellous, that Men ſhould uſe all the Skill they can to publiſh it with Impunity: And this is a Thing that was done after ſome Time of Premeditation and ſerious Conſultation; for it was ſome Days after the Order for reading the Declaration was publiſhed, that this was framed and delivered, and it concerned them to be wary (as it ſeems they have been); but take this altogether, my Lord, the Paper being found in the King's Hands, it is in theſe Perſons Power, and it lies upon them, to make it out plain, what became of this Paper, which once lay in their own Hands and Cuſtody? They can give an Account of it, they can give Light unto it. If they do not, I ſhall ſubmit to the Jury, whether this is not ſufficient Evidence to convict them; eſpecially when, being examined, they did not make that their Excuſe. They never ſaid, this Paper indeed we ſigned, but we did not intend to publiſh it, we intended to ſtifle it; that had been ſome Excuſe: But for them to ſay now, they did not preſent it to the King, I muſt ſubmit to the Jury, whether they will believe upon this Evidence, that theſe Lords, the Biſhops, did preſent it, or cauſe it to be preſented to the King; then they are guilty of this Matter: And I leave it to them, and their Conſciences, what they will think upon the whole.

Mr. *Recorder.* My Lord, if your Lordſhip pleaſe----

L. C. J. What, again? Well, go on Sir *Bartholomew Shower*, if we muſt have a Speech----

Mr. *Recorder.* Nay, my Lord, I would not treſpaſs upon your Lordſhip.

L. C. J. Gentlemen of the Jury, here is an Information againſt my Lords the Biſhops: I think I need not trouble myſelf to open all of it, becauſe I ſee you are Men of Underſtanding, Men of great Diligence, and have taken Notes yourſelves, ſome of you; therefore I ſhall ſay only ſomething of the Proof that is required in ſuch a Caſe, and of the manner of the Proof that has been given in this Caſe, and then tell you my Opinion in Point of Law. Here is an Information brought by Mr. *Attorney-General*, on Behalf of the King, againſt theſe Reverend Fathers of the Church, the Archbiſhop and the reſt; and it is for publiſhing a ſeditious Libel, under the Pretence of a Petition, in which are contained the Words that are ſeen. Gentlemen, the Information is long; it tells you, that the King, out of his Gracious Clemency to all his loving Subjects, and for other Conſiderations, had thought fit to publiſh a Declaration of Indulgence, that all his loving Subjects might have Liberty of Con-

Conſcience, upon the 4th of *April*, in the third Year of his Reign, and that this was ſet forth by the King; and that the King, of his farther Grace, about the 27th of *April* then next following——

Mr. *Finch.* I humbly beg your Lordſhip's favour.

L. C. J. What ſay you, Mr. *Finch?*

Mr. *Finch.* I aſk your Pardon for breaking in upon you when you are directing the Jury. I know I ſhould not do it, but I hope you will not be angry with me for it.

L. C. J. If I thought you did any ſervice to your Client, I ſhould willingly hearken to you.

Mr. *Finch.* That which I humbly offer to your Lordſhip, is only to remember your Lordſhip where we were.

L. C. J. Go on, Sir.

Mr. *Finch.* I would only ſay this, my Lord, the Queſtion is, whether this be Evidence or no?

L. C. J. I am ſorry, Mr. *Finch*, you have that Opinion of me, as to think I ſhould not leave it fairly to the Jury.

Mr. *Finch.* I only ſpeak it, my Lord, becauſe if it be Evidence, we have other Matters to offer in Anſwer to that Evidence, and in our own Defence.

L. C. J. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? But ſince you ſay you have other Matter to offer, we will hear it.

Mr. *S. Pemberton.* My Lord, we ſubmit to your Lordſhip's Direction.

L. C. J. No, no, you do not; you ſay you have further Matter to offer.

Mr. *Pollexfen.* My Lord, we ſhall reſt it here.

L. C. J. No, no, I will hear Mr. *Finch.* Go on, my Lords the Biſhops ſhall not ſay of me, I would not hear their Counſel; I have been already told of being Counſel againſt them, and they ſhall never ſay that I would not hear their Counſel for them.

Mr. Serj. *Levinz.* My Lord, we beſeech your Lordſhip go on with your Directions; for all that Mr. *Finch* ſaid, was only that this was not ſufficient Evidence.

L. C. J. No, Brother, he ſays you have a great deal more to offer, and I will not refuſe to hear him. The Court will think there was ſomething more than ordinary, therefore I will hear him; ſuch a learned Man as he ſhall not be refuſed to be heard by me, I'll aſſure you. Why don't you go on, Mr. *Finch?*

Mr. *Finch.* My Lord, I beg your Pardon for interrupting you; but all that I was going to ſay would have amounted to no more than this, that there being no Evidence againſt us, we muſt of Courſe be acquitted.

Mr. Juſt. *Holt.* My Lord did intend to have ſaid as much as that, I dare ſay.

L. C. J. Well, Gentlemen of the Jury, we have had Interruption enough——

Mr. Sol. Gen. My Lord, I muſt beg your Pardon for interrupting you now; and I am very glad theſe Gentlemen have given us this Occaſion, becauſe we ſhall now be able to clear this Point. There is a Fatality in ſome Cauſes, my Lord, and ſo there is in this; we muſt beg your Patience for a very little while, for we have Notice that a Perſon of a very great Quality is coming, that will make it appear, that they made their Addreſſes to him, that they might deliver it to the King.

L. C. J. Well—you ſee what comes of the Interruption, Gentlemen, now we muſt ſtay---------

[*Then there was a Pauſe for near half an Hour.*]

Mr. Att. Gen. Pray, my Lord, put the Caſe that a Man writes a Libel in one County, and it is found in another, is not he anſwerable, unleſs he can ſhew ſomething that may ſatisfy the Jury how it came there?

Mr. Sol. Gen. Ought he not to give an Account what became of it?

L. C. J. No: Look you, Mr. *Attorney*, you muſt look to your Information, and then you will find the Caſe that you put does not come up to it: It is for Writing, Compoſing, and Publiſhing, and cauſing to be Publiſhed, and all this is laid in *Middleſex:* Now you have proved none of all theſe Things to be done in the County.

Mr. Att. Gen. They did in *Middleſex* confeſs it was theirs.

L. C. J. Ay, but the owning their Hands is not a Publication in *Middleſex*, and ſo I ſhould have told the Jury.

Mr. *Finch.* I beg your Lordſhip's Pardon for interrupting you.

Mr. Att. Gen. But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands?

L. C. J. No, the Proof lies on your Part.

Mr. *Pollexfen.* Pray, my Lord, give us your favour to diſmiſs us and the Jury.

Mr. Sol. Gen. My Lord, our Witneſſes will be here preſently.

Mr. Att. Gen. Sure, my Lord, the Preſumption is on our Side.

Mr. Juſt. *Powell.* No, the Preſumption is againſt you; for my Lord Archbiſhop lived in *Surrey*, and it is proved was not out of *Lambeth-Houſe* ſince *Michaelmas*, till he came before the Council.

Mr. *S. Pemberton.* Pray, good my Lord, we ſtand mightily uneaſy here, and ſo do the Jury, pray diſmiſs us.

L. C. J. I cannot help it, it is your own Fault---

[*Then there was another great Pauſe.*]

L. C. J. Sir *Bartholomew Shower*, now we have Time to hear your Speech, if you will.

Mr. *Pollexfen.* My Lord, there is no Body come, nor I believe will come.

Mr. Sol. Gen. Yes, he will come preſently; we have had a Meſſenger from him [*Call Mr.* Graham.]

Crier. He is gone, and ſaid he would come preſently.

Mr. Sol. Gen. My Lord, he will bring our Witneſſes with him-------

[*Then there was another Pauſe.*]

Mr. *S. Pemberton.* My Lord, this is very unuſual to ſtay thus for Evidence.

L. C. J. It is ſo; but I am ſure you ought not to have any Favour ----Mr. *Sollicitor*, are you aſſured that you ſhall have this Witneſs that you ſpeak of?

Mr. Sol. Gen. Yes, my Lord, he will be here preſently.

L. C. J. We have ſtaid a great while already, and therefore it is fit that we ſhould have ſome Oath made that he is coming.

Mr. Sol. Gen. The Crier tells you, that Mr. *Graham* did acquaint him, that he would return preſently.

L. C. J. Give him the Book.

Mr. Sol. Gen. Let your Left-Hand give your Right-Hand the Oath

[*The Crier ſworn.*]

L. C. J. By the Oath that you have taken, Did Mr. *Graham* tell you, there was any further Witneſs coming in this Caſe?

Crier. Yes, my Lord, he did; he went out of the Hall, and returned when your Lordſhip was directing the Jury, and he aſked me what the Court were upon; and I told him you were directing the Jury, and then he ſaid, my Lord *Sunderland* was a coming, but he would go and prevent him; and afterwards he returned, and finding your Lordſhip did not go on to direct the Jury, he ſaid he would go again for my Lord *Sunderland*, whom he had ſent away, and he is now gone for him, and he ſaid he would bring him with him preſently.

L. C. J. Well then, we muſt ſtay till the Evidence for the King comes, for now there is Oath made that he is coming-------

[*And after a conſiderable Pauſe the Lord Preſident came.*]

Mr. Att. Gen. My Lord, we muſt pray that my Lord Preſident may be ſworn in this Caſe, on Behalf of the King.

[*The Lord Preſident Sworn.*]

Mr. Att. Gen. My Lord, with your Lordſhip's Favour, I would aſk my Lord Preſident a Queſtion: Your Lordſhip remembers where we left this Cauſe; we have brought it to this Point, That this Petition came to the King's Hands: that it is a Petition written by my Lord Archbiſhop, and ſubſcribed by the reſt of my Lords the Biſhops; but there is a Difficulty made, whether this Petition thus prepared and written was by them delivered to the King, and whether my Lords the Biſhops were concerned in the doing of it, and were privy, or Parties to the Delivery? Now that which I would aſk your Lordſhip, my Lord Preſident, is, Whether they did make their Application to your Lordſhip to ſpeak to the King?

Mr. Sol. Gen. Did they make their Application to your Lordſhip upon any Account whatſoever?

Lord Preſident. My Lord, my Lord Biſhop of St. *Aſaph*, and my Lord Biſhop of *Chicheſter* came to my Office, and told me, they came in the Names of my Lord Archbiſhop of *Canterbury*, and four others of their Brethren, and themſelves, with a Petition, which they deſired to deliver to his Majeſty, and they did come to me to know which was the beſt way of doing it, and whether the King would give them Leave to do it or not? They would have had me read their Petition, but I refuſed it, and ſaid, I thought it did not at all belong to me, but I would let the King know their Deſire, and bring them an Anſwer immediately, what his Pleaſure was in it; which I did. I acquainted the King, and he commanded me to let my Lords the Biſhops know, they might come when they pleaſed, and I went back and told them ſo; upon which they went and fetch'd the reſt of the Biſhops, and when they came, immediately they went into the Bed-Chamber, and into another Room, where the King was. This is that I know of the Matter.

Mr. Sol. Gen. About what Time was this, pray my Lord?

Lord Preſident. I believe there could not be much Time between my coming from the King, and their fetching their Brethren, and going in to the King.

Mr. Sol. Gen. They were with the King that Day?

Lord Preſident. Yes, they were.

Mr. Sol. Gen. Was this before they appeared in Council?

Lord Preſident. Yes, it was ſeveral days before.

Mr. Sol. Gen. Then I think now, my Lord, the Matter is very plain.

Mr. Juſt. *Allybone.* Did they acquaint your Lordſhip that their Buſineſs was to deliver a Petition to the King?

Lord Preſident. Yes, they did.

Mr. Sol. Gen. And they would have had my Lord read it, he ſays.

Mr. Att. Gen. And this was the ſame Day that they did go in to the King?

Lord Preſident. The very ſame Day, and I think the ſame Hour; for it could not be much longer.

L. C. J. Now it is upon you truly; it will be preſumed to be the ſame, unleſs that you prove that you delivered another.----Pray, my Lord, did you look into the Petition?

Lord Preſident. No, I refuſed it; I thought it did not concern me.

Mr. Juſt. *Powell.* Did you ſee them deliver it to the King, my Lord?

Lord Preſident. I was not in the Room when it was delivered.

Mr. Juſt. *Powell.* They did open their Petition to your Lordſhip, did they?

Lord Preſident. They offered me to read it, but I did refuſe.

L. C. J. Will you aſk my Lord Preſident any Queſtion, you that are for the Defendants?——Sir *Rob. Sawyer.* No, my Lord.

Mr. Sol. Gen. Then, my Lord, we muſt beg one Thing for the ſake of the Jury, if your Lordſhip can turn yourſelf a little this Way, and deliver the Evidence you have given over again, that they may hear it.

Lord Preſident. My Lord, I will repeat it as near as I can; I think I ſhall not vary the Senſe. The Biſhops of St. *Aſaph* and *Chicheſter* came to my Office, I do not know juſt the Day when, but it was to let me know, that they came in the Names of the Archbiſhop, and four others of their Brethren------Is it neceſſary I ſhould name them?

L. C. J. Do it, my Lord, if you can.

Lord Preſident. They were the Biſhops of *Ely*, *Bath* and *Wells*, *Briſtol*, and *Peterborough:* They came to let me know, in the Name of the Archbiſhop, thoſe four, and themſelves, that they had a Petition to deliver to the King, if he would give them Leave, and deſired to know of me which was the beſt way to do it. I told them I would know the King's Pleaſure, and bring them Word again: They offered me their Petition to read, but I did not think it fit for me to do it, and therefore I refuſed, and would not read it; but I went immediately to the King, and acquainted his Majeſty with it, and he commanded me to let them know they might come when they would, which I immediately did: They ſaid they would go and ſpeak with ſome of their Brethren that were not far off: In the mean time I gave order that they ſhould be admitted when they came, and they did in a little Time return, and went firſt into the Bed-Chamber, and then into the Room where the King was.

Mr. Sol. Gen. And this was before they came and appeared at the Council?—*Lord Preſident.* Yes, it was.

Mr. *Pollexfen.* Your Lordſhip did not read any thing of the Petition?

Lord Preſident. No, Sir, I did not, I refuſed it.

Mr. *Pollexfen.* Nor does your Lordſhip know what Petition was delivered to the King?

Lord Preſident. I did not know any thing of it from them then.

L. C. J. Now you may make your Obſervations upon this two Hours hence: Now we ſhall hear what Mr. *Finch* had further to offer, I ſuppoſe.

[*Then my Lord Preſident went away.*]

Mr. Sol. Gen. I think now it is very plain.

L. C. J. Truly, I muſt needs tell you, there was a great Preſumption before, but there is a greater now, and I think I ſhall leave it with ſome Effect to the Jury. I cannot ſee but here is enough to put the Proof upon you. They came to the Lord Preſident, and aſked him how they might deliver a Petition to the King: He told them he would go ſee what the King ſaid to it. They would have had him read their Petition, but he refuſed it: He comes and tells them the King ſaid they might come when they would: Then thoſe two that came to my Lord Preſident went and gathered up the other four (the Archbiſhop indeed was not there) but they ſix came, and my Lord Preſident gave Direction they ſhould be let in, and they did go into the Room where the King was. Now this, with the King's producing the Paper, and their owning it at the Council, is ſuch a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. *Pollexfen.* Then, my Lord, thus far they only can go; the Archbiſhop was not there, and ſo there is no Evidence againſt him.

Mr. Sol. Gen. As to the Writing, we have given Proof againſt him, for it is all his Hand.

Mr. *Pollexfen.* That ſtill is in another County, and there is nothing proved to be done by my Lord Archbiſhop in *Middleſex*; and next, for the other ſix Lords, my Lord Preſident does not ſay that this is the Petition that they ſaid they had to deliver to the King; nor did he ſee them deliver any thing to the King; but that is ſtill left doubtful, and under your Judgment, ſo that it ſtands upon Preſumption, not upon Proof, that this is the ſame, and left under Conſideration.

Mr. Att. Gen. Then we will leave it fairly to the Jury upon this Fact.

Mr. *Pollexfen.* If ſo, then we deſire to be heard in our Defence.

Sir *Robert Sawyer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Charge which Mr. *Atterney* has been pleaſed to make againſt my Lords the Biſhops, and that is this, That they did conſpire to diminiſh the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council; and in Proſecution of this, they did falſely, maliciouſly and ſeditiouſly make a Libel againſt the King, under Pretence of a Petition, and did publiſh the ſame in the King's Preſence.

This, Gentlemen, is a very heinous and heavy Charge; but you ſee how ſhort their Evidence is: The Evidence they bring forth is only, that my Lords the Biſhops preſented the Paper to the King in the moſt private and humble Manner they could: That which they have been ſo many Hours a proving, and which they cry up to be as ſtrong an Evidence as ever was given, proves it to be the fartheſt from Sedition in the doing of it that can be: and you ſee what it is, it was a Petition to be relieved againſt an Order of Council, which they conceive they were aggrieved by. They indeed do not deal fairly with the Court nor with us, in that they do not ſet it forth that it was a Petition.

L. C. J. That was over-ruled before.

Sir *Rob. Sawyer.* I do not inſiſt upon it now ſo much an Exception to the Information, as I do the Evidence. They ſet this forth to be a ſcandalous Matter, but it only contains their Reaſons, whereby they would ſatisfy his Majeſty why they cannot comply in a Concurrence with his Majeſty's Pleaſure; and therefore they humbly beſeech the King, and beg and requeſt him (as the Words of it are) that his Majeſty would be pleaſed not to inſiſt upon their diſtributing and reading of this Declaration: So the Petitioners, on Behalf of themſelves and the whole Clergy of *England*, beg of the King that he would pleaſe not to inſiſt upon it.

Gentlemen, you may obſerve it, that there is nothing in this Petition that contains any thing of Sedition in it; and it would be ſtrange this Petition ſhould be *Felo de ſe*, and by one Part of it deſtroy the other. It is laid indeed in the Information, that it was with Intent and Purpoſe to diminiſh the King's Royal Authority; but I appeal to your Lordſhip, the Court, and the Jury, whether there be any one Word in it, that any way touches the King's Prerogative, or any Tittle of Evidence that has been given to make good the Charge. It is an Excuſe barely for their Non-compliance with the King's Order, and a begging of the King with all Humility and Subminſſion, that he would be pleaſed not to inſiſt upon the reading of his Majeſty's Declaration upon theſe Grounds, becauſe the diſpenſing Power upon which it was founded, had been ſeveral times in Parliament declared to be againſt Law, and becauſe it was a Caſe of that Conſequence that they could not in Prudence, Honour, or Conſcience concur in it.

My Lord, Mr. *Attorney* has been pleaſed to charge in this Information, that this is a falſe, malicious, and ſeditious Libel: Both the Falſity of it, and that it was malicious and ſeditious, are all Matters of Fact, which, with Submiſſion, they have offered to the Jury no Proof of, and I make no Queſtion but eaſily to demonſtrate the quite contrary.

For, my Lord, I think it can be no Queſtion, but that any Subject that is commanded by the King to do a Thing which he conceives to be againſt Law, and againſt his Conſcience, may humbly apply himſelf to the King, and tell him the Reaſon why he does not that thing he is commanded to do, why he cannot concur with his Majeſty in ſuch a Command.

My Lord, that which Mr. *Attorney* did inſiſt upon in the Beginning of this Day (and he pretended to cite ſome Caſes for it) was, that in this Caſe, my Lords the Biſhops were not ſued as Biſhops, nor proſecuted for their Religion. Truly, my Lord, I do not know what they are ſued for elſe: The Information is againſt them as Biſhops, it is for an Act they did as Biſhops, and no otherwiſe; and for an Act they did, and do conceive they lawfully might do with relation to their Eccleſiaſtical Polity, and the Government of their People as Biſhops.

The next Thing that Mr. *Atterney* offered was, That it was not for a Non-feaſance, but for a Feaſance. It is true, my Lord, it is for a Feaſance in making of the Petition, but it was to excuſe a Non-feaſance, the not reading according to the Order; and this ſure was lawful for all the Biſhops as Subjects to do; and I ſhall ſhew it was certainly the Duty of my Lords the Biſhops, or any Peer of this Realm, to do the ſame in a like Caſe. It was likewiſe ſaid, they were proſecuted here for affronting the Government, and intermeddling with Matters of State; but I beg your Lordſhip and the Jury to conſider, whether there is one Tittle of this mentioned in the Petition, or any Evidence given of it. The Petition does not meddle with any thing of any Matter of State, but refers to an Eccleſiaſtical Matter, to be executed by the Clergy, and to a Matter that has Relation to Eccleſiaſtical Cauſes; ſo that they were not Buſy-bodies, or ſuch as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Juriſdiction.

But after all, there is no Evidence, nor any Sort of Evidence that is given by Mr. *Atterney*, that will maintain the leaſt Tittle of this Charge; and how he comes to leave it upon this Sort of Evidence I cannot tell; all that it amounts to is, That my Lords the Biſhops being grieved in this Manner, made this Petition to the King in the moſt private and reſpectful Manner; and for him to load it with ſuch horrid black Epithets, that it was done libellouſly, maliciouſly, and ſcandalouſly, and to oppoſe the King and Government, 'tis very hard; 'tis a Caſe of a very extraordinary Nature, and I believe my Lords the Biſhops cannot but conceive a great deal of Trouble, that they ſhould lie under ſo heavy a Charge, and that Mr. *Atterney* ſhould draw ſo ſevere an Information againſt them, when he has ſo little Proof to make it out.

My Lord, by what we have to ſay to it, we hope we ſhall give your Lordſhip and the Jury Satisfaction, that we have done but our Duties, ſuppoſing here has been a ſufficient Evidence of the Fact given, which we leave to your Lordſhip and the Jury.

My Lord, we ſay in ſhort, That this Petition is no more than what any Man, if he be commanded to do any thing, might humbly do it, and not be guilty of any Crime: And, my Lord, as to the Matter of our Defence, it will conſiſt of theſe Heads:

Firſt, We ſhall conſider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here; and,

Thirdly, The Perſons that have delivered this Petition. And we hope to make it appear, beyond all Queſtion, that the Matter contained in this Petition, is neither falſe nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We ſhall likewiſe ſhew you (tho' that appear ſufficiently to you already) that the Manner of delivering it was ſo far from being ſeditious, that it was in the moſt ſecret and private Manner, and with the greateſt Humility and Duty imaginable. And then as to the Perſons, we will ſhew you that they are not ſuch as Mr. *Atterney* ſays, who meddle with Matters of State, that are out of their Sphere; but they are Perſons concerned, and concerned in Intereſt in the Caſe, to make this humble Application to the King. And when we have proved all this Matter, you will ſee how ſtrangely we are blackened with Titles and Epithets which we no ways deſerve, and of which, God be thanked, there is no Proof.

For, my Lord, for the Matter of the Petition, we ſhall conſider two Things.

The Firſt is, The Prayer, which is this; They humbly beg and deſire of the King, on Behalf of themſelves and the reſt of the Clergy, that he would not inſiſt upon the Reading and Publiſhing of this Declaration.

Surely, my Lord, there is nothing of Falſity in this, nor any thing that is contrary to Law, or unlawful for any Man that is preſſed to any thing, eſpecially by an Order of Council; and this is nothing but a Petition againſt an Order of Council; and if there be an Order that commands my Lords the Biſhops to do a Thing that ſeems grievous to them, ſurely they may beg of the King that he would not inſiſt upon it.

As for this Matter, they were ſo well ſatisfied about it, and ſo far from thinking that it was any Part of a Libel, that they left it out of the Information, and ſo have made a deformed and abſurd Story of it, without Head or Tail, a Petition directed to no body, and for nothing, it being without both Title and Prayer; ſo that this is plain, it was lawful to petition.

Then, my Lord, the next Thing is, the Reaſons which my Lords the Biſhops come to acquaint the King with; why in Honour and Conſcience they cannot comply with, and give Obedience to this Order; and the Reaſons, my Lord, are two.

The firſt Reaſon that is aſſigned, is, the ſeveral Declarations that have been in Parliament (ſeveral of which are mentioned) that ſuch a Power to diſpenſe with the Law, is againſt Law, and that it could not be done but by an Act of Parliament; for that is the Meaning of the Word Illegal, that has no other Signification but unlawful; the ſame Word in Point of Signification with the Word *Illicitè*, which they have uſed in their Information, a Thing that cannot be done by Law; and this they are pleaſed to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Biſhops of the Church, are bound to underſtand the Laws, eſpecially when (as I ſhall come to ſhew you) they are made Guardians of theſe Laws; and if any thing go amiſs, and contrary to theſe Laws, they ought to inform the King of it.

My Lord, the next Thing is, Becauſe it is a Thing of ſo great Moment, and the Conſequence that will ariſe from their publiſhing of this Declaration, and that too, my Lord (for the latter I ſhall begin firſt with) there can be no Queſtion about, or any Pretence that this is libellous or falſe; for certainly it is a Caſe of the greateſt Conſequence to the whole Nation that ever was, therefore it cannot be falſe or libellous to ſay ſo.

My Lord, I would not mention this, for I am loth to touch upon Things of this Nature, had not the Information itſelf made it the very Giſt of the Charge;

Charge; for the Information (if there be any thing in it) ſays, that it was to diminiſh the King's Prerogative and Regal Power in publiſhing that Declaration.

Now, my Lord, what the Conſequence of this would be, and what my Lords the Biſhops meant by ſaying, it was a Cauſe of great Moment, will appear, by conſidering that which is the main Clauſe in the Declaration, at which my Lords the Biſhops ſcrupled, which is the main Stumbling-block to my Lords, and has been to many honeſt Men beſides, and that is this:

"We do likewiſe declare, it is our Royal Will and Pleaſure, that from "henceforth the Execution of all and all manner of Penal Laws, in Matters "Eccleſiaſtical, for not coming to Church, or not receiving the Sacrament, "or for any other Non-conformity to the Religion eſtabliſhed; or for or "by reaſon of the Exerciſe of Religion in any Manner whatſoever, be im-"mediately ſuſpended; and the further Execution of the ſaid Penal Laws, "and every of them, is hereby ſuſpended."

Now, my Lord, this Clauſe either is of ſome legal Effect and Signification, or it is not. If Mr. *Attorney*, or the King's Counſel, do ſay it is of no Effect in Law, then there is no Harm done; then this Petition does no ways impeach the King's Prerogative, in ſaying, it has been declared in Parliament, according as the King's Counſel do agree the Law to be.

But, my Lord, if it have any Effect in Law, and theſe Laws are ſuſpended by Virtue of this Clauſe in the Declaration; then certainly, my Lord, it is of the moſt diſmal Conſequence that can be thought of, and it behoved my Lords, who are the Fathers of the Church, humbly to repreſent it to the King.

For, my Lord, by this Declaration, and particularly by that Clauſe in it, not only the Laws of our Reformation, but all the Laws for the Preſervation of the Chriſtian Religion in general are ſuſpended, and become of no Force; if there be ſuch an Effect in Law wrought by this Declaration as is pretended; that is, that the Obligation of Obedience to them ceaſeth; the Reaſon of it is plain, the Words cannot admit of ſuch a Quibble as to pretend, that the ſuſpending the Execution of the Law, is not a ſuſpending of the Law; for we all know the End of every Law, in its primary Intent, is Obedience to it; that of the Penalty comes in by the way of Puniſhment and Recompence for their Diſobedience.

Now, my Lord, if this Declaration does diſcharge the King's Subjects from their Obedience to, and the Obligation from thoſe Laws; then pray, my Lord, where are we? Then all the Laws of the Reformation are ſuſpended, and the Laws of Chriſtianity itſelf, by thoſe latter Words, [or for or by reaſon of Religion in any Manner whatſoever] ſo that it is not confined to the Chriſtian Religion, but all other Religions are permitted under this Clauſe; and thus all our Laws for keeping the *Sabbath*, and which diſtinguiſh us from Heathens, will be ſuſpended too.

My Lord, this is ſuch an Inconvenience as, I think, I need name no more; and it is a very natural Conſequence from that Clauſe of the Declaration; it diſcharges at once all Miniſters and Clergymen from performing their Duty in reading the Service of the Church; it diſcharges their Hearers from attending upon that Service.

When a Law is ſuſpended, the Obligation thereof is taken away; and thoſe that before thought themſelves bound to obey, now conclude they are not ſo obliged; and what a Miſchief that will be to the Church, which is under the Care of my Lords the Biſhops, your Lordſhip will eaſily apprehend.

Theſe Things, my Lord, I only mention, to ſhew the great and evil Conſequences that apparently follow upon ſuch a Declaration, which made my Lords the Biſhops decline obeying the Order, and put them under a Neceſſity of applying thus to the King, to acquaint him with the Reaſons why they could not comply with his Commands to read this Declaration to the People, becauſe the Conſequences thereof were ſo great, it tending naturally to lead the People into ſo great an Error, as to believe thoſe Laws were not in Force, when in Truth and Reality they are ſtill in Force, and continue to oblige them.

And that being the ſecond Reaſon in this Petition, I come next to conſider it, to wit, that the Parliament had often declared this pretended Power to be Illegal; and for that we ſhall read the ſeveral Records in Parliament mentioned in their Petition, and produce ſeveral ancient Records of former Parliaments that prove this point; and particularly in the Time of *Richard* the Second, concerning the Statute of Proviſors, where there were particular Diſpenſations for that Statute, the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir *Robert Sawyer*, go to your Proofs, and reſerve your Arguments till afterwards.

Sir *Robert Sawyer*. My Lord, I do but ſhortly mention theſe Things; ſo that, my Lord, as to the Matter of this Petition, we ſhall ſhew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the Manner of delivering it, I need ſay no more, but that it is plain from their Evidence, that it was in the moſt private and humble Manner. And, as the Lord Preſident ſaid, Leave was aſked of the King for them to be admitted to preſent it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third Thing, the Perſons, theſe noble Lords; and we ſhall ſhew they are not Buſy-bodies, but in this Matter have done their Duty, and meddled with their own Affairs. That, my Lord, will appear,

Firſt, By the general Care that is repoſed in them by the Law of the Land: They are frequently in our Books called the King's Spiritual Judges; they are entruſted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

Here the Lord Chief Juſtice ſpeaking aſide, ſaid,

L. C. J. *I muſt not ſuffer this; they intend to diſpute the King's Power of ſuſpending Laws.*

Mr. Juſt. Powell. *My Lord, they muſt neceſſarily fall upon the Point; for if the King hath no ſuch Power (as clearly he hath not in my Judgment), the natural Conſequence will be, that this Petition is no Diminution of the King's Regal Power, and ſo not ſeditious or libellous.*

L. C. J. *Brother, I know you are full of that Doctrine; but however, my Lords the Biſhops ſhall have no Occaſion to ſay, that I deny to hear their Counſel. Brother, you ſhall have your Will for once, I will hear them, let them talk till they are weary.*

Mr. Juſt. Powell. *I deſire no greater Liberty to be granted them, than what in Juſtice the Court ought to grant, that is, to hear them in Defence of their Clients.*

But, beſides this, my Lord, there is another ſpecial Care put upon them by the expreſs Words of an Act of Parliament; for, over and above the general Care of the Church, by Virtue of their Offices as Biſhops, the Act of 1 *Eliz. Cap.* 2. makes them ſpecial Guardians of the Law of Uniformity, and of that other Law in his late Majeſty's Reign; where all the Clauſes of that Statute of 1 *Eliz.* are revived, and made applicable to the preſent State of the Church of *England*. Now in that Statute of 1 *Eliz.* there is this Clauſe:

And for the due Execution hereof, the Queen's moſt Excellent Majeſty, the Lords Spiritual and Temporal, and all the Commons in this preſent Parliament aſſembled, do, in God's Name, earneſtly require all the Archbiſhops, and Biſhops, and other Ordinaries, that they do endeavour themſelves, to the Utmoſt of their Knowledges, that the due and true Execution hereof may be had throughout their Dioceſes and Charges, as they will anſwer before God, for ſuch Evils and Plagues wherewith Almighty God may juſtly puniſh his People, for neglecting this good and wholeſome Law.

This is the Charge that lies upon the Biſhops, to take Care of the Execution of that Law; and I ſhall pray by and bye, that it may be read to the Jury.

Mr. Sol. Gen. This is very well, indeed! To what purpoſe?

Sir *Rob. Sawyer*. So that, my Lord, by this Law it is plain, that my Lords the Biſhops, upon pain of bringing upon themſelves the Imprecation of this Act of Parliament, are obliged to ſee it executed; and then, my Lord, when any thing comes under their Knowledge, eſpecially if they are to be Actors in it, that hath ſuch a Tendency to deſtroy the very Foundation of the Church, as the Suſpenſion of all the Laws that related to the Church muſt do, it concerns them that have no other Remedy, to addreſs the King, by Petition, about it.

For that Mr. *Attorney*, my Lord, has agreed, that if a proper Remedy be purſued in a proper Court, for a Grievance complained of, tho' there may be many hard Words that elſe would be ſcandalous, yet being in a regular Courſe, they are no Scandal: And it is ſaid in *Lake*'s Caſe, in my Lord *Hobart*.

My Lord, we muſt appeal to the King, or we can appeal to nobody, to be relieved againſt an Order of Council with which we are aggrieved; and it is our Duty ſo to do, according to the Care that the Law hath placed in us.

Beſides, my Lord, the Biſhops were commanded by this Order to do an Act relating to their Eccleſiaſtical Function, to diſtribute it to be read by their Clergy: And how could they in Conſcience do it, when they thought Part of the Declaration was not according to Law?

Pray, my Lord, What has been the Reaſon of his Majeſty's conſulting of his Judges? And if his Majeſty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King ſo? I always look'd upon it as the Duty of an Officer or Magiſtrate, to tell the King what is Law, and what is not Law.

Cavendiſh's Caſe, in the Queen's Time, there was an Office granted of the Retorn of the Writs of *Superſedeas* in the Court of *Common-Pleas*; and he comes to the Court, and deſires to be put into the Poſſeſſion of the Office: The Court told him, They could do nothing in it, but he muſt bring his Aſſize. He applies to the Queen, and ſhe ſends, under the Privy-Seal, a Command to ſequeſter the Profits, and to take Security to anſwer the Profits, as the Judgment of the Law ſhould go: But the Judges there return an Anſwer, That it was againſt Law, and they could not do it. Then there comes a ſecond Letter, reciting the former, and commanding their Obedience: The Judges returned for Anſwer, They were upon their Oaths, and were ſworn to keep the Laws, and would not do it.

My Lord, The like was done in the Time of my Lord *Hobart*: We have it reported in *Anderſon*, in a Caſe where a Prohibition had gone: There came a Maſſage from Court, that a Conſultation ſhould be granted; and that was a Matter wherein there were various Opinions, whether it was *ex Neceſſitate*, or Diſcretionary; but there they returned, That it was againſt Law for any ſuch Meſſage to be ſent.

Now here, my Lord, is a Caſe full as ſtrong: My Lords the Biſhops were commanded to do an Act, which they conceived to be againſt Law, and they declined it, and tell the King the Reaſon; and they have done it in the moſt humble Manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Reſcribere* generally, that had been lawful; but here they have done it in a more reſpectful Manner, by an humble Petition. If they had ſaid the Law was otherwiſe, that ſure had been no Fault; but they do not ſo much as that, but they only ſay, it was ſo declared in Parliament: and they declare it with all Humility and Dutifulneſs. So that, my Lord, if we conſider the Perſons of the Defendants, they have not acted as Buſy-bodies; and therefore, as this Caſe is, when we have given our Evidence, here will be an Anſwer to all the Implications of Law that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but by what I have ſaid, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper that they have put into the Caſe. We ſhall prove the Matters that I have opened for our Defence, and then, I dare ſay, your Lordſhip and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. *Finch*. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, This Information ſets forth (as you may obſerve upon opening it) that the King having, by his Royal Prerogative, ſet forth his Declarations that we have read, and made an Order of Council for the reading the ſaid Declarations in the Churches, and that the Archbiſhops and Biſhops ſhould ſeverally ſend them into their Dioceſes, to be read; my Lords the Biſhops, that are the Defendants, did conſult and conſpire together to diminiſh the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in ſetting forth his Declaration; and that, in Proſecution of that Conſpiracy, they did conrrive (as it was laid in the Information) a malicious, ſeditious, falſe, and feigned Libel, under Pretence of a Petition, and ſo ſet forth the Petition; and that they publiſhed the Petition in the Preſence of the King.

To this Charge in the Information, Not Guilty being pleaded, the Evidence that hath been given for the King, I know, hath been obſerved by the Court

Court and Jury, and I know will be taken into Conſideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Biſhops; for all that was ſaid till my Lord Preſident was pleaſed to come, was no Evidence of any Delivery at all; and my Lord Preſident's Evidence is, that they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But ſuppoſing now, my Lord, that there were Room to preſume that they had delivered this Petition ſet forth in the Information, let us conſider what the Queſtion is between the King and my Lords the Biſhops: The Queſtion is, whether they are guilty of contriving to diminiſh the King's Regal Authority and Royal Prerogative, in his Power and Government, in ſetting forth this Declaration? Whether they are guilty of the making and preſenting a malicious, ſeditious, and ſcandalous Libel; and whether they have publiſhed it, as it is ſaid in the Information, in the King's Preſence?

So that the Queſtion is not now reduced to this, Whether this Paper, that is ſet forth in the Information, was delivered to the King by my Lords the Biſhops; but whether they have made a malicious and ſcandalous Libel, with an Intent to diminiſh the King's Royal Prerogative, and Kingly Authority? And then, if you, Gentlemen, ſhould think that there is Evidence given ſufficient to prove that my Lords the Biſhops have delivered to the King that Paper which is ſet forth in the Information; yet, unleſs they have delivered a falſe, malicious, ſeditious, and ſcandalous Libel; unleſs they have publiſhed it, to ſtir up Sedition in the Kingdom; and unleſs they have contrived this by Conſpiracy, to diminiſh the King's Royal Prerogative and Authority, and that Power that is ſaid to be in the King, my Lords the Biſhops are not guilty of this Accuſation.

There are in this Declaration ſeveral Clauſes, which, upon reading of the Information, I am ſure, cannot but have been obſerved by you, Gentlemen of the Jury; and one ſpecial Cauſe hath been by the Counſel already opened to you, and I ſhall not enlarge upon it.

My Lord, this Petition that is thus delivered to the King, if it be a Libel, a ſcandalous and ſeditious Libel (as the Information calls it) it muſt be ſo, either for the Matter of the Petition, or for the Perſons that delivered the Petition, or for the Manner of their preſenting and delivering it: But neither for the Matter, nor for the Perſons, nor for the Manner of preſenting it, is there any Endeavour to diminiſh the King's Royal Prerogative, nor to ſtir up Sedition, nor Reflection upon the King's Royal and Kingly Authority.

The Petition does humbly ſet forth to his Majeſty, that there having been ſuch a Declaration, and ſuch an Order of Council; they did humbly repreſent to his Majeſty, that they were not averſe to any thing commanded them in that Order, in reſpect to the juſt and due Obedience that they owed to the King, nor in reſpect of their Want of a due Tenderneſs to thoſe Perſons to whom the King had been pleaſed to ſhew his Tenderneſs; but the Declaration being founded upon a Power of Diſpenſing, which had been declared illegal in Parliament ſeveral Times, and particularly in the Years 1662, 72, and 85, they did humbly beſeech his Majeſty (they not being able to comply with his Command in that Matter) that he would not inſiſt upon it.

Now, my Lord, Where is the Contrivance to diminiſh the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of diſpenſing, which undertakes to ſuſpend all Laws Eccleſiaſtical whatſoever; for not coming to Church, or not receiving the Sacrament, or any other Non-conformity to the Religion eſtabliſhed, or for, or by reaſon of the Exerciſe of Religion in any Manner whatſoever; ordering that the Execution of all thoſe Laws be immediately ſuſpended, and they are thereby declared to be ſuſpended; as if the King had a Power to ſuſpend all the Laws relating to his eſtabliſhed Religion, and all the Laws that were made for the Security of our Reformation. Theſe are all ſuſpended by his Majeſty's Declaration (as it is ſaid) in the Information, by Virtue of his Royal Prerogative, and Power ſo to do.

Now, my Lord, I have always taken it, with Submiſſion, that a Power to abrogate Laws, is as much a Part of the Legiſlature, as a Power to make Laws: A Power to lay Laws aſleep, and to ſuſpend Laws, is equal to a Power of abrogating them; for they are no longer in being, as Laws, while they are ſo laid aſleep, or ſuſpended: And to abrogate all at once, or to do it Time after Time, is the ſame Thing; and both are equally Parts of the Legiſlature.

My Lord, in all the Education that I have had, in all the ſmall Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Conſtitution of the Government in *England* was otherwiſe than thus, That the whole Legiſlative Power is in the King, Lords, and Commons; the King and his two Houſes of Parliament. But then, if this Declaration be founded upon a Part of the Legiſlature, which muſt be by all Men acknowledged not to reſide in the King alone, but in the King, Lords, and Commons, it cannot be a legal and true Power, or Prerogative.

This, my Lord, has been attempted but in the laſt King's Time; it never was pretended till then; and in that firſt Attempt, it was ſo far from being acknowledged, that it was taken Notice of in Parliament, and declared againſt: So it was in the Years 1662, 1672.

In the Year ---62, where there was but the leaſt Umbrage given of ſuch a diſpenſing Power; although the King had declared, in his Speech to the Parliament, that he wiſhed he had ſuch a Power, which his Declaration before ſeemed to aſſume; the Parliament was ſo jealous of this, that they immediately made their Application to his Majeſty, by an Addreſs againſt the Declaration; and they give Reaſons againſt it, in their Addreſs: One in particular was, *That the King could not diſpenſe with theſe Laws without an Act of Parliament.*

There was another Attempt in 1672, and then, after his Majeſty had, in his Speech mentioned his Declaration to them, the Parliament there again, particularly the Houſe of Commons, did humbly addreſs to his Majeſty; ſetting forth, that this could not be done by Law, without an Act of Parliament: And your Lordſhip, by and bye, upon reading the Record, will be ſatisfied what was the Event of all this. His Majeſty himſelf was ſo far pleaſed to concur with them in that Opinion, that he cancelled his Declaration, tore off the Seal, and cauſed it to be made known to the Houſe of Lords, by the Lord Chancellor, who, by his Majeſty's Command, ſatisfied the Houſe of it, that his Maieſty had broken the Seal, and cancell'd the Declaration; with this further Declaration, which is enter'd in the Records of the Houſe, *That it ſhould never be drawn into Example, or Conſequence.*

My Lord, The Matter ſtanding thus, in reſpect to the King's Prerogative, and the Declarations that had been made in Parliament; conſider next, I beſeech you, how far my Lords the Biſhops were concerned in this Queſtion, humbly to make their Application to the King.

My Lords the Biſhops lying under a Command to publiſh this Declaration, it was their Duty, as Peers of the Realm, and Biſhops of the Church of *England*, humbly to apply themſelves to his Majeſty, to make known their Reaſon why they could not obey that Command; and they do it with all Submiſſion, and all Humility, repreſenting to his Majeſty what had been declared in Parliament; and it having been ſo declared, they could not comply with his Order, as apprehending that this Declaration was founded upon that which the Parliament declared to be illegal; and ſo his Majeſty's Command to publiſh this Declaration would not warrant them ſo to do. This they did as Peers; and this they had a Right to do as Biſhops, humbly to adviſe the King.

For, ſuppoſe, my Lord (which is not to be ſuppoſed in every Caſe, nor do I ſuppoſe it in this: But ſuppoſe that there might be a King of *England* that ſhould be miſled. I do not ſuppoſe that to be the Caſe now, I ſay, but I know it hath been the Caſe formerly), that the King ſhould be environed with Counſellors that had given him evil Advice; it hath been objected as a Crime againſt ſuch evil Counſellors, that they would not permit and ſuffer the great Men of the Kingdom to offer the King their Advice. How often do we ſay in *Weſtminſter-hall*, that the King is deceived in his Grant: There is ſcarce a Day in the Term, but it is ſaid in one Court or other; but it was never yet thought an Offence to ſay ſo: And what more is there in this Caſe?

My Lord, if the King was miſ-informed, or under a Miſapprehenſion of the Law, my Lords, as they are Peers, and as they are Biſhops, are concerned in it; and if they humbly apply themſelves to the King, and offer him their Advice, where is the Crime?

My Lord, theſe noble Lords, the Defendants, had more than an ordinary Call to this; for beſides the Duty of their Office, and the Care of the Church, that was incumbent on them as Biſhops, they were here to become Actors; for they were, by that Order of Council, commanded themſelves to publiſh it, and to diſtribute it to the ſeveral Miniſters in their ſeveral Dioceſes, with their Commands to read it: Therefore they had more than ordinary Reaſon to concern themſelves in the Matter.

Next, we are to conſider, my Lord, in what Manner this was done: they make their Application to the King by an humble Petition, with all the Decency and Reſpect that could be ſhewn; asking Leave, firſt, to approach his Perſon; and having Leave, they offered my Lord Preſident the Matter of their Petition, that nothing might ſeem hard, or diſreſpectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this Care in their Approach, and begging Leave for it, they come ſecretly to the King in private, when he was all alone, and they humbly preſented this Petition to his Majeſty. Now, how this can be called the Publication of a malicious and ſeditious Libel, when it was but the preſenting of a Petition to the King alone; and how it can be ſaid to be with an Intent to ſtir up Sedition in the People againſt his Majeſty, and to alienate the Hearts of his People from him, when it was in this private Manner delivered to him himſelf only, truly I cannot apprehend.

My Lord, I hope nothing of this can be thought an Offence: If the Jury ſhould think that there has been Evidence ſufficient given to prove that my Lords the Biſhops did deliver this Paper to the King; yet that is not enough to make them guilty of this Information, unleſs this Paper be likewiſe found to be in Diminution of the King's Royal Prerogative and Regal Authority in diſpenſing with, and ſuſpending of, all Laws, without Act of Parliament: Unleſs it be found to be a Libel againſt the King to tell him, that in Parliament it was ſo and ſo declared. And unleſs the preſenting this by Way of Petition (which is the Right of all People that apprehend themſelves aggrieved, to approach his Majeſty by Petition) be a libelling of the King: And unleſs this humble Petition, in this Manner preſented to the King in private, may be ſaid to be a malicious and ſeditious Libel, with an Intent to ſtir up the People to Sedition: Unleſs all this can be found, there is no Man living can ever find my Lords the Biſhops guilty upon this Information. Therefore, my Lord, we will go on, and make out this Matter that we have opened to your Lordſhip, if Mr. *Attorney* and Mr. *Solliciter* think fit to argue the Points that we have opened.

Mr. *Pollexfen.* Pray, my Lord, ſpare me a Word on the ſame Side. For the firſt Point, it is a Point of Law; whether the Matter contained in this Petition be a Libel. The King's Counſel pretend it is ſo, becauſe it ſays, the Declaration is founded upon a Power the Parliament has declared to be illegal. But we ſay, that whatſoever the King is pleaſed to ſay in any Declaration of his, it is not the King's ſaying of it that makes it to be Law. Now, we ſay, this Declaration under the Great Seal, is not agreeable to the Laws of the Land; and that for this Reaſon, becauſe it does, at one Blow, ſet aſide all the Law we have in *England*.

My Lord, if this be denied, we muſt a little debate this Matter; for they are almoſt all penal Laws; not only thoſe before the Reformation, but ſince; upon which the whole Government, both in Church and State, does in a great Meaſure depend.

Eſpecially, my Lord, in Matters of Religion, they are all penal Laws: For, by the Act of Uniformity, which my Lords the Biſhops are ſworn to obſerve, and adjured by an expreſs Clauſe in the Act, no Man is to preach unleſs he be Epiſcopally ordained; no Man is to preach without a Licence. If all this be ſet aſide, I confeſs then, it will go very far into the whole Eccleſiaſtical Government. If this be denied, we are ready to argue that too.

L. C. J. They are to do ſo ſtill.——Mr. *Pollexfen.* My Lord, I am ſure the Conſequence is otherwiſe, if this Declaration ſignify any

any thing. And if it be the Will of the King, my Lord; the Will of the King is what the Law is. If ſo be the King's Will be not conſonant to the Law, it is not obliging.

My Lord, The Cates that we have had of Diſpenſations; are all ſo many ſtrong Authorities againſt a general, or particular Abrogation. My Lord, that is a Matter of Law, which if it fall out to be any way doubtful, it will be fit to have it debated and ſettled.

If they will ſay, that the Penal Laws in Matters Eccleſiaſtical can be abrogated, or nulled, or made void *pro tempore*, or for Life, without the meeting of the King and People in Parliament, I muſt confeſs, they ſay a great thing, as it is a Point of great Concern; but I think that will not be ſaid: And all that has been ever ſaid in any Caſe, touching Diſpenſations, proves quite the contrary, and aſſerts what I affirm. For why ſhould any Man go about to argue, that the King may diſpenſe with this or that particular Law, if at once he can diſpenſe with all the Law, by an undoubted Prerogative? This is a Point of Law which we inſiſt upon, and are ready to argue with them; but we will go on with the reſt of thoſe Things that we have offered: And firſt, we will read the Act of Uniformity, made 1 *Eliz.* that Clauſe of it, where they are ſo ſtrictly charged to ſee the Execution of that Law.

This Act, my Lord, by the Act of Uniformity, made in the Beginning of the late King's Reign, is revived, with all the Clauſes in it relating to this Matter. If then this be a Duty incumbent upon them, and their Oaths require it of them; and if they find that the Pleaſure of the King, in his Declaration, is that which is not conſonant to this Law, what can they do?

Can any thing be more humble, or done with a more Chriſtian Mind, than by Way of Petition, to inform the King in the Matter? For I never thought it, nor hath it ever, ſure, been thought by any body elſe, to be a Crime to petition the King: For the King may be miſtaken in the Law, ſo our Books ſay; and we, every Day, in *Weſtminſter-hall*, argue againſt the King's Grants, and ſay, he is deceived in his Grants. It is the great Benefit and Liberty which the King gives to his Subjects, to argue the Legality or Illegality of his Grants.

My Lord, when all this is done, to make this to be a Libel, by putting in the Words Malicious, Seditious, Scandalous, and with an Intent to raiſe Sedition, would be pretty hard.——My Lord, we pray that Clauſe of the Statute may be read.

Mr. *Soll. Gen.* What for?

Mr. *Pollexfen.* It is a general Law, and therefore the Court will take Notice of it; and we pray the Jury may hear it read.

Mr. *Soll. Gen.* I agree it to be as Mr. *Pollexfen* has opened; and I agree it to be as Sir *Robert Sawyer* has opened it.

Mr. Serj. *Pemberton.* My Lord, we ſhall put it upon a ſhort Point. My Lords the Biſhops are here accuſed of a Crime of a very heinous Nature as can be; they are here branded and ſtigmatized by this Information, as if they were ſeditious Libellers; when, my Lord, it will in Truth fall out, that they have done no more than their Duty; their Duty to God, their Duty to the King, and their Duty to the Church.

For in this Caſe, that which we humbly offer to your Lordſhip (and inſiſt upon it, as very plain) is this; That the Kings of *England* have no Power to ſuſpend, or diſpenſe with the Laws and Statutes of the Kingdom, that eſtabliſh Religion; That is it which we ſtand upon for our Defence. And we ſay, that ſuch a diſpenſing Power with Laws and Statutes, is a Thing that ſtrikes at the very Foundation of all the Rights, Liberties, and Properties of the King's Subjects whatſoever. If the King may ſuſpend the Laws of the Land which concern our Religion, I am ſure there is no other Law but he may ſuſpend: And if the King may ſuſpend all the Laws of the Kingdom, what a Condition are all the Subjects in, for their Lives, Liberties, and Properties? All at Mercy.

My Lord, the King's legal Prerogatives are as much for the Advantage of his Subjects as of himſelf; and no Man goes about to ſpeak againſt them: But, under Pretence of legal Prerogatives, to extend the Power of the King to ſupport a Prerogative that tends to the Deſtruction of all his Subjects, their Religion and Liberties; in that, I think, they do the King no Service, who go about to do it.

But now we ſay, with your Lordſhip's Favour, that theſe Laws are the great Bulwark of the Reformed Religion; they are, in Truth, that which fenceth the Religion and Church of *England*, and we have no other human Fence beſides. They were made upon a Foreſight of the Miſchief that had, and might come, by falſe Religions in this Kingdom; and they were intended to defend the Nation againſt them, and to keep them out; particularly to keep out the *Romiſh* Religion, which is the very worſt of all Religions, from prevailing among us; and that is the very Deſign of the Act for the Teſts, which is entituled, *An Act to prevent Dangers that may happen from Popiſh Recuſants.*

My Lord, if this Declaration ſhould take Effect, what would be the End of it? All Religions are let in, let them be what they will; *Ranters*, *Quakers*, and the like; nay, even the *Roman Catholick* Religion, as they call it, which was intended, by theſe Acts of Parliament, and by the Act of Uniformity, and ſeveral other Acts, to be kept out of this Nation, as a Religion no Way tolerable, nor to be endured here.

If this Declaration takes Effect, that Religion will ſtand upon the ſame Terms with the Proteſtant Religion. Suſpend thoſe Laws, and that *Romiſh* Religion, that was intended to be prohibited, and ſo much Care was taken, and ſo many Statutes made to prohibit it, will come in; and all this Care, and all thoſe Statutes go for nothing. This one Declaration ſets them all out of Doors; and then that Religion ſtands upon equal Terms with the eſtabliſhed Religion.

My Lord, we ſay this farther, that my Lords the Biſhops have the Care of the Church, by their very Function and Offices; and are bound to take Care to keep out all thoſe falſe Religions that are prohibited, and deſigned to be kept out by the Law. My Lords the Biſhops finding this Declaration founded upon a meer pretended Power, that had been continually oppoſed and rejected in Parliament, could not comply with the King's Command to read it.

My Lord, Such a Power to diſpenſe with, or ſuſpend the Laws of a Nation, cannot with any Shadow of Reaſon be. It is not long ſince, that ſuch a Power was ever pretended to by any, but ſuch as have the Legiſlative too; for it is plain, that ſuch a Power muſt at leaſt be equal to the Power that made the Laws. To diſpenſe with a Law muſt argue a Power greater, or at leaſt as great as that which made the Law.

My Lord, it has been often ſaid in our Books; That where the King's Subjects are concerned in Intereſt, the King cannot ſuſpend, or diſpenſe with a particular Law. But, my Lord, how can the King's Subjects be more concerned in Intereſt, than when their Religion lies at Stake? It has been reſolved, upon the Statute of *Simony*, that where the Statute has diſabled the Party to take, there the King could not enable him againſt that Act of Parliament: And ſhall it be ſaid, that by his Diſpenſation he ſhall enable one to hold an Office who is diſabled by the Teſt Act?

My Lord, we ſay, the Courſe of our Law allows no ſuch Diſpenſation as the Declaration pretends to: And he that is but meanly read in our Law, muſt needs underſtand this, That the Kings of *England* cannot ſuſpend our Laws; for that would be to ſet aſide the Law of the Kingdom: And then we might be clearly without any Laws, if the King ſhould pleaſe to ſuſpend them.

'Tis true, we ſay, the laſt King *Charles* was prevailed upon, by Miſinformation, to make a Diſpenſation ſomewhat of the Nature of this, though not ſo full an one; for that diſpenſed only with ſome few Ceremonies, and Things of that Nature: But the Houſe of Commons (this taking Air) in 1662, repreſent this to the King by a Petition. And what is it that they do repreſent? That he, by his Diſpenſation, has undertaken to do that which nothing but an Act of Parliament can do; that is, the diſpenſing with Penal Laws, which is only to be done by Act of Parliament. And thereupon it was thought fit, upon the King's Account, to bring in an Act for it in ſome Caſes.

My Lord, the King did then, in his Speech to the Parliament (which we uſe as a great Argument againſt this diſpenſing Power) ſay this, "That "conſidering the Circumſtances of the Nation, he could wiſh with all "his Heart, that he had ſuch a Power to diſpenſe with ſome Laws, in "ſome Particulars." And thereupon there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to diſpenſe; but, my Lord, with a great many Qualifications: Which ſhews plainly, that it was taken by the Parliament, that he had no Power to diſpenſe with the Laws of himſelf.

My Lord, Afterwards in 1672, the King was prevailed upon again to grant another Diſpenſation ſomewhat larger——

L. C. J. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. S. *Pemberton.* Then, ſince your Lordſhip is ſatisfied of theſe Things, as I preſume you are, elſe I ſhould have gone on, I have done, my Lord.

Mr. Serj. *Levinz.* But, my Lord, we ſhall go a little higher than that, and ſhew that it has been taken all along as the antient Law of *England*, that ſuch Diſpenſations ought to be by the King and the Parliament, and not by the King alone.

Mr. *Soll. Gen.* My Lord, if you will admit every one of the Counſel to ſpeech it before they give their Evidence, when ſhall we come to an End of this Cauſe? We ſhall be here till Midnight.

L. C. J. They have no Mind to have an End of the Cauſe, for they have kept it three Hours longer than they need to have done.

Mr. S. *Pemberton.* My Lord, this Caſe does require a great deal of Patience.

L. C. J. It does ſo, Brother; and the Court has had a great deal of Patience: But we muſt not ſit here only to hear Speeches.

Mr. *Att. Gen.* Now, after all their Speeches of two Hours long, let them read any thing if they have it.

Sir *Rob. Sawyer.* We will begin with the Record of *Richard* the Second —Call *William Fiſher.*

[William Fiſher, *Clerk to Mr.* Ince, *ſworn.*]

L. C. J. What do you aſk him?

Sir *Rob. Sawyer.* Shew him that Copy of the Record.

[*The Record was then ſhewn him.*]

L. C. J. Where had you thoſe, Sir?

Mr. *Fiſher.* Among the Records in the *Tower.*

L. C. J. Are they true Copies?

Mr. *Fiſher.* Yes, my Lord.

L. C. J. Did you examine them by the Record?

Mr. *Fiſher.* Yes, my Lord.

Sir *Rob. Sawyer.* Then hand them in; put them in.

Clerk reads. *Ex Rotulo Parliamenti de Anno Regni Regis* Richardi *Secundi* 15. N. 1.——My Lord, it is written in *French*, and I ſhall make but a bad Reading of it.

Sir *Samuel Aſtry.* Where is the Man that examined it?—Do you underſtand *French?*

Mr. *Fiſher.* Yes, my Lord.

Sir *Rob. Sawyer.* The Record is in another Hand than this; they may eaſily read it.

Mr. *Soll. Gen.* Who copied this Paper?

Mr. *Fiſher.* I did examine it.

Mr. *Soll. Gen.* What did you examine it with?

Mr. *Fiſher.* I looked upon that Copy, and Mr. *Halſtead* read the Record.

L. C. J. Young Man, read out.

Fiſher reads. *Vendredy Lende maine del Almes qu'eſtoit le primier jour*—

Mr. *Soll. Gen.* Pray tell us what it is you would have read?

Mr. Serj. *Levinz.* I'll tell you what it is, Mr. Sollicitor: 'Tis the Diſpenſation with the Statute of Proviſors: And the Act of Parliament does give the King a Power to diſpenſe till ſuch a Time.

Mr. *Soll. Gen.* Don't you think the King's Prerogative is affirmed by many Acts of Parliament?

Mr. Serj. *Levinz.* If the King could diſpenſe without an Act of Parliament, what need was there for the making of it?

Mr. *Soll. Gen.* Mr. Serjeant, we are not to argue with you about that yet.

L. C. J. Read it in *Engliſh*, for the Jury to underſtand it.

Mr. *Fiſher.* My Lord, I cannot undertake to read it ſo readily in *Engliſh.*

Mr. Juſt. *Powell.* Why don't you produce the Records that are mentioned in the Petition, thoſe in King *Charles* the Second's Time?

Mr. Serj. *Levinz.* We will produce our Records in Order of Time, as they are.

Sir

Sir *Samuel Astry*. There is the Clerk of the Records of the *Tower*, Mr. *Halstead*, will read it very well in *French* or *English*.

[*Then Mr.* Halstead *was sworn to interpret the Record into* English, *according to the best of his Skill and Knowledge; but not reading very readily——a true Copy of the Record in* English *follows, out of the Rolls of Parliament, in the* 15*th Year of King* Richard *the Second*, Numero Primo.]

" *FRIDAY*, the Morrow of *All-Souls*, which was the first Day of this " Parliament, holden at *Westminster*, in the fifteenth Year of the " Reign of our Lord King *Richard* the Second, after the Conquest, the " Reverend Father in God the Archbishop of *York*, Primate and Chan- " cellor of *England*, by the King's Commandment, being present in Par- " liament, pronounced and declared very nobly and wisely, the Cause of " the Summons of this Parliament, and said, First, That the King would, " that holy Church principally, and afterwards the Lords Spiritual and " Temporal, and also the Cities and Boroughs should have and enjoy " their Liberties and Franchises as well as they had them, and enjoyed " them, in the Time of his noble Progenitors, Kings of *England*; and also " in his own Time. And afterwards said, The Summons of this Parlia- " ment was principally for three Occasions. The first Occasion was, " To ordain how the Peace and Quiet of the Land, which have heretofore " been greatly blemished and disturbed, as well by Detraction and Main- " tenance as otherwise, might be better holden and kept, and the Laws " better executed, and the King's Commands better obeyed. The second " Occasion was, To ordain and see how the Price of Wools, which is be- " yond measure lessened and impaired, might be better amended and en- " hanced. And also, That in case the War should begin again, at the " End of the present Truce, to wit, at the *Assumption of our Lady* next " coming, to ordain and see, how and whereby the said War may be main- " tained at the least Charge of the People. And the third Occasion was, " touching the Statutes of Provisors, To ordain and see how our holy " Father might have that which to him belongs, and the King that which " belongs to him, and to his Crown; according unto that, *Render unto* " Cæsar *the Things that are* Cæsar's, *and unto God the Things which are* " *God's*."

Then the other Record of *Richard* the Second was read as follows, out of the Rolls of Parliament, the fifteenth Year of King *Richard* the Second, N. 8.

" Be it remembered, touching the Statute of Provisors, That the Com- " mons, for the great Confidence which they have in the Person of our " Lord the King, and in his most excellent Knowledge, and in the great " Tenderness which he hath for his Crown, and the Rights thereof; and " also, in the noble and high Discretions of the Lords, *have assented, in full* " *Parliament, that our said Lord the King*, by Advice and Assent of the said " Lords, *may make such Sufferance*, touching the said Statute, as shall seem " to him reasonable and profitable, until the next Parliament, so as the " said Statute be not repealed in no Article thereof: And that all those " who have any Benefices by Force of the said Statute, before this present " Parliament; and also, That all those to whom any Aid, Tranquillity, " or Advantage is accrued, by virtue of the said Statute of the Benefices " of holy Church (of which they were heretofore in Possession) as well by " Presentation, or Collation of our Lord the King, as of the Ordinaries, " or Religious Persons whatsoever, or by any other Manner or Way " whatsoever, may freely have and enjoy them, and peaceably continue " their Possession thereof, without being ousted thereof, or any ways " challenged, hindred, molested, disquieted, or grieved hereafter, by any " Provisors, or others, against the Form and Effect of the Statute afore- " said, by reason of the said Sufferance in any Time to come. *And more-* " *over, That the said Commons may disagree at the next Parliament to this* " *Sufferance, and fully resort to the said Statute*, if it shall seem good to them " to do it: *With Protestation*, That this Assent, *which is a Novelty, and* " *has not been done before this Time, be not drawn into Example or Conse-* " *quence for Time to come*. And they prayed our Lord the King, that the " Protestation might be entered of Record, in the Roll of the Parliament: " And the King granted, and commanded to do it."

Mr. *Serj. Levinz*. Now, my Lord, we will go on——This was in *Richard* the Second's Time: And a Power is given by the Commons to the King, with the Assent of the Lords, to dispense, but only to the next Parliament, with a Power reserved to the Commons; and to disagree to it, and retract that Consent of theirs the next Parliament.

Sir *George Treby*. The Statute of Provisors was, and is a Penal Law, and concerning Ecclesiastical Matters too; *viz*. The Collating and Presenting to Archbishopricks, Bishopricks, Benefices, and Dignities of the Church: And in this Record now read, the Parliament give the King a limited Power, and for the short Time, to dispense with that Statute. But, to obviate all Pretence of such a Power's being inherent in the Crown, as a Prerogative, they declare, (1.) That it was a Novelty; that is as much as to say, that the King had no such Power before. (2.) That it should not be drawn into Example; that is to say, that he should have no such Power for the future.

Mr. *Serj. Levinz*. Now we will go on to the Records mentioned in the Petition; those in the last King's Time, in 1662, and 1672; and that in this King's Time, in 1685.—Where is the Journal of the House of Lords?

[Mr. *Walker* sworn.]

L. C. J. Is that the Book of the House of Lords?

Mr. *Walker*. It is the Journal of the House of Lords.

L. C. J. Is it kept by you?

Mr. *Walker*. Yes, my Lord.

L. C. J. Where is it kept?

Mr. *Walker*. In the usual Place, here in *Westminster*.

Mr. *Soll. Gen*. What is that?

Mr. *Serj. Levinz*. It is the Journal of the House of Lords.——But, my Lord, there is one Thing that is mentioned in the last Record that was read, which is worth your Lordship's and the Jury's Observation; That it is declared a Novelty, and a Protestation, that it should not be drawn into Precedent for the future.

L. C. J. That has been observed, Brother: Let us hear your Record read.

Clerk reads——*Die* Mercurii 18. *die* Februarii, 1662.

" His Majesty was present this Day, sitting in the Regal Crown and " Robes, the Peers being likewise in their Robes: The King gave Or- " der to the Gentleman Usher of the Black Rod, to signify to the House " of Commons his Pleasure, that they presently come up, and attend his " Majesty, with their Speaker; who being present, his Majesty made this " Speech following.

" *My Lords and Gentlemen*,

" I AM very glad to meet you here again, having thought the Time " long since we parted, and often wished you had been together, to " help me in some Occasions which have fallen out: I need not repeat " them unto you, you have all had the Noise of them in your several " Countries; and, God be thanked, they were but Noise, without any " worse Effects.

" To cure the Distempers, and compose the differing Minds that are " yet amongst us, I set forth my Declaration of the 26th of *December*. " In which you may see, I am willing to set Bounds to the Hopes of some, " and to the Fears of others; of which when you shall have examined " well the Grounds, I doubt not but I shall have your Concurrence " therein. The Truth is, I am in my Nature an Enemy to all Severity " for Religion and Conscience, how mistaken soever it be, when it " extends to capital and sanguinary Punishments; which I am told, " were began in Popish Times. Therefore, when I say this, I hope " I shall not need to warn any here, not to infer from thence, " that I mean to favour Popery. I must confess to you, there are " many of that Profession, who, having served my Father, and myself " very well, may fairly hope for some Part in that Indulgence I would " willingly afford to others who dissent from us. But let me explain my- " self, lest some mistake me herein, as I heard they did in my Declaration: " I am far from meaning by this a Toleration, or qualifying them thereby " to hold any Offices or Places of Trust in the Government. Nay, fur- " ther, I desire some Laws may be made to hinder the Growth and Pro- " gress of their Doctrine.

" I hope you have all so good an Opinion of my Zeal for the Protestant " Religion, as I need not tell you, I will not yield to any therein, not to " the Bishops themselves, nor in my liking the Uniformity of it, as it is " now established; which being the Standard of our Religion, must be " kept pure and uncorrupted, free from all other Mixtures. *And yet, if* " *the Dissenters will demean themselves peaceably and modestly under the Go-* " *vernment, I could heartily wish I had such a Power of Indulgence to use upon* " *Occasion*"——

Sir *George Treby*. Pray, Sir, read that out distinctly.

Clerk reads.—" I could heartily wish I had such a Power of Indulgence " to use upon Occasion, as might not needlessly force them out of the " Kingdom; or, staying here, give them Cause to conspire against the " Peace of it.

" *My Lords and Gentlemen*,

" It would look like Flattering in me, to tell you in what Degree I am " confident of your Wisdom and Affection in all Things that relate to the " Greatness and Prosperity of the Kingdom. If you consider well what " is best for us all, I dare say we shall not disagree. I have no more to " say to you at present, but, once again, to bid you heartily welcome."

Mr. *Finch*. The next Thing we shall shew you is, that after the King had made this Speech, and wished he had such a Power of Indulgence to use upon Occasion, there was a Bill in the House of Lords brought in, to enable the King to dispense with several Laws: We shall shew you the Journal, where it was read and committed; but further than that it went not.

L. C. J. What Use do you make of this, Mr. *Finch*?

Sir *Rob. Sawyer*. You may easily apprehend the Use we shall make of it. (The King, in his Speech, says, *He wished he had such a Power*) the House of Lords thought he had not; and therefore they ordered a Bill to be brought in, to enable him.——Read the Journal of the Lords of the 13th of *March*, 1662.

Clerk reads. *Die* Veneris 13. *die Martii*, 1662.

" After some Debate, whether the House should be put into a Grand " Committee, for the further Debate of the Bill concerning his Majesty's " Power in Ecclesiastical Affairs, it was put to the Question; *viz.*

" As many of your Lordships as would have this House adjourned, and " put into a Committee to consider of the said Bill, say, *Content*; others, " *Not Content*.

" Passed in the Affirmative.

" And then the Lord Chamberlain of the Houshold was directed to take " the Chair, as formerly; which he did accordingly.

" And after Debate, the House was resumed, after the Grand Com- " mittee had appointed a Sub-Committee, touching the said Bill."

Sir *Rob. Sawyer*. This is all in the Journal of the House of Lords about this Matter.——We will now shew you the Bill itself.

Clerk reads. " *An Act concerning his Majesty's Power in Ecclesiastical Affairs.*

" WHereas divers of his Majesty's Subjects, through Error of Judg- " ment, and misguided Consciences (whereunto the Licentious- " ness of these late unhappy Times have much contributed) do not con- " form themselves to the Order of divine Worship and Service established " by Law; and though his Majesty and both Houses of Parliament are " fully satisfied, that those Scruples of Conscience, from whence this Non- " conformity ariseth, are ill grounded; and that the Government of the " Church, with the Service thereof, (as now established) is the best that " is any where extant, and most effectual to the Preservation of the Pro- " testant Religion: Yet hoping that Clemency and Indulgence may, in " Time, wear out those Prejudices, and reduce the Dissenters to the Unity " of the Church; and considering that this Indulgence, how necessary so- " ever, cannot be dispensed by any certain Rule, but must vary, according " to the Circumstances of Time, and the Temper and Principles of those " to whom it is to be granted; and his Majesty being the best Judge " when, and to whom this Indulgence is to be dispensed, or as may be " most consistent with the public Peace, and without just Cause of

" Offence

" Offence to others; and to the End his Majeſty may be enabled to ex-
" ercise it with univerſal Satisfaction, Be it Enacted by the King's moſt
" Excellent Majeſty, by Advice, and with the Conſent of the Lords Spiri-
" tual and Temporal, and Commons, in this preſent Parliament aſſembled,
" and by the Authority thereof, That the King's Majeſty may, by Letters
" Patents under the Great Seal, or by ſuch other Ways as to his Majeſty
" ſhall ſeem meet, *diſpenſe with one Act, or Law, made the laſt Seſſion of*
" *this preſent Parliament* (intituled, *An Act for the Uniformity of publick*
" *Prayers, and Adminiſtration of the Sacraments, and other Rites and Cere-*
" *monies; and for eſtabliſhing the Form of making, and ordaining, and conſe-*
" *crating Biſhops, Prieſts and Deacons, in the Church of* England) and with
" any other Laws or Statutes concerning the ſame; or requiring Oaths,
" or Subſcriptions; or which do enjoin Conformity to the Order, Diſci-
" pline, and Worſhip eſtabliſhed in this Church, and the Penalties in the
" ſaid Laws impoſed, or any of them: And may grant Licences to ſuch
" of his Majeſty's Subjects of the Proteſtant Religion, of whoſe inoffenſive
" and peaceable Diſpoſition his Majeſty ſhall be perſuaded, to enjoy and
" uſe the Exerciſe of their Religion and Worſhip, though differing from
" the publick Rule (the ſaid Laws and Statutes, or any Diſabilities, Inca-
" pacities, or Penalties, in them, or any of them contained, or any Matter
" or Thing to the contrary thereof notwithſtanding.)

" *Provided always, and be it Enacted*, That no ſuch Indulgence, Licence,
" or Diſpenſation hereby to be granted, *ſhall extend, or be conſtrued to ex-*
" *tend to the Tolerating, or Permitting the Uſe or Exerciſe of the Popiſh, or*
" *Roman Catholick Religion* in this Kingdom; *nor to enable any Perſon or*
" *Perſons to hold or exerciſe any Place or Office of publick Truſt* within this
" Kingdom; who, at the Beginning of this preſent Parliament were, by
" the Laws and Statutes of this Realm, diſenabled thereunto; nor to ex-
" empt any Perſon or Perſons from ſuch Penalties as are by Law to be
" inflicted upon ſuch as ſhall publiſh or preach any thing to the Depreva-
" tion, or Derogation of the Book of *Common-Prayer*, or the Government,
" Order and Ceremonies of the Church eſtabliſhed by Law.

" *Provided alſo, and be it Enacted*, That no ſuch Licence or Diſpenſation
" *ſhall extend to make any Prieſt or Miniſter capable of any Eccleſiaſtical Liv-*
" *ing or Benefice, with Cure*, who ſhall not, before the Archbiſhop of the
" Province, or Biſhop of the Dioceſe where he lives, *make ſuch Subſcription*
" *to the Articles of Religion*, as is enjoined by the Statute of the 13th of *Eliza-*
" *beth*, made for Reformation of Diſorders in the Church; *Nor ſhall extend,*
" *or be conſtrued to extend to diſpenſe with the Book of Common Prayer:* But
" that the ſaid Book ſhall be conſtantly read in all the Cathedral and Col-
" legiate Churches, and in all the Pariſh Churches, and publick Chapels."

Sir *Rob. Sawyer*. Here your Lordſhip ſees what the Lords did in this Matter.—We ſhall now ſhew you, out of the Commons Journal, what they did concerning this Speech of the King——Shew the Journal of the 25th of *February*, 1662.

[Mr. *Jodrell* ſworn.]

L. C. J. Did you examine that, Mr. *Jodrell?*

Mr. *Jodrell*. It is the Original Book.

[*The Book delivered into the Court.*]

Clerk reads. *Die* Mercurii 25. *die* Februarii, 15 Car. II. *Reſolved*, That it be preſented——

Sir *Rob. Sawyer*. You muſt begin above——The Houſe then took into Debate——

Clerk reads. " The Houſe then took into Debate the Matter touching
" Indulgence to Diſſenters, from the Act of Uniformity.

" The Queſtion being put, that the preſent Debate be adjourned till
" To-morrow Morning.

" The Houſe was divided.

" The *Yeas* went out.

Sir *John Goodrick*, and Sir *William Lowther*, } Tellers for the *Noes*; with the *Noes* 161.

Sir *Richard Temple*, and Sir *John Talbot*, } Tellers for the *Yeas*; with the *Yeas* 119.

" And ſo it paſſed in the Negative.

" *Reſolved*, &c.

" That it be preſented to the King's Majeſty, as the humble Advice of
" this Houſe, That no Indulgence be granted to the Diſſenters, from the
" Act of Uniformity——

Mr. *Soll. Gen.* Does you Lordſhip think it to be Evidence?

L. C. J. Let them read it, Mr. Sollicitor, that we may hear what it is.

Clerk reads on.

" *Ordered*, That a Committee be appointed to collect and bring in
" the Reaſons of this Houſe for this Vote, upon the preſent Debate; to be
" preſented to his Majeſty, and that the nominating of the Committee be
" adjourned till To-morrow Morning."

Sir *Rob. Sawyer*. That's all.

Mr. *Soll. Gen.* Pray, if there be any thing more, read on; you ſhall not parcel out a Record, and take and leave what you will.

Mr. *Finch*. Did not you parcel out our Petition?

Mr. *Soll. Gen.* Read on, if there be any thing about this Matter.

Clerk. That is all.

Sir *Rob. Sawyer*. Turn to the 27th of *Febr.* 1662.

Clerk reads. *Veneris* 27. Februarii 15 Car. II.

" Sir *Heneage Finch* reports from the Committee appointed to collect
" and bring in the Reaſons of the Houſe for their Vote of Advice to the
" King's Majeſty; and in the Cloſe of thoſe Reaſons to add, That the
" Houſe will aſſiſt his Majeſty with their Lives and Fortunes: And to
" pen an Addreſs to his Majeſty for that Purpoſe, the ſeveral Reaſons
" and Addreſs agreed to by the Committee in Writing, he read in his
" Place, and did bring up, and deliver the ſame in at the Clerk's Table.

" The firſt Paragraph was read, and upon the Queſtion agreed to.

" The ſecond Paragraph was read, and upon the Queſtion agreed to.

" The third was read, and upon the Queſtion agreed to."

Sir *Rob. Sawyer*. Go over that, and go to the Addreſs itſelf.

Clerk reads. " *May it pleaſe your moſt Excellent Majeſty,*

" WE your Majeſty's moſt dutiful and loyal Subjects, the Knights,
" Citizens, and Burgeſſes of the Houſe of Commons in Parliament aſſem-
" bled, having with all Fidelity and Obedience conſidered of the ſeveral
" Matters comprized in your Majeſty's late gracious Declaration of the
" 26th of *December* laſt, and your moſt gracious Speech at the Beginning
" of this preſent Seſſion, do in the firſt Place for ourſelves, and in the
" Names of all the Commons of *England*, render unto your Sacred Ma-
" jeſty the Tribute of our moſt hearty Thanks for that infinite Grace and
" Goodneſs wherewith your Majeſty hath been pleaſed to publiſh your
" Royal Intention of adhering to your Act of Indemnity and Oblivion,
" by a conſtant and religious Obſervance of it; and our Hearts are fur-
" ther enlarged in theſe Returns of Thankſgiving, when we conſider your
" Majeſty's moſt Princely and Heroick Profeſſion relying upon the
" Affections of your People, and the abhorring all Sorts of Military
" and Arbitrary Rule; but above all, we can never enough remember to
" the Honour of your Majeſty's Piety, and our own unſpeakable Comfort,
" thoſe ſolemn and moſt endearing Invitations of your Majeſty's Sub-
" jects, to prepare Laws to be preſented to your Majeſty againſt the
" Growth and Increaſe of Popery; and withal, to provide more Laws
" againſt Licentiouſneſs and Impiety, at the ſame Time declaring your
" own Reſolutions for maintaining the Act of Uniformity: And it becomes
" us always to acknowledge and admire your Majeſty's Wiſdom in this
" your Declaration, whereby your Majeſty is pleaſed to reſolve not only
" by ſumptuary Laws, but by your own Royal Example of Frugality, to
" reſtrain that Exceſs in Men's Expences, which is grown ſo general,
" and ſo exorbitant, and to direct our Endeavours to find out fit and pro-
" per Laws for the Advancement of Trade and Commerce.

" After all this, we moſt humbly beſeech your Majeſty to believe, *That*
" *it is with extreme Unwillingneſs and Reluctancy of Heart, that we are*
" *brought to differ from any Thing which your Majeſty hath thought fit to pro-*
" *poſe*; and though we do no ways doubt but that the unreaſonable Diſ-
" tempers of Mens Spirits, and the many Mutinies and Conſpiracies
" which were carried on during the late Intervals of Parliament, did rea-
" ſonably incline your Majeſty to endeavour by your Declaration to give
" ſome Allay to thoſe ill Humours, till the Parliament aſſembled, and the
" Hopes of an Indulgence, if the Parliament ſhould conſent to it; eſpe-
" cially ſeeing the Pretenders to this Indulgence did ſeem to make ſome
" Title to it by virtue of your Majeſty's Declaration from *Bredah: Ne-*
" *verthleſs, we your Majeſty's moſt dutiful and loyal Subjects*, who are now
" returned to ſerve in Parliament, from thoſe ſeveral Parts and Places of
" your Kingdom for which we are choſen, *Do humbly offer it to your Ma-*
" *jeſty's great Wiſdom, that it is in no ſort adviſeable that there be any Indul-*
" *gence to ſuch Perſons who preſume to diſſent from the Act of Uniformity and*
" *Religion eſtabliſhed*, for theſe Reaſons.

" We have conſidered the Nature of your Majeſty's Declaration from
" *Bredah*, and are humbly of Opinion, That your Majeſty ought not to
" be preſſed any further.

" Becauſe it is not a Promiſe in itſelf, but only a gracious Declaration
" of your Majeſty's Intentions to do what in you lay, and what a Parlia-
" ment ſhould adviſe your Majeſty to do, and no ſuch Advice was ever
" given, or thought fit to be offered; nor could it be otherwiſe under-
" ſtood, becauſe there were Laws of Uniformity then in being, which
" could not be diſpenſed with but by Act of Parliament.

Sir *Rob. Sawyer*. This is all that we read this for; your Lordſhip and the Jury ſee what is here declared by the Parliament, That the Act of Uniformity, could not be diſpenſed with without an Act of Parliament.

Next, my Lord, we ſhall ſhew you what was done in the Year 1672.——Read the King's Speech the 5th of *February*, 1672.

[*The Journals of the Lords Houſe were delivered in.*]

Clerk reads. *Die Mercurij*, 5. *Februarij*, 1672.

" *My Lords and Gentlemen*,

" I AM glad to ſee you here this Day. I would have called you ſooner
" together, but that I was willing to eaſe you and the Country, till
" there were an abſolute Neceſſity.

" Since you were laſt here, I have been forced to a moſt important, ne-
" ceſſary, and expenſive War; and I make no doubt but you will give me
" ſuitable and effectual Aſſiſtance to go through with it. I refer you to
" my Declaration for the Cauſes, and indeed the Neceſſity of this War,
" and ſhall now only tell you, That I might have digeſted the Indignities
" to my own Perſon, rather than have brought it to this Extremity, if
" the Intereſt, as well as the Honour of the whole Kingdom had not been
" at Stake; and if I had omitted this Conjuncture, perhaps I had not
" again ever met with the like Advantage.

" You will find that the laſt Supply that you gave me, did not anſwer
" Expectation for the Ends you gave it, the Payments of my Debts;
" therefore I muſt in the next Place recommend them again to your ſpe-
" cial Care.

" Some few Days before I declared the War, I put forth my Declara-
" tion for Indulgence to Diſſenters, and have hitherto found a good
" Effect of it, by ſecuring my Peace at home, when I had War abroad:
" There is one Part in it that has been ſubject to Miſconſtructions, which
" is that concerning the Papiſts, as if more Liberty was granted to them
" than to other Recuſants, when 'tis plain there is leſs; for the others
" have publick Places allowed them, and I never intended that they
" ſhould have any, but only have the Freedom of their Religion in their
" own Houſes, without any Concourſe of others; and I could not grant
" them leſs than this, when I had extended ſo much more Grace to
" others, moſt of them having been loyal, and in the Service of me, and the
" King my Father: And in the whole Courſe of this Indulgence I do not
" intend that it ſhall any way prejudice the Church, but I will ſupport its
" Rights, and it in its full Power.

" Having ſaid this, I ſhall take it very ill to receive Contradiction in
" what I have done; and I will deal plainly with you, I am reſolved to
" ſtick to my Declaration.

" There is one Jealouſy more which is maliciouſly ſpread abroad, and
" yet ſo weak and frivolous, that I once thought it not of Moment
" enough to mention; but it may have gotten ſome Ground with
" ſome well-minded People, and that is, that the Forces which I have
" raiſed in this War were deſigned to controul Law and Property. I
" wiſh I had had more Forces the laſt Summer; the Want of them
" then, convinces me, I muſt raiſe more againſt this next Spring;
" and I do not doubt but you will conſider the Charge of them in
" your Supplies.

" I will

" I will conclude with this Assurance to you, That I will preserve the " true Reformed Protestant Religion, and the Church, as it is now estab- " lished in this Kingdom, and that no Man's Property or Liberty shall " ever be invaded. I leave the rest to the Chancellor."

Mr. Serj. *Pemberton.* Now go to the Journal of the Commons of the 14th of *February*, 1672.

[*The Journal put in.*]

Clerk reads. *Veneris* 13. *die Februarij*, 1672.

" Mr. *Powle* reports from the Committee appointed to prepare and " draw up a Petition and Address to his Majesty, the said Petition and " Address, which he read in his Place, and afterwards delivered the same " in at the Clerk's Table, and the same being again twice read, is as " followeth; *viz.*

" *Most Gracious Sovereign,*

" WE your Majesty's most loyal and faithful Subjects, the Com- " mons assembled in Parliament, do in the first Place, as in all " Duty bound, return your Majesty our most humble and hearty Thanks " for the many Gracious Promises and Assurances which your Majesty " has several Times, during this present Parliament, given to us, that " your Majesty would secure and maintain unto us the true Reformed " Protestant Religion, our Liberties and Properties; which most gracious " Assurances your Majesty, out of your great Goodness, has been pleased " to renew unto us, more particularly at the Opening of this present Ses- " sion of Parliament.

" And further, we crave Leave humbly to represent, that we have, with " all Duty and Expedition, taken into Consideration the several Parts of " your Majesty's last Speech to us; and withal, the Declaration therein " mentioned for Indulgence to Dissenters, dated the 15th of *March* last: " **And we find our selves bound in Duty to inform your Majesty, " That Penal Statutes, in Matters Ecclesiastical, cannot be sus- " pended but by Act of Parliament.**

" *We therefore*, the Knights, Citizens, and Burgesses of your Majesty's " House of Commons, *do most humbly beseech your Majesty, That the said " Laws may have their free Course, until it shall be otherwise provided for by " Act of Parliament:* And that your Majesty would graciously be pleased " to give such Directions herein, that no Apprehensions or Jealousies may " remain in the Hearts of your Majesty's good and faithful Subjects.

" *Resolved*, &c.

" That this House doth agree with the Committee in the Petition and " Address by them drawn up to be presented to his Majesty."

Sir *Rob. Sawyer.* Now turn to the 24th of *February*, 1672, in the same Book.

Clerk reads. *Lunæ* 24. *Februarii*, 1672.

" Mr. Secretary *Coventry* reports and presents in Writing from his Ma- " jesty, his Answer to the humble Petition and Address of this House, " which was thrice read, and the Matter debated, and is as followeth; *viz.*

" CHARLES R.

" HIS Majesty hath received an Address from you, and he hath se- " riously considered of it, and returns you this Answer, That he " is very much troubled, that that Declaration which he put out for Ends " so necessary for the Quiet of his Kingdom, and especially in that Con- " juncture, should have proved the Cause of Disquiet in his House of " Commons, and give Occasion to the questioning of his Power in Ec- " clesiasticks, which he finds not done in the Reigns of any of his Ances- " tors. He is sure he never had Thoughts of using it otherwise than as " it hath been entrusted in him, to the Peace and Establishment of the " Church of *England*, and the Ease of all his Subjects in general; *Neither " does he pretend to the Right of suspending any Laws, wherein the Properties, " Rights, or Liberties of any of his Subjects are concerned, nor to alter any " thing in the established Doctrine or Discipline of the Church of* England. " But his only Design in this, was to take off the Penalties the Statutes " inflicted upon Dissenters, which he believes, when well considered of, " you yourselves would not wish executed according to the Rigour and " Letter of the Law; neither hath he done this with any Thought of " avoiding or precluding the Advice of his Parliament; and if any Bill " shall be offered, which shall appear more proper to attain the aforesaid " Ends, and secure the Peace of the Church and Kingdom, when tendred " in due Manner to him, he will shew how readily he will concur in all " Ways that shall appear good for the Kingdom."

Sir *Rob. Sawyer.* Turn to the 26th of *February*, 1672.

Clerk reads. *Die Mercurij* 26. *Februarij*, 1672.

" Mr. *Powle* reports from the Committee appointed to consider of an " Answer to return to his Majesty's last Message upon the Debate of the " House, an Answer agreed by the Committee, and drawn up, and put " into Writing, which he read in his Place, and then delivered the same in " at the Clerk's Table, where it was twice read, and is as followeth; *viz.*

" *Most Gracious Sovereign,*

" WE your Majesty's most humble and loyal Subjects, the Knights, " Citizens, and Burgesses in this present Parliament assembled, " do render to your most sacred Majesty our most dutiful Thanks, for " that, to our unspeakable Comfort, your Majesty has been pleased so " often to reiterate unto us those gracious Promises and Assurances of " maintaining the Religion now established, and the Liberties and " Properties of your People; and we do not in the least Measure doubt " but that your Majesty had the same gracious Intention in giving Satis- " faction to your Subjects, by your Answer to our last Petition and Ad- " dress: Yet, upon a serious Consideration thereof, *We find that the said " Answer is not sufficient to clear the Apprehensions that may justly remain in " the Minds of your People, by your Majesty's having claimed a Power to " suspend Penal Statutes in Matters Ecclesiastical, and which your Majesty " does still seem to assert, in the said Answer, to be entrusted in the Crown, " and never questioned in the Reigns of any of your Ancestors:* Wherein we " humbly conceive your Majesty has been very much misinformed; *since " no such Power ever was claimed or exercised by any of your Majesty's " Predecessors; and if it should be admitted, might tend to the interrupting the " free Course of the Laws, and altering the Legislative Power, which hath al- " ways been acknowledged to reside in your two Houses of Parliament.*

" We therefore with an unanimous Consent become again most humble " Suitors unto your Sacred Majesty, *That you would be pleased to give us a " full and satisfactory Answer to our said Petition and Address, and that your " Majesty would take such effectual Order, that the Proceedings in this Matter " may not for the future be drawn into Consequence or Example.*

" The Answer to his Majesty's Message was again read by Paragraphs, " and the several Paragraphs to the last were, upon the Question, severally " agreed.

" The last Paragraph being read, and the Question being put, that the " Word *unanimous* should stand in the Paragraph,

" The House divided.——The *Noes* go out.

" *Tellers.*

" Lord *St. John*, " Mr. *Vaughan*, } for the *Yeas*, 180.

" Sir *Richard Temple*, " Sir *Philip Howard*, } for the *Noes*, 77.

" And so it was resolved in the Affirmative.

" The Question being put to agree to the Paragraph, it was resolved " in the Affirmative.

" Resolved, &c.

" That the whole Address be agreed to, as it was brought in by the " Committee."

Sir *Rob. Sawyer.* Now turn to the Lords Journal, and there your Lordship will see, that the King does communicate this Address to the Lords, and desires their Advice.

Read the 1st of *March*, 1672.

Clerk reads. *Die Sabbati primo die Martii*, 1672.

" His Majesty this Day made a short Speech, as follows.

" *My Lords,*

" You know, that at the Opening of this Session, I spoke here to " your Satisfaction; it has notwithstanding begotten a greater Disquiet in " the House of Commons than I could have imagined.

" I received an Address from them, which I looked not for, and I made " them an Answer that ought to have contented them; but on the con- " trary, they have made me a Reply of such a Nature, that I cannot think " fit to proceed any further in this Matter without your Advice.

" I have commanded the Chancellor to acquaint you with all the " Transactions, wherein you will find both me and yourselves highly " concerned. I am sensible for what relates to me, and I assure you, my " Lords, I am not less so for the Privilege, and the Honour of this House.

" Afterwards the Lord Chancellor read the several Papers and Addresses " of the House of Commons, and his Majesty's Answer thereunto, and " opened his Majesty's Proceedings upon them."

The Address of the House of Commons was read.

Sir *Rob. Sawyer.* Pass over that, you have read it already.

Clerk reads. The next, his Majesty's Answer to the Address of the House of Commons was read as follows,——

Sir *Rob. Sawyer.* That hath been read too.

Clerk reads. Then was read the Reply of the House of Commons to his Majesty's Answer, as followeth,——

Mr. *Finch.* You have read that likewise.

Clerk reads. " Upon this it is ordered, that the Lord Treasurer, Duke " of *Buckingham*, Earl of *Bridgwater*, Earl of *Northampton*, Earl of *Bristol*, " Earl of *Berks*, Earl of *Bolingbroke*, and the Earl of *Anglesey*, do forthwith " withdraw, and consider what humble Thanks is fit to be given to his " Majesty for his great Favour in communicating this Business to this " House, and report the same. And accordingly, the said Lords Commit- " tees did withdraw themselves for that Purpose.

" The Lords being returned, the Duke of *Buckingham* reported what " the Committee had prepared to present to his Majesty by way of Thanks, " which was read as followeth.

" We the Lords Spiritual and Temporal in Parliament assembled, do " unanimously present to your Sacred Majesty our most humble Thanks, " for having been pleased to communicate to us what has passed between " your Majesty and the House of Commons, whereby you have graciously " offered us the Means of shewing our Duty to your Majesty, and of as- " serting the antient just Rights and Privileges of the House of Peers.

" The Question being put, whether to agree with the Committee?

" It was resolved in the Affirmative.

" Ordered, That his Majesty be desired, that his Speech, and the Papers " read this Day, may be entered into the Journal-Book of this House.

" The Lord Treasurer, the Duke of *Buckingham*, and the Lord *Cham- " berlain*, are appointed to attend his Majesty presently, to know his Plea- " sure, what Time and Place this whole House shall wait upon him, to " present the humble Thanks of this House for his great Favour shewed " this Day.

" Ordered, that upon *Monday* Morning next, this House will debate " the whole Matter of his Majesty's Speech, and these Papers; and to " consider the Points of Privilege, and what else may arise thereupon.

" The Lords that were appointed to attend his Majesty, return with " this Answer.

" That his Majesty has appointed this Afternoon at five of the Clock, " for this House to wait upon him in the Banquetting House, at *White- " hall.*

" Ordered, that all the Judges now in Town, shall attend this House " on *Monday* Morning next."

Sir *Rob. Sawyer.* The third of *March*, 1672, is the next.

Clerk reads. *Die Lunæ* 3. *die Martii*, 1672.

" The Lord Chancellor reported, that the whole House on *Saturday* " last waited upon his Majesty at *Whitehall*, and presented the humble " Address of this House, and his Majesty was pleased to return this An- " swer.

" *My Lords,*

" I take this Address of yours very kindly; I will always be very af- " fectionate to you, and expect you should stand by me, as I will always " by you.

" Then the House took into Consideration the whole Matter of " his Majesty's Speech on *Saturday*, and the three Papers which " his Majesty acquainted this House withal, and all the said Papers in " their Order were read; and after a long Debate, the Question being " put,

" Whe-

" Whether this Houſe ſhall in the firſt Place enter into Conſideration " of giving Advice to his Majeſty?—It was reſolved in the Affirmative.

" It is ordered, that this Buſineſs ſhall be taken into Conſideration to- " morrow Morning, at nine of the Clock, the firſt Buſineſs.

" *Ordered*, That the Judges now in Town, ſhall attend to-morrow " morning."

Sir *Rob. Sawyer.* The 4th of *March*, 1672.

Clerk reads. " Next, the Houſe took into Conſideration the Advice to " be given to his Majeſty, concerning the Addreſſes made to him from " the Houſe of Commons.

" The Addreſs of the Houſe of Commons, and his Majeſty's Anſwer " were read, and after a long Debate, the Queſtion being put, Whether " the King's Anſwer to the Houſe of Commons, in referring the Points " now controverted to a Parliamentary Way by Bill, is good and graci- " ous, that being a proper and natural Courſe for Satisfaction therein?" It was reſolved in the Affirmative.

Sir *Robert Sawyer.* The 8th of *March*, 1672.

Clerk reads. " *Die Sabbati* 8. *die Martij*, 1672.

" His Majeſty on his Royal Throne, adorned with his Crown and Re- " gal Ornaments, commanded the Gentleman Uſher of the Black-Rod " to give Notice to the Houſe of Commons, that they attend his Majeſty " preſently.

" The Commons being come with their Speaker, his Majeſty made this " ſhort Speech following.

" *My Lords and Gentlemen,*

" YESTERDAY you preſented me an Addreſs, as the beſt Means for the " Satisfying and Compoſing the Minds of my Subjects, to which I " freely and readily agreed, and I ſhall take Care to ſee it performed ac- " cordingly.

" I hope, on the other Side, you Gentlemen of the Houſe of Commons " will do your Part; for I muſt put you in mind, it is near five Weeks " ſince I demanded a Supply, and what you voted unanimouſly upon it, did " both give Life to my Affairs at Home, and diſhearten mine Enemies " Abroad; but the ſeeming Delay it hath met withal ſince, hath made " them to take new Courage, and they are now preparing for this next " Summer a greater Fleet, as they ſay, than ever they have had yet; ſo " that if the Supply be not very ſpeedily diſpatch'd, it will be altogether " ineffectual, and the Safety, Honour and Intereſt of *England* muſt of " Neceſſity be expoſed. Pray lay this to Heart, and let not the Fears and " Jealouſies of ſome draw an inevitable Ruin upon us all.

" My Lords and Gentlemen,

" *If there be any Scruple remaining with you concerning the Suſpenſion of Pe-* " *nal Laws, I here faithfully promiſe you, that what has been done in that Par-* " *ticular, ſhall not for the future be drawn either into Conſequence or Example.* " And as I daily expect from you a Bill for my Supply, ſo I aſſure you, I " ſhall as willingly paſs any other you ſhall offer me that may tend to the " giving you Satisfaction in all your juſt Grievances.

" Next my Lord Chancellor reported, That both Houſes waited upon " the King Yeſterday, and preſented him with the Addreſs againſt the " Growth of Popery, and his Majeſty hath been pleaſed to return this An- " ſwer.

" *My Lords and Gentlemen,*

" I do heartily agree with you in your Addreſs, and ſhall give ſpeedy " Order to have it put in Execution. There is one Part to which I be- " lieve it is not your Intention that it ſhould extend; for I can ſcarce ſay, " thoſe are in my Pay that are preſently to be employed abroad; but as " for all other Parts, I ſhall take Care it ſhall be done as you deſire."

After which the Lord Chancellor ſaid, he had ſomewhat more to im- part to the Houſe by the King's Command, which was,

That his Majeſty laſt Night, having ſpoken with ſeveral Members of both Houſes, *found ſome Diſſatisfaction remaining concerning* his Anſwer to their Addreſs in the Particular of *the Officers to be employed abroad*, of which Num- ber he had five or ſix that were of the beſt Officers of *France* and *Flanders*, and being his own Subjects, he had been very ſollicitous to get; *but if that bred any Umbrage, the King commanded him to let them know, that he reſolves to give both his Houſes full Satisfaction to their deſires.*

There was another Particular that the Lord Chancellor ſaid he thought fit to ac- quaint them with, which, tho' it was by his Majeſty's Leave, yet it was not by his Command: However, he thought it his Duty to acquaint the Houſe with it (Mr. Secretary *Coventry* intending to acquaint the Houſe of Com- mons with the ſame), *That his Majeſty had the laſt Night, in Purſuance of what he then intended, and declared this Morning, concerning the Suſpenſion of Penal Laws not being for the future drawn either into Conſequence or Example, cauſed the original Declaration under the Great-Seal to be cancelled in his Pre- ſence, whereof himſelf and ſeveral other Lords of the Council were Witneſſes.*

Sir *Robert Sawyer.* Turn to the 10th of *March*, 1672.

Clerk reads. " *Die Lunæ decimo die* Martij, 1672.

" *Ordered*, That what my Lord Chancellor ſaid on *Saturday* laſt, con- " cerning his Majeſty's cauſing the vacating his Indulgence under the " Great-Seal of *England*, ſhall be entred into the Journal-Book of this " Houſe as on *Saturday* laſt."

Sir *Rob. Sawyer.* We ſhall now come to that which paſs'd in the Par- liament in 1685——Read the 9th of *November*, 1685.

[*The Journal of the Lords*, 1685, *put in.*]

Clerk reads. " His Majeſty being on his Royal Throne adorned with " his Regal Robes and Crown (the Lords being in their Robes alſo) com- " manded the Gentleman-Uſher to give Notice to the Houſe of Commons " that they immediately attend his Majeſty; who being come, his Ma- " jeſty made the following Speech.

" *My Lords and Gentlemen,*

" AFTER the Storm that ſeemed to be coming upon us when we part- " ed laſt, I am glad to meet you all again in ſo great Peace and " Quietneſs; God Almighty be praiſed, by whoſe Bleſſing that Rebelli- " on was ſuppreſſed; but when I reflect what an inconſiderable Number " of Men began it, and how long they carried it on without any Oppoſi- " tion, I hope every body will be convinced that the Militia, which hath " hitherto been ſo much depended upon, is not ſufficient for ſuch Occa- " ſions, and that there is nothing but a good Force of well-diſciplin'd " Troops in conſtant Pay that can defend us from ſuch as either at Home " or Abroad are diſpoſed to diſturb us.

" And in Truth, my Concern for the Peace and Quiet of my Subjects, " as well as for the Safety of the Government, make me think it neceſſa- " ry to increaſe the Number to the Proportion I have done: This I ow- " ed as well to the Honour as to the Security of the Nation, whoſe Re- " putation was ſo infinitely expoſed unto all our Neighbours, by having " lain open to this late wretched Attempt, that it is not to be repaired " without keeping ſuch a Body of Men on Foot, that none may ever " have the Thoughts again of finding us ſo miſerably unprovided.

" It is for the Support of this great Charge, which is now more than " Double to what it was, that I aſk your Aſſiſtance, in giving me a Supply " anſwerable to the Expence it brings along with it: And I cannot doubt, " but what I have begun ſo much for the Honour and Defence of the Go- " vernment, will be continued by you with all the Chearfulneſs and Rea- " dineſs that is requiſite for a Work of ſo great Importance.

" *Let no Man take Exceptions that there are ſome Officers in the Army not* " *qualified according to the late Teſts* for their Employments: The Gentle- " men, I muſt tell you, are moſt of them well known to me; and having " formerly ſerved with me on ſeveral Occaſions, and always approved the " Loyalty of their Principles by their Practices, I think them fit now to " be employed under me; and will deal plainly with you, that after ha- " ving had the Benefit of their Services in ſuch Time of Need and Dan- " ger, *I will neither expoſe them to Diſgrace, nor myſelf to the Want of them,* " *if there ſhould be another Rebellion to make them neceſſary to me.*

" I am afraid ſome Men may be ſo wicked to hope and expect that a " Difference may happen between you and me upon this Occaſion; but " when you conſider what Advantages have riſen to us in a few Months " by the good Underſtanding we have hitherto had, what wonderful Ef- " fects it has already produced in the Change of the whole Scene of Af- " fairs abroad, ſo much more to the Honour of the Nation, and the Fi- " gure it ought to make in the World, and that nothing can hinder a fur- " ther Progreſs in this Way, to all our Satisfactions, but Fears and Jea- " louſies amongſt ourſelves; I will not apprehend that ſuch a Misfortune " can befal us as a Diviſion, or but a Coldneſs between me and you; nor " that any thing can ſhake you in your Steadineſs and Loyalty to me, " who, by God's Bleſſing, will ever make you all Returns of Kindneſs and " Protection, with a Reſolution to venture even my own Life in the De- " fence of the true Intereſt of this Kingdom."

Sir *R. Sawyer.* Turn to the Commons Journal the 16th of *Nov.* 1685.

[*The Journal of the Houſe of Commons put in.*]

Clerk reads. " *Die Lunæ* 16. *die* Novemb. 1685.

" *Moſt gracious Sovereign,*

" WE your Majeſty's moſt loyal and faithful Subjects, the Commons " in Parliament aſſembled, do in the firſt Place (as in Duty bound) " return your Majeſty our moſt humble and hearty Thanks for your great " Care and Conduct in the Suppreſſion of the late Rebellion, which threat- " ned the Overthrow of this Government both in Church and State, and " the uttermoſt Extirpation of our Religion by Law eſtabliſhed, which is " moſt dear unto us, and which your Majeſty has been pleaſed to give us " repeated Aſſurances you will always defend and ſupport, which with " all grateful Hearts we ſhall ever acknowledge.

" We further crave leave to acquaint your Majeſty, That we have with " all Duty and Readineſs taken into our Conſideration your Majeſty's " gracious Speech to us; *and as to that Part of it relating to the Officers in the* " *Army not qualified for their Employment according to an Act of Parliament made* " *in the 25th Year of the Reign of your Majeſty's Royal Brother of bleſſed Me-* " *mory, entituled*, An Act for preventing Dangers that may happen by " Popiſh Recuſants, *We do, out of our bounden Duty, humbly repreſent unto* " *your Majeſty, That thoſe Officers cannot by Law be capable of their Employ-* " *ments, and that the incapacities they bring upon themſelves thereby, can no ways* " *be taken off but by Act of Parliament.*

" *Therefore*, out of the great Deference and Duty we owe unto your " Majeſty (who has been graciouſly pleaſed to take Notice of their Servi- " ces to you), *we are preparing a Bill to paſs both Houſes for your Royal Aſ-* " *ſent, to indemnify them from the Penalties they have now incurred; and be-* " *cauſe the Continuance of them in their Employments may be taken to be diſpen-* " *ſing with that Law without Act of Parliament, the Conſequence of which is of* " *the greateſt Concern to the Rights of all your Majeſty's dutiful and loyal Sub-* " *jects, and to all the Laws made for the Security of their Religion:*

" *We therefore*, the Knights, Citizens, and Burgeſſes of your Majeſty's " Houſe of Commons, *do moſt humbly beſeech your Majeſty, that you would be* " *graciouſly pleaſed to give ſuch Directions therein, that no Apprehenſions or Jea-* " *louſies may remain in the Hearts of your Majeſty's good and faithful Subjects.*"

Mr. *Pollexfen.* My Lord, we pray that theſe half Dozen Lines of the Statute 1 *Eliz.* may be read.

[*A Statute-Book was then produced by Mr.* Ince.]

L. C. J. We will have it read out of our own Book.

[*Which was delivered into Court.*]

Clerk reads. " This is 1 *Eliz. Cap.* 2. An Act for Uniformity of Reli- " gion, *&c.* Whereabout is it?—Mr. *Ince.* 'Tis the 15th Paragraph, at theſe Words———And for due Execution, *&c.*

Clerk reads. " And for due Execution hereof, the Queen's moſt Excel- " lent Majeſty, the Lords Spiritual and Temporal in this Parliament aſ- " ſembled, do in God's Name earneſtly require and charge all the Arch- " biſhops and Biſhops, and other Ordinaries, that they ſhall endeavour " themſelves, to the utmoſt of their Knowledge, that the due and true " Execution hereof may be had throughout their Dioceſes and Charges, " as they will anſwer before God for ſuch Evils and Plagues, wherewith " Almighty God may juſtly puniſh his People for neglecting this good " and wholeſome Law."

Mr. Serj. *Levinz.* Now, my Lord, if your Lordſhip pleaſes, the Charge is a Charge for a Libel, and there are two things to be conſidered.

Firſt, Whether the Biſhops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; only we ſay, there has been no direct Proof of that.

In the next Place, ſuppoſing they did deliver this Petition to the King, Whether this be a Libel upon the Matter of it, the Manner of delivering it, or the Perſons that did it?

And with Submiſſion, my Lord, this cannot be a Libel, although it be true that they did ſo deliver it.

Firſt, my Lord, there is a little Diſingenuity offered to my Lords the Biſhops, in only ſetting forth Part, and not the Whole; in only reciting the Body, and not the Prayer.

But, my Lord, with your Lordſhip's Favour, taking the petitionary Part, and adding it to the other, it quite alters the Nature of the Thing; for it may be, a Complaint without ſeeking Redreſs might be an ill Matter; but here taking the Whole together, it appears to be a Complaint of a Grievance, and a Deſire to be eaſed of it.

With your Lordſhip's Favour, the Subjects have a Right to petition the King in all their Grievances, ſo ſay all our Books of Law, and ſo ſays the Statute of the Thirteenth of the late King; they may petition, and come and deliver their Petition under the Number of ten, as heretofore they might have done, ſays the Statute; ſo that they all Times have had a Right ſo to do, and indeed if they had not, it were the moſt lamentable Thing in the World, that Men muſt have Grievances upon them, and yet they not to be admitted to ſeek Relief in an humble Way.

Now, my Lord, this is a Petition ſetting forth a Grievance, and praying his Majeſty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Biſhops, to diſtribute the Declaration, and cauſe it to be read in the Churches: And pray, my Lord, let us conſider what the Effects and Conſequences of that Diſtribution and Reading is: It is to tell the People, that they need not ſubmit to the Act of Uniformity, nor to any Act of Parliament made about Eccleſiaſtical Matters, for they are ſuſpended and diſpenſed with. This my Lords the Biſhops muſt do, if they obey this Order; but your Lordſhip ſees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curſe if they do not look to the Preſervation and Obſervation of that Act: But this Command to diſtribute and read the Declaration, whereby all theſe Laws are diſpenſed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordſhip's Favour, my Lords the Biſhops lying under this Preſſure, the Weight of which was very grievous upon them, they by Petition apply to the King to be eaſed of it, which they might do as Subjects: Beſides, my Lord, they are Peers of the Realm, and were moſt of them ſitting as ſuch in the laſt Parliament, where, as you have heard, it was declared, ſuch a Diſpenſation could not be; and then in what a Caſe ſhould they have been, if they ſhould have diſtributed this Declaration, which was ſo contrary to their own Actings in Parliament? What could they have anſwered for themſelves, had they thus contributed to this Declaration? when they had themſelves before declared, that the King could not diſpenſe.

And that this was no new Thing, for it had been ſo declared in a Parliament before, in two Seſſions of it, in the late King's Reign, within a very little Time one of another; and ſuch a Parliament that were ſo liberal in their Aids to the Crown, that a Man would not think they ſhould go about to deprive the Crown of any of its Rights. It was a Parliament that did do as great Services for the Crown as ever any did, and therefore there is no Reaſon to ſuſpect, that if the King had had ſuch a Power, they would have appeared ſo earneſt againſt it.

But, my Lord, if your Lordſhip pleaſes, theſe are not the Beginnings of this Matter; for we have ſhewed you from the Fifteenth of *Richard* the Second, that there was a Power granted by the Parliament to the King to diſpenſe with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament: And in 1662, 'tis ſaid expreſsly, that they could not be diſpenſed with but by an Act of Parliament. 'Tis ſaid ſo again in 1672. The King was then pleaſed to aſſume to himſelf ſuch a Power as is pretended to in this Declaration; yet, upon Information from his Houſes of Parliament, the King declared himſelf ſatisfied that he had no ſuch Power, cancelled his Declaration, and promiſed that it ſhould not be drawn into Conſequence or Example. And ſo the Commons, by their Proteſtation, ſaid in *Richard* the Second's Time, that it was a Novelty, and ſhould not be drawn into Conſequence or Example.

Now, my Lord, if your Lordſhip pleaſes, if this Matter that was commanded the Biſhops to do, were ſomething which the Law did not allow of, ſurely then my Lords the Biſhops had all the Reaſon in the World to apply themſelves to the King, in an humble Manner to acquaint him why they could not obey his Commands; and to ſeek Relief againſt that which lay ſo heavy upon them.

Truly, my Lord, Mr. *Attorney* was very right in the opening of the Cauſe at firſt, that is, That the Government ought not to receive Affronts, no, nor the inferior Officers are not to be affronted; a Juſtice of the Peace, ſo low a Man in Office, is not. For a Man to ſay to a Juſtice of Peace, when he is executing his Office, that he does not right in it; is a great Crime, and Mr. *Attorney* ſaid right in it: But ſuppoſe a Juſtice of Peace were making of a Warrant to a Conſtable, to do ſomething that was not legal for him to do, if the Conſtable ſhould petition this Juſtice of the Peace, and therein ſet forth, Sir, you are about to command me to do a Thing which, I conceive, is not legal; ſurely that would not be a Crime that he was to be puniſhed for; for he does but ſeek Relief, and ſhew his Grievance in a proper Way, and the Diſtreſs he is under.

My Lord, this is the Biſhops Caſe, with Submiſſion; they are under a Diſtreſs, being commanded to do a Thing which they take not to be legal, and they with all Humility, by Way of Petition, acquaint the King with this Diſtreſs of theirs, and pray him, that he will pleaſe to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law; for an Act of Parliament there is none for ſuch a Power; all that we have of it in Parliamentary Proceedings, is againſt it; and for the Common Law, ſo far as I have read it, I never did meet with any thing of ſuch a Nature, as a Grant or Diſpenſation that pretended to diſpenſe with any one whole Act of Parliament; I have not ſo much as heard of any ſuch Thing mentioned by any of the King's Counſel; but here, my Lord, is a Diſpenſation that diſpenſes with a great many Laws at once, truly, I cannot take upon me to tell how many, there may be forty or above, for aught I know.

Therefore, my Lord, the Biſhops lying under ſuch a Grievance as this, and under ſuch a Preſſure, being ordered to diſtribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Caſe, which ſurely was a very great Preſſure, both in Point of Law and Conſcience too, they lying under ſuch Obligations to the contrary, as they did; with Submiſſion to your Lordſhip, and you Gentlemen of the Jury, If they did deliver this Petition (Publiſhing of it I will not talk of, for there has been no Proof of a Publication, but a delivering of a Petition to his Majeſty in the moſt ſecret and decent Manner that could be imagined), my Lords the Biſhops are not guilty of the Matter charged upon them in this Information. It has been expreſsly proved, that they did not go to diſperſe it abroad, but only delivered it to the King himſelf: And, in ſhort, my Lord, if this ſhould be a Libel, I know not how ſad the Condition of us all would be, if we may not petition when we ſuffer.

Mr. *Finch.* My Lord, I challenge them to ſhew us any one Inſtance of ſuch a Declaration, ſuch a General Diſpenſation of Laws, from the Conqueſt till 1672. The firſt Umbrage of ſuch a Thing is that of *Car.* II. 1662; but your Lordſhip hears the Declaration of the Parliament upon it. Before that, as there was no ſuch thing, ſo your Lordſhip ſees what the Parliament did to enable the King (not to do this Thing, but ſomething like it) in *Richard* the Second's Time, where you ſee the Parliament did give the King a Power to diſpenſe with the Statute of Proviſors for a Time; but at the ſame Time declared that very Grant of their own to be a Novelty, and that it ſhould not be drawn into Conſequence or Example.

My Lord, we ſhall leave it upon this Point; To ſuſpend Law is all one as to abrogate Laws; for ſo long as a Law is ſuſpended, whether the Suſpenſion be Temporary, or whether it be for ever; whether it be at once, or at ſeveral Times, the Law is abrogated to all Intents and Purpoſes: But the Abrogation of Laws is Part of the Legiſlature, that Legiſlative Power is lodged (as I ſaid before, and I could never find it otherwiſe in all our Law) in Kings, Lords, and Commons.

L. C. J. You did open that before, Mr. *Finch.*

Mr. *Finch.* With this, my Lord, that my Lords the Biſhops finding this Order, made upon them to publiſh this Declaration, did what in Duty they were bound to do; and unleſs the Jury do find, that they have done that which is contrary to Law, and to the Duty of their Places, and that this Petition is a Libel, and a ſeditious Libel, with an Intent to ſtir up Sedition among the People (we rely upon it) my Lords the Biſhops can never be found guilty upon this Information.

L. C. J. Have you now done, Gentlemen?

Mr. *Finch.* Yes, my Lord, till they give us further Occaſion: If they have any other Evidence to offer, we muſt anſwer it; if not, this is the Anſwer we give to what they have ſaid.

Mr. Sol. Gen. We make no Bargain with you: If you have done, ſay ſo.

L. C. J. You muſt know, that you are not to have the laſt Word.

Mr. Sol. Gen. You have been three Hours already, if you have any more to ſay, pray conclude.

Mr. *Finch.* If they ſay they have no more Evidence, then we know what we have to do.

L. C. J. If you do ſay any thing more, pray let me adviſe you one Thing; don't ſay the ſame Thing over and over again; for after ſo much Time ſpent, it is irkſome to all Company as well as to me.

Mr. *Finch.* My Lord, we have no more Evidence to offer to your Lordſhip at preſent, unleſs they, by offering new Evidence, give us Occaſion to reply upon them.

L. C. J. Gentlemen, you ſhall have all the legal Favour and Advantage that can be; but, pray let us keep to an orderly decent Method of Proceeding.

Sir *Rob. Sawyer.* Pray, my Lord, favour me a Word before we conclude. My Lord, I do find very few Attempts of this Nature in any King's Reign.

In the Reign of *Henry* the Fourth, there was an Act of Parliament that Foreigners ſhould have a free Trade in the City of *London*, notwithſtanding the Franchiſes of *London:* After the Parliament roſe, the King iſſued out his Proclamation, forbidding the Execution of that Law, and commanding that it ſhould be in Suſpenſe, *uſque ad proximum Parliamentum*; yet that was held to be againſt Law.

L. C. J. Sir *Robert Sawyer*, that which you are to look to, is the Publiſhing of this Paper, and whether it be a Libel or no. And as to the Buſineſs of the Parliament you mentioned, that is not to the Purpoſe.

Sir *Rob. Sawyer.* My Lord, I ſay, I would put it where the Queſtion truly lies; if they don't diſpute the Point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your Lordſhip's Favour to mention one Caſe more, and that is upon the Statute of 31 *Hen.* VIII. *Cap.* 8. which enables the King by Proclamation, in many Caſes, to create the Law; which Statute was repealed by 1 *Edw.* VI. *Cap.* 12. That very Act does recite, that the Law is not to be altered, or reſtrained, but by Act of Parliament; and therefore the Parliament enables the King to do ſo and ſo: But that was ſuch a Power, that the Parliament thought not fit to continue, and it was afterwards repealed; but it ſhews, that at that Time the Parliament was of the ſame Opinion, as to this Matter, that other Parliaments have been ſince.

Mr. *Sommers.* My Lord, I would only mention the great Caſe of *Thomas* and *Sorrel* in the *Exchequer Chamber*, upon the Validity of a Diſpenſation of the Statute of *Edward* the Sixth, touching Selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a ſettled Poſition, that there never could be an Abrogation, or a Suſpenſion (which is a Temporary Abrogation) of an Act of Parliament, but by the Legiſlative Power. That was a Foundation laid down quite through the Debate of that Caſe. Indeed it was diſputed, how far the King might diſpenſe with the Penalties in ſuch a particular Law, as to particular Perſons; but it was agreed by all, that the King had no Power to ſuſpend any Law: And, my Lord, I dare appeal to Mr. *Attorney-General* himſelf, whether, in the Caſe of *Godden* and *Hales*, which was lately in this Court, to make good that Diſpenſation, he did not uſe it as an Argument then, that it could not be expound-

ed into a Suſpenſion: He admitted it not to be in the King's Power to ſuſpend a Law, but that he might give a Diſpenſation to a particular Perſon, was all that he took upon to juſtify him at that Time.

My Lord, by the Law of all civilized Nations, if the Prince does require ſomething to be done, which the Perſon who is to do it takes it to be unlawful, it is not only lawful, but his Duty, *Reſcribere Principi*. This is all that is done here, and that in the moſt humble Manner that could be thought of. Your Lordſhip will pleaſe to obſerve how far it went, how careful they were that they might not any way juſtly offend the King: They did not interpoſe by giving Advice, as Peers: they never ſtirr'd till it was brought Home to themſelves. When they made their Petition, all they beg is, that it may not ſo far be inſiſted upon by his Majeſty, as to oblige them to read it. Whatever they thought of it, they do not take upon them to deſire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the ſaid Petition, that they are perfectly true, we have ſhewn by the Journals of both Houſes. In every one of thoſe Years which are mentioned in the Petition, this Power of Diſpenſation was conſidered in Parliament, and, upon Debate, declared to be contrary to Law: There could be no Deſign to diminiſh the Prerogative, becauſe the King hath no ſuch Prerogative. Seditious, my Lord, it could not be, nor could poſſibly ſtir up Sedition in the Minds of the People, becauſe it was preſented to the King in private and alone: Falſe it could not be, becauſe the Matter of it is true: There could be nothing of Malice, for the Occaſion was not ſought: the Thing was preſſed upon them; and a Libel it could not be, becauſe the Intent was innocent, and they kept within the Bounds ſet by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition when he is aggrieved.

Mr. Att. Gen. Have you done, Gentlemen?

Mr. *Finch.* We have done, Sir.

Mr. Att. Gen. My Lord, I ſhall be a great deal more merciful to your Lordſhip and the Jury than they have been, who have ſpent theſe four Hours in that which I think is not pertinent to the Caſe in queſtion: They have let themſelves into large Diſcourſes, making great Complaints of the Hardſhips put upon my Lords the Biſhops, by the Order of Council to read his Majeſty's Declaration; and putting theſe Words into the Information of Seditious, Malicious, and Scandalous: But, my Lord, I admire that Sir *Robert Sawyer* ſhould make ſuch Reflections and Obſervations upon theſe Words, when I am ſure he will ſcarce find any one of his own exhibiting, that has ſo few of thoſe aggravating Words as this has; and therefore that might have been very well ſpared, eſpecially by him.

In the next Place, my Lord, we are told what great Danger our Religion is in by this Declaration: I hope we have an equal Concern for that with them, or any Perſon elſe whatſoever. But, however, I am ſure our Religion teaches us, not to preſerve our Religion, or our Lives, by any illegal Courſes; and the Queſtion is, whether the Courſe that my Lords the Biſhops have taken to preſerve, as they ſay, our Religion, be legal or not? If it be not legal, then I am ſure our Religion will not juſtify the uſing ſuch a Courſe for never ſo good an End.

My Lord, for the Thing itſelf, I do admire that they, in ſo long a Time and Search that they have made, ſhould not, which I expected, produce more Precedents of ſuch a Paper as this is. They challenge us to ſhew, that ever there was any ſuch Declaration as this: I'll turn the ſame Challenge upon them. Shew me any one Inſtance, that ever ſo many Biſhops did come, under pretence of a Petition, to reflect upon the King out of Parliament.

Sir *Rob Sawyer.* Is that your way of anſwering, Mr. *Attorney?*

Mr. Att. Gen. Pray, Sir *Rob. Sawyer*, you have had your Time, don't interrupt us; ſure we have as much Right to be heard as you.

L. C. J. You have been heard over and over again, Sir *Robert Sawyer*, already.

Sir *Rob. Sawyer.* My Lord, I don't intend to interrupt him.

Mr. Sol. Gen. We cannot make them be quiet, they will ſtill be chopping in upon us.

Mr. Att. Gen. That is an Art that ſome People have always practiſed, not to permit any body to ſpeak but themſelves.

But, my Lord, I ſay, that thoſe few Inſtances that they have produced, are nothing at all to this Matter that is now upon Trial before your Lordſhip and this Jury: Nay, they are Evidences againſt them; for they are only Matters tranſacted in Parliament, which are no more to be applied to this Thing that is in Controverſy now, than any the moſt remote Matter that could be thought of; and though they have gone ſo high in Point of Time, as to the Reign of *Richard* the Second, yet they have nothing between that and the late King's Reign, to which they at laſt have deſcended down.

But, my Lord, I ſay, that all the Talk of *Richard* the Second's Time is wholly out of the Caſe: Truly, I do not doubt but that in *Richard* the Second's Time they may find a great many Inſtances of ſome ſuch ſort of Petitioning as this; for our Hiſtories tell us, that at that Time they had 40,000 Men in Arms againſt the King; and we know the Troubles that were in that King's Reign, and how at length he was depoſed: But certainly there may be found Inſtances more applicable to the Caſe, than thoſe they produce. As for thoſe in King *Charles* the Second's Time, do they any ways juſtify this Petition? For now they are upon juſtifying the Words of their Petition, that this Power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662, do they ſhew any thing more than ſome Debates in the Houſe of Commons, and at laſt an Addreſs, an Anſwer by the King, a Reply of the Commons, and then the Thing dies. Pray, my Lord, is a Tranſaction in the Houſe of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unleſs he that is the principal Part concurs, who is the King: For if you ſpeak of the Court of Parliament in a legal Senſe, you muſt ſpeak of the whole Body, King, Lords, and Commons, and a Declaration in Parliament muſt be by all the whole Body; and that is properly an Act of Parliament.

Why then they come to the Year 1672, where your Lordſhip obſerves, that the late King did inſiſt upon his Right; for after the Diſpute, which was in 1662, his Majeſty did iſſue out another Declaration, and when it comes to be debated in Parliament, he inſiſts upon his Right in Eccleſiaſtical Matters; and though his Declaration was cancelled, yet there is no formal Diſclaimer of the Right.

My Lord, after all, how far theſe Things that they have offered may work as to the Point that they have debated, I ſhall not now meddle with it, nor give your Lordſhip any Trouble about it, becauſe it is not at all pertinent to the Caſe in Queſtion; for I do (after all this Time and Pains that they have ſpent) take Leave to ſay, that theſe Gentlemen have ſpent all this Time to no Purpoſe.

L. C. J. Yes, Mr. *Attorney*, I'll tell you what they offer, which it will lie upon you to give an Anſwer to; They would have you ſhew how this has diſturbed the Government, or diminiſhed the King's Authority.

Mr. Att. Gen. Whether a Libel be true or not, as to the Matter of Fact, was it ever yet in any Court of Juſtice permitted to be made a Queſtion whether it be a Libel or not? or whether a Party be puniſhable for it? And therefore I wonder to hear theſe Gentlemen to ſay, that becauſe it is not a falſe one, therefore 'tis not a Libel. Suppoſe a Man ſhould ſpeak ſcandalous Matter of any Noble Lord here, or of any of my Lords the Biſhops, and a *Scandalum Magnatum* be brought for it, though that which is ſpoken has been true, yet it has been the Opinion of the Courts of Law, that the Party cannot juſtify it, by reaſon it tends to the diſturbing of the Peace, to publiſh any thing that is Matter of Scandal: The only Thing that is to be looked into, is, whether there be any thing in this Paper that is reflecting and ſcandalous, and not whether it be true or no? For if any Man ſhall *Extrà-judicially*, and out of a legal Courſe and Way, reflect upon any of the great Officers of the Kingdom, nay, if it be but upon any inferior Magiſtrate, he is to be puniſhed; and is not to make his Complaint againſt them, unleſs he do it in a proper Way. A Man may petition a Judge; but if any Man in that Petition ſhall come and tell the Judge, Sir, you have given an illegal Judgment againſt me, and I cannot in Honour, Prudence, or Conſcience obey it; I do not doubt, nor will any Man, but that he that ſhould ſo ſay, would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man ſhall come to petition the King, as we all know, the Council-Doors are thronged with Petitioners every Day, and Acceſs to the King by Petition is open to every Body, the moſt inferior Perſon is allowed to petition the King; but becauſe he maydo ſo, may he therefore ſuggeſt what he pleaſes in his Petition? Shall he come and tell the King to his Face, what he does is illegal? I only ſpeak this, becauſe they ſay, in this Caſe his Majeſty gave them Leave to come to him to deliver their Petition; but the King did not underſtand the Nature of their Petition, I ſuppoſe, when he ſaid, he gave them Leave to come to him.

My Lord, for this Matter we have Authority enough in our Books; particularly there is the Caſe of *Wrenham* in my Lord *Hobart*. The Lord Chancellor had made a Decree againſt him, and he petitioned the King that the Cauſe might be re-heard; and in that Petition he complains of Injuſtice done him by my Lord Chancellor, and he put into his Petition many reflecting Things. This, my Lord, was puniſhed as a Libel in the *Star-Chamber*; and in that Book it was ſaid, though it be lawful for the Subject to petition the King againſt any Proceedings by the Judges, yet it muſt not be done with Reflections, nor with Words that turn to the Accuſation or Scandal of any of the King's Magiſtrates or Officers, and the Juſtice of the Decree is not to be queſtioned in the Caſe; for there *Wrenham*, in his Defence, would have opened the Particulars wherein he thought the Decree was unjuſt, but that the Court would not meddle with, nor would allow him to juſtify for ſuch Illegality in the Decree: So in this Caſe, you are not to draw in Queſtion the Truth or Falſhood of the Matter complained againſt; for you muſt take the Way the Law has preſcribed, and proſecute your Right in a legal Courſe, and not by Scandal and Libelling.

My Lord, there is a great deal of Difference between not doing a Thing that is commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with ſcandalous Expreſſions telling him, Sir, you act illegally, you require of us that which is againſt Prudence, Honour, or Conſcience, as my Lords the Biſhops are pleaſed to do in this Petition of theirs. I appeal to any Lord here, that if any Man ſhould give him ſuch Language, either by Word of Mouth or Petition, whether he would bear it, without ſeeking Satisfaction or Reparation by the Law.

My Lord, there is no greater Proof of the Influence of this Matter than the Crowd of this Day, and the Harangue that hath been made: Is it not apparent that the taking this Liberty to canvaſs and diſpute the King's Power and Authority, and to cenſure his Actions, poſſeſſes the People with ſtrange Opinions, and raiſes Diſcontents and Jealouſies, as if the free Courſe of Law were reſtrained, and arbitrary Will and Pleaſure ſet up inſtead of it?

My Lord, there is one Thing that appears upon the Face of the Information, which ſhews this not to be the right Courſe; and if my Lords the Biſhops had given themſelves the Opportunity of reading the Declaration ſeriouſly, they would have found in the End of the Declaration, that the King was reſolved to call a Parliament in *November*. Might not my Lords the Biſhops have acquieſced under their paſſive Obedience till the Parliament met? But nothing would ſerve them but this, and this muſt be done out of Parliament, for which there is no Precedent can be ſhewn, and this muſt be done in ſuch a Manner as your Lordſhip ſees the Conſequence of, by your Trouble of this Day.

There is one Thing I forgot to ſpeak to: They tell us, That it is laid malicious and ſeditious, and there is no Malice or Sedition found; we know very well that that follows the Fact, thoſe Things ariſe by Conſtruction of Law out of the Fact. If the Thing be illegal, the Law ſays it is ſeditious; a Man ſhall not come and ſay, he meant no Harm in it; That was the Caſe of *Williams*; in his treaſonable Book, ſays he,

he, I only intended to warn the King of the Danger approaching, and concludes his Book with *God ſave the King*; but no Man will ſay, that a good Preface at the Beginning, or a good Prayer at the End, ſhould excuſe Treaſon or Sedition in the Body of a Book. If I meet another Man in the Street and kill him, though I never ſaw him in my Life, the Indictment is, that it was *ex Malitia præcogitata*, as it often happens, that a Perſon kills one he never had Acquaintance with before; and *in favorem vitæ*, if the Nature of the Fact be ſo, the Jury are permitted to find according to the Nature of the Caſe; but in Strictneſs of Law there is Malice imply'd: But, my Lord, I think theſe Matters are ſo common, and that is a Point that has been ſo often ſettled, that the Form of the Indictment and Information muſt follow the Nature of the Fact, that I need not inſiſt upon it, if the Act be unlawful, the Law ſupplies the Malice and evil Intentions.

Mr. Sol. Gen. My Lord, and Gentlemen of the Jury, I am of Counſel in this Caſe for the King, and I ſhall take Leave to proceed in this Method: Firſt, I ſhall put the Caſe of my Lords the Biſhops, and then conſider the Arguments that have been uſed in their Defence, and anſwer them as much as is material to be anſwered; and then leave it to your Lordſhip, and the Jury's Conſideration, whether what has been ſaid by theſe Gentlemen, weigh any thing in this Caſe.

Firſt, my Lord, I take it for granted, and I think the Matter is pretty plain by this Time, by my Lord Preſident's Evidence, and their own Confeſſion, that it is not to be diſputed, but that this Paper was preſented by theſe Lords to the King; I think there is no great Difficulty in that Matter at all, but I juſt touch upon it, becauſe I would follow them in their own Method.

Then, my Lord, let us take this Caſe as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us ſee whether that will juſtify the Thing that is done: For the Buſineſs of Petitioning, I would diſtinguiſh and enquire, whether my Lords the Biſhops out of Parliament can preſent any Petition to the King? I do agree, that in Parliament the Lords and Commons may make Addreſſes to the King, and ſignify their Deſires, and make known their Grievances there; and there is no doubt but that is a natural and proper Way of Application: For in the Beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed to draw up Petitions and Addreſſes; but to come and deduce an Argument, that becauſe the Lords in Parliament have done thus (there being ſuch Methods of Proceedings uſual in Parliaments) therefore my Lords the Biſhops may do it out of Parliament, that is certainly a *Non ſequitur*, no ſuch Concluſion can be drawn from thoſe Premiſes.

My Lord, I ſhall endeavour to lay the Fact before you as it really is, and then conſider what is proper for the Court to take Notice of, as legal Proof or Evidence: And I take it, all thoſe Precedents that they have produced of what the Lords did, and what the Commons did in Parliament, is no Warrant for them to ſhelter themſelves under, againſt the Information here in Queſtion.

[*Here Mr. Juſtice* Powell *ſpake aſide to the Lord Chief Juſtice thus.*]

Mr. Juſt. *Powell.* My Lord, this is ſtrange Doctrine! Shall not the Subject have Liberty to petition the King but in Parliament? If that be Law, the Subject is in a miſerable Caſe.

L. C. J. Brother, let him go on, we will hear him out, tho' I approve not of his Poſition.

Mr. Sol. Gen. The Lords may Addreſs to the King in Parliament, and the Commons may do it, but therefore that the Biſhops may do it out of Parliament, does not follow. I heard nothing ſaid that could have given Colour to ſuch a Thing, but the Curſe that has been read in 1 *Eliz.*

But pray, my Lord, let us conſider that Evidence they have given: They have begun with that Record in *Richard* the Second's Time, and what is that? That the King may diſpenſe with the Statute of Proviſors till the Meeting of the next Parliament, and a Proteſtation of the Commons at the End of it, whether that be an Act of Parliament that is Declaratory of the Common Law, or Introductory of a new Law, *non conſtat*; and for aught appears, it might be a Declaratory Act: And if ſo, it is a Proof of the King's Prerogative of Diſpenſing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many ſuch, we very well know; and generally moſt of the Laws in that kind, are in Affirmance of the King's Power; ſo that the Law turns as an Argument for the King's Prerogative, and they have given him that which will turn upon themſelves: So it ſtood in *Richard* the Second's Time; but whether that be an Argument one way or other concluſive, is left to your Lordſhip and the Jury.

Ay, but ſay they, there is no Execution of ſuch a Power till very lately, and the firſt Inſtance that they produce, is that in the Year 1662. But your Lordſhip knows, that before the Reign of *Henry* the Fourth, there was great Juriſdiction aſſumed by the Lords in Original Cauſes: Then comes the Statute of Appeals, 1 *Hen.* IV. which takes Notice, that before that Time the Lords had aſſumed an original Juriſdiction in all Cauſes, and would proceed and determine them in Parliament, and out of Parliament; and it fell out to be ſo great a Grievance, that it was thought neceſſary to make a Law againſt it, that Appeals in Parliament ſhould be aboliſhed and deſtroyed; and then comes that Law in Favour of the Subject of *England*, and that ſettles the Bounds between the King and the Lords in a great Meaſure. Before that time the Lords were grown very powerful, and where there is a Power, there always will be Applications; and what is the Effect of that Statute, 1 *Hen.* IV.? For all that we endeavour is, to make Things as plain as can be, that no further Applications, no Accuſations, no Proceedings in any Caſe whatſoever be before the Lords in Parliament, unleſs it be by Impeachment of the Commons: So that there is the *Salvo*; and the Uſe that I make uſe of it is this; The Commons, by that very Statute, did aboliſh the Power that the Lords had arrogated to themſelves, and ordered, that they ſhould not meddle with any Cauſe, but upon the Impeachment of the Houſe of Commons, and eſtabliſh the Impeachment of the Commons, which is as antient as the Parliament, for that was never yet ſpoken againſt, the Power of the Commons impeaching any Perſon under the Degree of the Prince; and that is the regular legal Way, and ſo the Commons aſſerted their antient Right, and whatſoever the Lords took Notice of, muſt come by Application of the Commons; then Conferences were to paſs between the Houſes; and both Houſes by Addreſs apply to the King. This is the proper Way and Courſe of Parliament, of which my Lord *Coke* ſays, It is known to few, and practiſed by fewer: But it is a venerable, honourable Way: and this is the Courſe that ſhould have been taken by my Lords here, and they ſhould have ſtayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to Addreſs to the King; but they were too quick, too nimble.

And whereas the Statute of *Hen.* IV. ſays, That no Lord whatſoever ſhall intermeddle with any Cauſe, but by the Impeachment of the Commons, they interpoſe and give their Advice before their Time: If there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it, and a Man muſt not be his own Judge, nor his own Carver, nor muſt every Man create Difficulties of his own, nor ſet upon petitioning in this ſort: But there I lay my Foundation, that in ſuch a Matter as this, there ought to have been the Impeachment of the Commons in Parliament before theſe Lords could do any thing; and I know nothing can be ſaid for the Biſhops more than this, that they were under an Anathema, under the Curſe that Sir *Robert Sawyer* ſpeaks of; and for Fear of that, they took this irregular Courſe. But ſome would ſay, Better fall into the Hands of God than of Men: Some would ſay ſo (I ſay) I know not what they would ſay; but theſe being the Methods that theſe Lords ſhould have taken, they ſhould have purſued that Method; the Law ſhould have carved out their Relief and Remedy for them, but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practiſed ſo till 3 *Hen.* VII. where the Grievance was found, that Offences in the Intervals of Parliament could not be well puniſhed, and then comes the Statute that ſets up the Court of *Star-Chamber*, and there Men were often brought to Judgment and Puniſhment for their Sins; and though very great Power was given them, yet they arrogated to themſelves a greater; and therefore that Court is aboliſhed by the Statute of 15 *Car.* I. and what is the Reaſon of aboliſhing that Statute? Becauſe the *Star-Chamber* did not keep within their Bounds that the Law ſet them, but aſſumed to themſelves a larger Power than the Law would allow, and grew very exorbitant and very grievous to the Subject: And another Reaſon was, which the Statute of 15 *Car.* I. founded itſelf upon, becauſe there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary Methods of Juſtice in the Courts of *Weſtminſter-Hall:* So that upon thoſe two Conſiderations, becauſe that Court was exorbitant, and becauſe all the Sins and Miſdemeanors that were puniſhed there, might be puniſhed in an ordinary Way of Law in another Court, and therefore there was no need of that Court, and ſo it was aboliſhed, and the Subject was pretty ſafe. If there was a Crime committed here, a Man might come properly before your Lordſhip into this Court, and have it puniſhed.

My Lord, they find fault with the Words in the Information, and they ſay, Why are theſe Words put in, Seditious, Malicious? If the Matter be libellous and ſeditious, we may lawfully ſay, and it is no more than the Law ſpeaks, it reſults out of the Matter itſelf; and, if it be a libellous Paper, the Law ſays, it is maliciouſly and ſeditiouſly done; and theſe Gentlemen need not quarrel with us, for ſo are all the Informations in all Times paſt, and 'tis no more than the *Vi & Armis*, which is common Form. It may be ſaid, How can the publiſhing of a Libel be ſaid to be done *Vi & Armis?* That is only a ſuppoſition of Law, and they may as well object to the Concluſion of the Information, that it was *contra Coronam & Dignitatem Domini Regis.* If it be an illegal Thing, or a Libel, theſe are neceſſary Conſequences; it is no more than the ſpeaking of the Law upon the Fact.

But, my Lord, let us a little conſider, whether this Matter were warrantable, and whether they had any Warrant to do what was done: They pretend it was done upon this Account, That the King had ſet forth a Declaration, and had ordered them to read it; which to excuſe themſelves from, they make this Petition, or this Libel (call it what you will), and they uſe this as the main Argument, That they ſay the King has done illegally, and they tell the King plainly ſo, that it is illegal; for they take Notice of this Declaration, and ſay, it is illegal, becauſe it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us conſider a little, whether there be any Declaration in Parliament that they have given Evidence of? Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is paſſed by the King, Lords, and Commons? That we know to be the Meaning, and no other. If it paſs the Commons, it is no Declaration in Parliament; nay, if it paſs the Lords and Commons, it is not a Declaration in Parliament, except it alſo paſs the King. All theſe Things are Nullities, and the Law takes no notice of them: We have it in our Books over and over, and no Court ought to ſuffer ſuch Evidence to be given. I know theſe Gentlemen are very well acquainted with the Authority in *Fitzherbert*, *Title*, *Parliament*. There was ſuch an Act that was ſaid to be by the King and the Lords; but becauſe the Commons did not agree to it, it is declared and adjudged to be a Nullity, and the Court would take no notice of it; and how can any Man call that a Declaration in Parliament, which is only a Vote of the Houſe of Commons, or of the Lords? No, ſure, that is one of the Heads I go upon; 'tis not a Declaration in Parliament, unleſs it be by an Act of Parliament.

Indeed, my Lord, there is another ſort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, that is a Declaration in Parliament, and may be fairly ſo called: So likewiſe there is another judicial Declaration, which is, when any thing comes

before the Lords judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment, that is, a Declaration in Parliament: But to say that there is any other Declaration in Parliament, is to say more than these Gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a Word against my Lords the Bishops; but if these learned Gentlemen cannot shew me any such, then they have not said what was true in this Petition, that it was so and so declared in Parliament.

For let us consider what there is in this Case upon this Evidence; for that in 1662, is only a Vote and Opinion of the House of Commons; and I always understood, and have been told so by some of the Gentlemen of the other Side, that such a Vote signifies nothing: But besides, it seems to be a mistaken Address; for they say in it, that the Declaration in 1662, which they address against, was the first Declaration of that Sort to suspend Laws without Act of Parliament; and yet in the same Breath, they do take Notice of the King's Declaration from *Bredah*. But here is a mighty Argument used from the King's Speech, that because he wished he had such a Power, this must be declared in Parliament that he had no such Power. Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the Opening of the Parliament, will you say they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seal's, must be a Declaration in Parliament. Whoever speaks the Sense of the King, if he does not speak that which is Law and Right, is questionable for it, and several have been impeached for so doing; for they look not upon it as the King's Speech, except it be according to Law. Nothing can turn upon the Prince but what is legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the Business in 1672, which, with that in 1662, and that in *Bredah*, shews, that this of the King's is not such a Novelty, but has been done often before. In 1672, the King was in Distress for Money, being entangled in a *Dutch* War, and wanted Supply: He capitulates with his Commons (you have heard it read) and, upon the Commons Address, he asserts it to be his Right, and makes his Complaint to the Lords how the Commons had used him; for when he gives them a fair Answer, they replied, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his present Necessities, and so he was minded to remit a little at the Instigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Bishops fancy or imagine that this is to be imposed upon the King, or upon the Court, for a Declaration in Parliament?

Then last of all, for that in 1685, in this King's Time, what is it? The Commons make an Address to the King, and complain to his Majesty of some of his Officers in his Army, * that might pretend to have a Dispensation, something of that Nature, contrary to the Test-Act; and what is done upon it? They make their Application to the King, and the King answers them, and that is all: But since it is spoken of in the Court, I would take Notice, that it is very well known by the Case of *Godding* and *Hales*, the Judgment of this Court was against the Opinion of that Address.

But what Sort of Evidence is all this? Would you allow all the Addresses of the House of Commons to be Evidence? Give me Leave to say it, my Lord, If you suffer these Votes, these Copies of imperfect Bills, these Addresses, and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament, then what will become of the † Bill of Exclusion? Shall any body mention that Bill of Exclusion to be a Declaration in Paliament? If so, then there is Declaration against Declaration; the Declaration of the Commons against the Declaration of the Lords. I know not what Judgment my Lords the Bishops may be of now, concerning those Things of Votes and Addresses being Declarations in Parliament, but I am sure they have spoken against it heretofore: Nay, I am sure some of them have preached against it.

And if my Lords the Bishops have said, these are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuse the King of having done an illegal Thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declared, then the Consequence is very plain, that they are mistaken sometimes; and I suppose by this Time they believe it.

I dare say it will not be denied me, that the King may, by his Prerogative Royal, issue forth his Proclamation; it is as essential a Prerogative as it is to give his Assent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, that the King may make Constitutions and Orders in Matters Ecclesiastical; and that these he may make out of Parliament, and without the Parliament. If the King may do so, and these are his Prerogatives, then suppose the King does issue forth his Royal Proclamation (and such in Effect is this Declaration under the Great Seal) in a Matter Ecclesiastical, by Virtue of his Prerogative Royal; and this Declaration is read in the Council, and published to the World, and then the Bishops come and tell the King, Sir, You have issued out an illegal Declaration, being contrary to what has been declared in Parliament, when there is no Declaration in Parliament; is not this a diminishing the King's Power and Prerogative in issuing forth his Declaration, and making Constitutions in Matters Ecclesiastical? Is not this a questioning of his Prerogative? Do not my Lords the Bishops in this Case raise a Question between the King and the People? Do not they, as much as in them lies, stir up the People to Sedition? For who shall be Judge between the King and the Bishops? Says the King, I have such a Power and Prerogative to issue forth my Royal Proclamation; and to make Orders and Constitutions in Matters Ecclesiastical, and that without the Parliament, and out of Parliament. Say my Lords the Bishops, You have done so, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do. But this, say the Bishops, is against Law. How shall this be tried? Should not the Bishops have had the Patience to have waited till a Parliament came, when the King himself tells them, he would have a Parliament in *November* at furthest.

L. C. J. Pray, Mr. *Sollicitor*, come close to the Business, for it is very late.

Mr. Sol. Gen. My Lord, I beg your Patience; you have had a great deal of Patience with them, pray spare me a little. I am saying, when the King himself tells them, that he would have a Parliament in *November* at furthest, yet they have no Patience to stay till *November*, but made this Application to him. Is not this raising a Question upon the King's Prerogative in issuing forth Declarations? and upon the King's Power and Right in Matters Ecclesiastical? And when I have said this, that my Lords the Bishops have so done, if they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stirred up Sedition. That they have so done is pretty plain: and for the Consequence of it, I shall appeal to the Case in the 2 *Cro.* 2 *Jac.* I. That is a plain direct Authority for me.

Mr. Just. *Powell.* Nay, Mr. *Sollicitor*, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High Treason.

Mr. Sol. Gen. I carry it not so far, Sir. We have a gracious Prince, and my Lords the Bishops find it so by this Prosecution: But what says that Case? It is printed in three Books, in *Noy* 100, in *Moor* 375, and in Mr. Just. *Cro.* 371. Says that Case, The King may make Orders and Constitutions in Matters Ecclesiastical.

Mr. Just. *Powell.* But how will you apply that Case to this in Hand, Mr. *Sollicitor?*

Mr. Sol. Gen. I will apply it by and bye, Sir; I would first shew what it is: There is a Convention of the greatest Men in the Kingdom.

Mr. Just. *Powell.* Indeed, Mr. *Sollicitor*, you shoot at Rovers.

Mr. Sol. Gen. There is the Lord Privy Seal, the Archbishop of *Canterbury*, and a great many others: It is the greatest Assembly we meet with in our Books, and all of them are of this Opinion, that the King may make Orders and Constitutions in Matters Ecclesiastical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commission Court, and that Statute was not introductory of a new Law, but declaratory of the old Law. The King by his Proclamation declares his Sense to do such and such a Thing; the Court and all Persons there give their Judgment and Opinion upon that Statute, that they looked upon it as the grossest Thing, and the foulest Affront to the Prince, for any Man to bring into Question that Power of the King in Matters Ecclesiastical: 'Tis said to be a very high Crime. Why then, my Lord, what is done in this Case?

Mr. Just. *Powell.* Mr. *Sollicitor*, pray, when you are applying, apply that other Part of the Case too, which says, that it was a heinous Offence to raise a Rumour that the King did intend to grant a general Toleration; and is there any Law since that has changed it, Mr. *Sollicitor?*

Mr. Sol. Gen. In the main, Judgment goes another Way. As for that Part, it was Personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a Thing. They look'd upon it as a Scandal to King *James*, that it was a sowing Sedition, and stirring up People against the Government, and that will come up to our Case: For as some Men do it on the right Side, others do it on the left; and whoever he be that endeavours to bring a Dislike of the King in the People, that is moving Sedition against the Prince; but that is Personal to the Prince himself, and does not go to his Successors.

Now, my Lord, I come to that which is very plain from the Case of *De Libellis Famosis*: If any Person, in any Paper, have slandered the Government, you are not to examine who is in the Right, and who is in the Wrong; whether what they said to be done by the Government be legal or no; but whether the Party have done such an Act. If the King have a Power (for still I keep to that) to issue forth Proclamations to his Subjects, and to make Orders and Constitutions in Matters Ecclesiastical, if he do issue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in Question, I say that is Sedition, and you are not to examine the Legality or Illegality of the Order or Proclamation; and that, I think, is very plain upon that Case, in the fifth *Report*; for it says, If a Person does a Thing that is libellous, you shall not examine the Fact, but the Consequence; whether it tended to stir up Sedition against the Publick, or to stir up Strife between Man and Man, in the Case of private Persons: As if a Man should say of a Judge, he has taken a Bribe, and I will prove it; this is not to be sent in a Letter, but they must take a regular way to prosecute it according to Law.

If it be so in the Case of an inferior Magistrate, what must it be in the Case of a King? To come to the King's Face, and tell him, as they do here, that he has acted illegally, doth certainly sufficiently prove the Matter to be libellous. What do they say to the King? They say and admit, that they have an Averseness for the Declaration, and they tell him from whence that Averseness doth proceed: and yet they insinuate, that they had an Inclination to gratify the King, and embrace the Dissenters, that were as averse to them as could be with due Tenderness, when it should be settled by Parliament and Convocation. Pray what hath their Convocation to do in this Matter?

L. C. J. Mr. *Sollicitor-General*, I will not interrupt you; but, pray come to the Business before us. Shew us that this is in Diminution

* *Here Mr. Justice* Powell *speaking to the Lord Chief Justice.*

Mr. Just. *Powell.* My Lord, this is wide, Mr. *Sollicitor* would impose upon us: let him make it out if he can, that the King has such a Power, and answer the Objections made by the Defendants Counsel.

L. C. J. Brother, impose upon us! He shall not impose upon me; I know not what he may upon you; for my Part, I do not believe one Word he says.

† *Here there was a great Hissing.*

of the King's Prerogative, or that the King ever had such a Prerogative.

Mr. Sol. Gen. I will, my Lord, I am observing what it is they say in this Petition—They tell the King it is inconsistent with their Honour, Prudence and Conscience, to do what he would have them to do: And if these Things be not reflective upon the King and Government, I know no twhat is. This is not in a Way of Judicature: Possibly it might have been allowable to petition the King to put it into a Course of Justice, whereby it may be tried; but alas! there is no such thing in this Matter.

It is not their Desire to put it into any Method for Trial, and so it comes in the Case *De Libel is Famosis*; for by this Way they make themselves Judges, which no Man by Law is permitted to do. My Lords the Bishops have gone out of the Way, and all that they have offered does not come home to justify them; and therefore I take it, under Favour, that we have made it a good Case for the King: We have proved what they have done, and whether this be warrantable or not, is the Question, Gentlemen, that you are to try. The whole Case appears upon Record; the Declaration and Petition are set forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they please in Arrest of Judgment. They have had a great deal of Latitude, and taken a great deal of Liberty; but truly, I apprehend, not so very pertinently. But I hope we have made a very good Case of it for the King, and that you, Gentlemen will give us a Verdict.

Mr. Just. *Holloway.* Mr. *Solliciter*, there is one thing I would fain be satisfied in: You say the Bishops have no Power to petition the King.

Mr. Sol. Gen. Not out of Parliament, Sir.

Mr. Just. *Holloway.* Pray give me Leave, Sir: Then the King having made such a Declaration of a general Toleration and Liberty of Conscience, and afterwards he comes and requires the Bishops to disperse this Declaration; this, they say, out of a Tenderness of Conscience, they cannot do, because they apprehend it contrary to Law, and contrary to their Function: What can they do, if they may not petition?

Mr. Sol. Gen. I'll tell you what they should have done, Sir. If they were commanded to do any Thing against their Consciences, they should have acquiesced till the Meeting of the Parliament.

[*At which some People in the Court hissed.*]

Mr. Att. Gen. This is very fine indeed! I hope the Court and the Jury will take Notice of this Carriage.

Mr. Sol. Gen. My Lord, it is one thing for a Man to submit to his Prince, if the King lay a Command upon him that he cannot obey, and another thing to affront him. If the King will impose upon a Man what he cannot do, he must acquiesce; but shall he come and fly in the Face of his Prince? Shall he say it is illegal? and that the Prince acts against Prudence, Honour or Conscience? and throw Dirt in the King's Face? Sure that is not permitted; that is Libelling with a Witness.

L. C. J. Truly, Mr. *Sollicitor*, I am of Opinion that the Bishops might petition the King; but this is not the right Way of bringing it in. I am not of that Mind that they cannot petition the King out of Parliament; but if they may petition, yet they ought to have done it after another Manner: For if they may in this reflective Way petition the King, I am sure it will make the Government very precarious.

Mr. Just. *Powell.* Mr. *Solliciter*, it would have been too late to stay for a Parliament; for it was to have been distributed by such a Time.

Mr. Sol. Gen. They might have lain under it and submitted.

Mr. Just. *Powell.* No, they would have run into Contempt of the King's Command, without petitioning the King not to insist upon it; and if they had petitioned, and not have shewn the Reason why they could not obey, it would have been looked upon as a Piece of Sullenness, and that they would have been blamed for as much on the other Side.

Mr. Serj. *Baldock.* After so long a Debate, I shall not trouble you long; most Things that are to be said have been said; but I shall only say this in short: I cannot deny, nor shall not, but that the Subject has a Right to petition; but I shall affirm it also, he has a Duty to obey; and that in this Case, the Power of the King to dispense with Penal Laws in Matters Ecclesiastical, is not a Thing that is now in question, nor need we here have had these long Debates on both Sides. It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themselves that they had such a Power, though it may be the Parliament thought they had not; and therefore the Declarations of the one or the other I shall not meddle with in this Case. That Power itself which the King has, as King of this Realm, in Matters rather Ecclesiastical and Criminal, than Matters of Property, may somewhat appear by what has been read before your Lordship: But all this will be nothing in our Case, neither has his Majesty now depended so much upon this Thing: The Declaration has been read to you, and what's there said? The King there says, That for those Reasons he was ready to suspend those Laws; and be they suspended. Yet, my Lord, with this too, that he refers it to, and hopes to make it secure by a Parliament: So that there being this, it has not gone, I think, very far; and it not having been touch'd here, it is not a Point of Duty in my Lords the Bishops, as Bishops, that's here enquired into: Whether they should have meddled with this or no, in this Manner, is the Question. That the King is Supream over all of us, and has a particular Supremacy over them, as Supream Ordinary and Governor, and Moderator of the Church, is very plain; and, my Lord, it is as plain, that in such Things as concern the Church, he has a particular Power to command them. This is not unknown, but very frequent and common in Matters Ecclesiastical, and Matters of State. It is not here a Question now, whether these Declarations which they were commanded to take care of getting read, were legal or not legal? What Prudence there was, what Honour there was, what Conscience there was, for their not reading it, is not the Question neither: But the Point was, the King as Supream Ordinary of his Kingdom, to whom the Bishops are subject, does in Council order; and what is it he orders? Their sending out and distributing his Declaration. They were concerned in no more than that, and it had been a very pretty Thing, a small Thing, to send out the King's Declaration to be read by the Clergy. All the Clergy were ordered to read it, but my Lords the Bishops were only commanded to distribute it. This he might do by Virtue of his Power Ecclesiastical. And if this be not an Evil in itself, and if it be not against the Word of God, certainly Obedience was due from my Lords the Bishops: Active Obedience was due from them to do so much as this. It was no Consent of theirs, it was no Approbation of theirs of what they read, that was required. So that if they had read it, or another had read it by the King's Order, especially if that Order be legal, they are bound to do it by Virtue of their Obedience, and not to examine more.

And, my Lord, in this Petition, here they come to relieve, not only themselves that were present, (for I speak to the Preamble, as others before me have spoke to the Conclusion) but they do involve the rest of the Bishops that were absent; for it is in Behalf of themselves, and their Brethren, and all the Clergy of that Province. Now that all these should join in the Petition, is a Thing very uncertain. How does it construe here, whether they were all together, and consented to it, or how all their Minds could be so fully known, that they would be all involved in the Disobedience to this Order of the King? Then, my Lord, What is the Thing they are greatly averse to? There are two Things required in the Order: The Bishops required to distribute the Declaration to the inferior Clergy, and the inferior Clergy are required to read it. Then their Averseness must be to distribute it, and the others to read it, and so they will be involved; none of whom did ever appear to have joined in it. And then they give Reasons for their Averseness; and it is true, Reasons might have been given, and good Reasons should be given, why they should not do this in Duty to his Majesty; more gentle Reasons, and other kind of Reasons than those that they have given.

L. C. J. Pray, Brother, will you come to the Matter before us?

Mr. Serj. *Baldock.* I have almost done, my Lord.

Mr. Just. *Powell.* The Information is not for Disobedience, Brother, but for a Libel.

Mr. Serj. *Baldock.* No, Sir, it is not for Disobedience, but it is for giving Reasons for the Disobedience in a libellous Petition, and I am going on to that. The Declaration is said in the Petition to be illegal; which is a Charge upon the King, that he has done an illegal Act. They say, they cannot in Honour, Conscience, or Prudence, do it; which is a Reflection upon the Prudence, Justice, and Honour of the King in commanding them to do such a Thing: And this appearing to have been delivered to the King by my Lords the Bishops, Persons to whom certainly we all owe a Deference, as our Spiritual Masters, to believe what Things they say as most likely to be true; and therefore it having an universal Influence upon all the People, I shall leave it here to your Lordship and the Jury, whether they ought not to answer for it.

Mr. Recorder. Will your Lordship please to spare me one Word?

L. C. J. I hope we shall have done by and bye.

Mr. Recorder. If your Lordship don't think fit, I can sit down.

L. C. J. No, no, go on, Sir *Bartholomew Shower*, you'll say I have spoiled a good Speech.

Mr. Recorder. I have no good one to make, my Lord, I have but a very few Words to say.

L. C. J. Well, go on, Sir.

Mr. Recorder. That which I would urge, my Lord, is only this: I think, my Lord, we have proved our Information, and that they have made no Answer to it; for the Answer they have made, is but Argumentative, and taken either from the Persons of the Defendants, as Peers, or from the Form of its being a Petition. As Peers, it is said they have a Right to petition to, and advise the King; but that is no Excuse at all; for if it contains Matter reproachful or scandalous, it is a Libel in them as well as in any other Subject; and they have no more Right to libel the King than his Majesty's other Subjects have; nor will the Privilege of their Peerage exempt them from being punished. And for the Form of this Paper, as being a Petition, there is no more Excuse in that neither: For every Man has as much Right to publish a Book, or Pamphlet, as they had to present their Petition. And as it would be punishable in that Man to write a scandalous Book, so it would be punishable in them to make a scandalous, and a libellous Petition. And the Author of *Julian the Apostate*, because he was a Clergyman, and a learned Man too, had as much Right to publish his Book, as my Lords the Bishops had to deliver this Libel to the King. And if the City of *London* were so severely punished, as to lose their Charter, for petitioning for the Sitting of a Parliament, in which there were reflecting Words, but more soft———

Mr. Just. *Holloway.* Pray, good Mr. *Recorder*, don't compare the Writing of a Book to the Making of a Petition; for it's the Birthright of the Subject to petition.

Mr. Recorder. My Lord, it was as lawful for the City of *London* to petition for the sitting of a Parliament, as it was for my Lords the Bishops to give Reasons for their Disobedience to the King's Command: And if the Matter of the City of *London*'s Petition was reckoned to be libellous, in saying that what the King had done in dissolving the Parliament, was an Obstruction of Justice, what other Construction can be made of my Lords the Bishops saying that the King's Declaration is illegal? And if the Matter of this Petition be of the same Nature with that of the City of *London*, your Lordship can make no other Judgment of it, but that it ought to have the same Condemnation.

Mr. Just. *Powell.* Mr. *Recorder*, you will as soon bring the two Poles together, as make this Petition to agree with *Johnson*'s Book. They are no more alike than the most different Things you can name.

Mr. Serj. *Trinder.* My Lord, I have but one Word.

L. C. J. How unreasonable is this now, that we must have so many Speeches at this Time of Day! But we must hear it; go on, Brother.

Mr. Serj. *Trinder.* My Lord, if your Lordship pleases, that which they seem most to insist upon on the other Side, and which has not been much spoken to on our Side, is, that this Power which his Majesty has exerted, in setting forth his Declaration, was illegal, and their Arguments were hypothetical. If it were illegal, they had not

offended;

offended; and they offered at ſome Arguments to prove it illegal: But as to that, my Lord, we need not go much further than a Caſe which is very well known here, which I crave leave to mention, only becauſe the Jury, perhaps, have not heard of it, and that was the Caſe of Sir *Edward Hales*; where, after a long Debate, it was reſolved, That the King had a Power to diſpenſe with Penal Laws.

But, my Lord, if I ſhould go higher into our Books of Law, that which they ſeem to make ſo ſtrange of, might eaſily be made appear to have been a frequent and conſtant Practice.——

L. C. J. That is quite out of the Caſe, Brother.

Mr. Serj. *Trinder.* I beg your Lordſhip's Favour for a Word or two. If your Lordſhip pleaſe to conſider the Power the King has, as Supream Ordinary, we ſay, he has a Power to diſpenſe with theſe Statutes as he is King, and to give eaſe to his Subjects, as Supream Ordinary of the whole Kingdom, and as having Supream Eccleſiaſtical Authority throughout the Kingdom. There might be abundance of Caſes cited for this, if there were Need: The Statute of *primo Eliz.* doubtleſs is in Force at this Time, and a great many of the Statutes that have been made ſince that Time, have expreſs Savings of the King's Supremacy: So that the King's Power is unqueſtionable. And if they have come and queſtioned this Power in this Manner, by referring themſelves to the Declarations in Parliament, they have done that which of late Days has been always look'd upon as an ill Thing; as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament Declarations, there was never a one, unleſs it be firſt in *Richard* the Second's Time, that can properly be called a Parliament Declaration: So that of the ſeveral Parliaments is a Matter perfectly miſtaken; and if they have miſtaken it, it is in the Nature of falſe News, which is a Crime for which the Law will puniſh them. More things might be added, but I conſider your Lordſhip has had a great deal of Patience already, and much Time has been ſpent, and therefore I ſhall conclude, begging your Lordſhip's Pardon for what I have ſaid.

L. C. J. I do aſſure you, if it had not been a Caſe of great Concern, I would not have heard you ſo long. It is a Caſe of very great Concern to the King and the Government on the one Side, and to my Lords the Biſhops on the other; and I have taken all the Care I can to obſerve what has been ſaid on both Sides. 'Tis not to be expected that I ſhould repeat all the Speeches, or the particular Facts, but I will put the Jury in Mind of the moſt material Things, as well as my Memory will give me Leave; but I have been interrupted by ſo many long and learned Speeches, and by the Length of the Evidence which has been brought in, in a very broken, unmethodical Way, that I ſhall not be able to do ſo well as I would.

Gentlemen, thus ſtands the Caſe: It is an Information againſt my Lords the Biſhops, his Grace my Lord of *Canterbury*, and the other ſix Noble Lords; and it is for Preferring, Compoſing, Making, and Publiſhing, and Cauſing to be Publiſhed, a ſeditious Libel: The Way that the Information goes is ſpecial, and it ſets forth, That the King was graciouſly pleaſed, by his Royal Power and Prerogative, to ſet forth a Declaration of Indulgence for Liberty of Conſcience, in the Third Year of his Reign; and afterwards upon the 27th of *April*, in the fourth Year, he comes and makes another Declaration; and afterwards in *May*, orders in Council that this Declaration ſhould be publiſhed by my Lords the Biſhops in their ſeveral Dioceſes; and after this was done, my Lords the Biſhops come and preſent a Petition to the King, in which were contained the Words which you have ſeen.

Now, Gentlemen, the Proofs that have been upon this; you'll ſee what they are. The two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal. A Queſtion did ariſe, whether the Prints were the ſame with the original Declarations, and that is proved by *Hills*, or his Man, that they were examined, and are the ſame. Then the Order of the Council was produced by Sir *John Nicholas*, and has likewiſe been read to you. Then they come to prove the Fact againſt the Biſhops, and firſt they fall to proving their Hands. They begun indeed a great Way off, and did not come ſo cloſe to it as they afterwards did; for ſome of their Hands they could hardly prove, but my Lord Archbiſhop's Hand was only proved, and ſome others; but there might have been ſome Queſtion about that Proof. But afterwards it came to be proved, that my Lords the Biſhops owned their Hands; which if they had produced at firſt, would have made the Cauſe ſomething ſhorter than it was.

The next Queſtion that did ariſe, was about the Publiſhing of it, whether my Lords the Biſhops had publiſhed it? And it was inſiſted upon, that no body could prove the Delivery of it to the King. It was proved, the King gave it to the Council, and my Lords the Biſhops were called in, and there they acknowledged their Hands; but nobody could prove how it came to the King's Hands. Upon which we were all of Opinion, that it was not ſuch a Publiſhing as was within the Information; and I was going to have directed you to find my Lords the Biſhops Not Guilty: But it happened, that being interrupted in my Directions by an honeſt, worthy, learned Gentleman, the King's Counſel took the Advantage, and informing the Court that they had further Evidence for the King, we ſtaid till my Lord Preſident came, who told us how the Biſhops came to him to his Office at *Whitehall*, and after they had told him their Deſign, that they had a Mind to petition the King, they aſked him the Method they were to take for it, and deſired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Deſire, which he does; and the King giving Leave, he comes down and tells the Biſhops, that they might go and ſpeak with the King when they would; and, ſays he, I have given Direction that the Door ſhall be opened for you as ſoon as you come. With that the two Biſhops went away, and ſaid, they would go and fetch their other Brethren, and they did bring the other Four, but my Lord Archbiſhop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was delivered to the King. He cannot ſpeak to that particular Petition, becauſe he did not read it, and that is all that he knew of the Matter; only it was all done the ſame Day, and that was before my Lords the Biſhops appeared at the Council.

Gentlemen, after this was proved, then the Defendants came to their Part; and theſe Gentlemen that were of Counſel for my Lords, let themſelves into their Defence, by notable learned Speeches, by telling you that my Lords the Biſhops are Guardians to the Church, and great Peers of the Realm, and were bound in Conſcience to take Care of the Church. They have read you a Clauſe of a Statute made in Queen *Elizabeth*'s Time, by which they ſay, my Lords the Biſhops were under a Curſe, if they did not take Care of that Law: Then they ſhew you ſome Records; one in *Richard* the Second's Time, which they could make little of, by reaſon their Witneſs could not read it; but it was in ſhort, a Liberty given to the King, to diſpenſe with the Statute of Proviſors. Then they ſhew you ſome Journals of Parliament; Firſt in the Year 1662, where the King had granted an Indulgence, and the Houſe of Commons declared it was not fit to be done, unleſs it were by Act of Parliament: And they read the King's Speech, wherein he ſays, he wiſh'd he had ſuch a Power, and ſo likewiſe that in 1672, which is all nothing but Addreſſes and Votes, or Orders of the Houſe, or Diſcourſes; either the King's Speech, or the Subjects Addreſſes; but theſe are not Declarations in Parliament. That is inſiſted upon by the Counſel for the King, that what is a Declaration in Parliament is a Law; and that muſt be by the King, Lords, and Commons; the other is but common Diſcourſe, but a Vote of the Houſe, or a Signification of their Opinion, and cannot be ſaid to be a Declaration in Parliament. Then they come to that in in 1685, where the Commons take Notice of ſomething about the Soldiers in the Army that had not taken the Teſt, and make an Addreſs to the King about it: But in all theſe Things (as far as I can obſerve) nothing can be gathered out of them one way or the other; it is nothing but Diſcourſes. Sometimes this Diſpenſing Power has been allowed, as in *Richard* the Second's Time; and ſometimes it has been denied, and the King did once wave it: Mr. *Sollicitor* tells you the Reaſon, There was a Lump of Money in the Caſe; but I wonder indeed to hear it come from him.

Mr. Sol. Gen. My Lord, I never gave my Vote for Money, I aſſure you.

L. C. J. But thoſe Conceſſions which the King ſometimes makes for the Good of the People, and ſometimes for the Profit of the Prince himſelf (but I would not be thought to diſtinguiſh between the Profit of the Prince and the Good of the People, for they are both one; and what is the Profit of the Prince is always for the Good of the People) but I ſay, thoſe Conceſſions muſt not be made Law, for that is reſerved in the King's Breaſt, to do what he pleaſes in it at any Time.

The Truth of it is, the Diſpenſing Power is out of the Caſe, it is only a Word uſed in the Petition; but truly, I will not take upon me to give my Opinion in the Queſtion, to determine that now, for it is not before me: The only Queſtion before me is, and ſo it is before you, Gentlemen, it being a Queſtion of Fact, Whether here be a certain Proof of a Publication? And then the next Queſtion is a Queſtion of Law indeed, Whether if there be a Publication proved, it be a Libel?

Gentlemen, upon the Point of the Publication, I have ſummed up all the Evidence to you; and if you believe that the Petition which theſe Lords preſented to the King was this Petition, truly, I think, that is a Publication ſufficient: If you do not believe it was this Petition, then my Lords the Biſhops are not guilty of what is laid to their Charge in this Information, and conſequently there needs no Enquiry whether they are guilty of a Libel? But if you do believe that this was the Petition they preſented to the King, then we muſt come to enquire whether this be a Libel.

Now, Gentlemen, any thing that ſhall diſturb the Government, or make Miſchief and a Stir among the People, is certainly within the Caſe of *Libellis Famoſis*; and I muſt in ſhort give you my Opinion, I do take it to be a Libel. Now this being a Point of Law, if my Brothers have any thing to ſay to it, I ſuppoſe they will deliver their Opinions.

Mr. Juſt. *Holloway.* Look you, Gentlemen, it is not uſual for any Perſon to ſay any thing after the Chief Juſtice has ſummed up the Evidence; it is not according to the Courſe of the Court: But this is a Caſe of an extraordinary Nature, and there being a Point of Law in it, it is very fit every body ſhould deliver their own Opinion. The Queſtion is, Whether this Petition of my Lords the Biſhops be a Libel, or no. Gentlemen, the End and Intention of every Action is to be conſidered; and likewiſe, in this Caſe, we are to conſider the Nature of the Offence that theſe Noble Perſons are charged with: It is for delivering a Petition, which, according as they have made their Defence, was with all the Humility and Decency that could be: So that if there was no ill Intent, and they were not (as it is not, nor can be pretended they were) Men of evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to petition. If you are ſatisfied there was an ill Intention of Sedition, or the like, you ought to find them guilty: But if there be nothing in the Caſe that you find, but only that they did deliver a Petition to ſave themſelves harmleſs, and to free themſelves from Blame, by ſhewing the Reaſon of their Diſobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conſcience give Obedience to; I cannot think it is a Libel: It is left to you, Gentlemen, but that is my Opinion.

L. C. J. Look you, by the Way, Brother, I did not aſk you to ſum up the Evidence (for that is not uſual) but only to deliver your Opinion, whether it be a Libel or no.

Mr. Juſt. *Powell.* Truly I cannot ſee, for my part, any thing of Sedition, or any other Crime, fixed upon theſe Reverend Fathers, my Lords the Biſhops.

For, Gentlemen, to make it a Libel, it muſt be falſe, it muſt be malicious, and it muſt tend to Sedition. As to the Falſhood, I ſee nothing that is offered by the King's Counſel, nor any thing as to the Malice: It was preſented with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you; you are to conſider of it, and it is worth your Conſideration. They tell his Majeſty, it is not out of Averſeneſs to pay all due Obedience to the King, nor out of a

Want

Want of Tenderneſs to their diſſenting Fellow Subjects, that made them not perform the Command impoſed upon them; but they ſay, that becauſe they do conceive that the Thing that was commanded them was againſt the Law of the Land, therefore they do deſire his Majeſty, that he would be pleaſed to forbear to inſiſt upon it, that they ſhould perform that Command which they take to be illegal.

Gentlemen, we muſt conſider what they ſay is illegal in it. They ſay, they apprehend the Declaration is illegal, becauſe it is founded upon a diſpenſing Power, which the King claims, to diſpenſe with the Laws concerning Eccleſiaſtical Affairs.

Gentlemen, I do not remember, in any Caſe in all our Law (and I have taken ſome Pains upon this Occaſion to look into it), that there is any ſuch Power in the King, and the Caſe muſt turn upon that. In ſhort, if there be no ſuch Diſpenſing Power in the King, then that can be no Libel which they preſented to the King, which ſays, that the Declaration, being founded upon ſuch a pretended Power, is illegal.

Now, Gentlemen, this is a Diſpenſation with a Witneſs; it amounts to an Abrogation and utter Repeal of all the Laws; for I can ſee no Difference, nor know of none in Law, between the King's Power to diſpenſe with Laws Eccleſiaſtical, and his Power to diſpenſe with any other Laws whatſoever. If this be once allowed of, there will need no Parliament; all the Legiſlature will be in the King, which is a Thing worth conſidering, and I leave the Iſſue to God and your Conſciences.

Mr. Juſt. *Allybone.* The ſingle Queſtion that falls to my Share is, to give my Senſe of this Petition, whether it ſhall be in Conſtruction of Law a Libel in itſelf, or a Thing of great Innocence. I ſhall endeavour to expreſs myſelf in as plain Terms as I can, and as much as I can, by way of Propoſition.

And I think, in the firſt Place, That no Man can take upon him to write againſt the actual Exerciſe of the Government, unleſs he have Leave from the Government, but he makes a Libel, be what he writes true or falſe; for if once we come to impeach the Government by Way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the firſt Place, that the Government ought not to be impeached by Argument, nor the Exerciſe of the Government ſhaken by Argument; becauſe I can manage a Propoſition in itſelf doubtful, with a better Pen than another Man: This, ſay I, is a Libel.

Then I lay down this for my next Poſition, That no private Man can take upon him to write concerning the Government at all; for what has any private Man to do with the Government, if his Intereſt be not ſtirred or ſhaken? It is the Buſineſs of the Government to manage Matters relating to the Government; it is the Buſineſs of Subjects to mind only their own Properties and Intereſts. If my Intereſt is not ſhaken, what have I to do with Matters of Government? They are not within my Sphere. If the Government does come to ſhake my particular Intereſt, the Law is open for me, and I may redreſs myſelf by Law: And when I intrude myſelf into other Men's Buſineſs, that does not concern my particular Intereſt, I am a Libeller.

Theſe I have laid down for plain Propoſitions; now then let us conſider further, whether if I will take upon me to contradict the Government, any ſpecious Pretence that I ſhall put upon it ſhall dreſs it up in another Form, and give it a better Denomination? And truly I think 'tis the worſe, becauſe it comes in a better Dreſs; for by that Rule, every Man that can put on a good Vizard, may be as miſchievous as he will to the Government at the Bottom: So that whether it be in the Form of a Supplication, or an Addreſs, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, it is a Libel.

Then, Gentlemen, conſider what this Petition is: This is a Petition relating to ſomething that was done and ordered by the Government. Whether the Reaſons of the Petition be true or falſe, I will not examine that now, nor will I examine the Prerogative of the Crown, but only take Notice that this relates to the Act of the Government. The Government here has publiſhed ſuch a Declaration as this that has been read, relating to Matters of Government; and ſhall, or ought any Body to come and impeach that as illegal, which the Government has done? Truly, in my Opinion, I do not think he ſhould, or ought; for by this Rule may every Act of the Government be ſhaken, when there is not a Parliament *de facto* ſitting.

I do agree, that every Man may petition the Government, or the King, in a Matter that relates to his own private Intereſt; but to meddle with a Matter that relates to the Government, I do not think my Lords the Biſhops had any Power to do more than any others. When the Houſe of Lords and Commons are in Being, it is a proper Way of applying to the King: There is all the Openneſs in the World for thoſe that are Members of Parliament, to make what Addreſſes they pleaſe to the Government, for the rectifying, altering, regulating, and making of what Law they pleaſe; but if every private Man ſhall come and interpoſe his Advice, I think there can never be an End of adviſing the Government. I think there was an Inſtance of this in King *James*'s Time, when by a ſolemn Reſolution it was declared to be High Miſdemeanor, and next to Treaſon, to petition the King to put the Penal Laws in Execution.

Mr. Juſt. *Powell.* Brother, I think you do miſtake a little.

Mr. Juſt. *Allybone.* Brother, I dare rely upon it that I am right: It was ſo declared by all the Judges.

Mr. Sol. Gen. The Puritans preſented a Petition to that Purpoſe, and in it they ſaid, if it would not be granted, they would come with a great Number.

Mr. Juſt. *Powell.* Ay, there it is.

Mr. Juſt. *Allybone.* I tell you, Mr. *Sollicitor*, the Reſolution of the Judges is, That ſuch a Petition is next Door to Treaſon, a very great Miſdemeanor.

Mr. Juſt. *Powell.* They accompanying it with Threats of the People's being diſcontented.

Mr. Juſt. *Allybone.* As I remember, it is in the ſecond Part of the *Folio* 35, or 37, where the Reſolution of the Judges is, That to frame a Petition to the King, to put the Penal Laws in Execution, is next to Treaſon; for, ſay they, no Man ought to intermeddle with Matters of Government without Leave of the Government.

Mr. S. *Pemberton.* That was a Petition againſt the Penal Laws.

Mr. Juſt. *Allybone.* Then I am quite miſtaken indeed, in caſe it be ſo.

Mr. Serj. *Trinder.* That is not material at all which it was.

Mr. *Pollexfen.* They there threatened, unleſs their Requeſt were granted, ſeveral Thouſands of the King's Subjects would be diſcontented.

Mr. Juſt. *Powell.* That is the Reaſon of that Judgment, I affirm it.

Mr. Juſt. *Allybone.* But then I'll tell you, Brother, again, what is ſaid in that Caſe that you hinted at, and put Mr. *Sollicitor* in mind of: For any Man to raiſe a Report that the King will, or will not permit a Toleration, if either of theſe be diſagreeable to the People, whether he may, or may not, it is againſt Law; for we are not to meaſure Things from any Truth they have in themſelves, but from that Aſpect they have upon the Government; for there may be every Tittle of a Libel true, and yet it may be a Libel ſtill: So that I put no great Streſs upon that Objection, that the Matter of it is not falſe; and, for Sedition, it is that which every Libel carries in itſelf; and as every Treſpaſs implies *Vi & Armis*, ſo every Libel againſt the Government carries in it Sedition, and all the other Epithets that are in the Information. This is my Opinion as to Law in general.

I will not debate the Prerogatives of the King, nor the Privileges of the Subject; but as this Fact is, I think theſe venerable Biſhops did meddle with that which did not belong to them: They took upon them, in a petitionary Way, to contradict the actual Exerciſe of the Government, which I think no particular Perſons, or ſingular Body may do.

L. C. J. Gentlemen of the Jury, Have you a Mind to drink before you go?

Jury. Yes, my Lord, if you pleaſe.

[*Wine was ſent for for the Jury.*]

Jurymen. My Lord, we humbly pray that your Lordſhip will be pleaſed to let us have the Papers that have been given in Evidence.

L. C. J. What is that you would have, Sir?

Mr. Sol. Gen. He deſires this, my Lord, That you would be pleaſed to direct that the Jury may have the Uſe of ſuch Writings and Statute-Books, as may be neceſſary for them to make uſe of.

L. C. J. The Statute-Book they ſhall have.

Mr. Sol. Gen. But they can have no Papers but what are under Seal.

Mr. Serj. *Levinz.* They may have them by Conſent, and they may have a Copy of the Information.

L. C. J. They ſhall have a Copy of the Information, and the Declarations under Seal.

Mr. *Pollexfen.* If they have thoſe, and the Libel, as they call it, they will not need a Copy of the Information.

Mr. Att. Gen. My Lord, we pray that your Lordſhip would be pleaſed to aſcertain what it is they ſhall have.

L. C. J. They ſhall have a Copy of the Information, the Libel, and the Declarations under the Great-Seal.

Mr. Sol. Gen. But not the Votes of the Houſe of Commons, nor the Journals, for they are not Evidence.

L. C. J. No, I don't intend they ſhall.

Sir *Rob. Sawyer.* My Lord, we pray they may have the whole Petition.

Mr. Juſt. *Holloway.* That is, with the Direction and Prayer, you mean.

Mr. Att. Gen. Yes, with all our Hearts.

[*Then the Court aroſe, and the Jury went together to conſider of their Verdict, and ſtayed together all Night, without Fire or Candle.*]

On Saturday *the* 30*th Day of* June, Anno Dom. 1688, *about Ten o'Clock in the Morning, the Archbiſhop, and the reſt of the Biſhops, came again into the Court, and immediately after the Jury were brought to the Bar.*

Sir *Sam. Aſtry.* Crier, Take the Appearance of the Jury. Sir *Roger Langley.*

Sir *Roger Langley.* Here.

Crier. Vous avez, &c.

[*And ſo all the reſt were called, and anſwered.*]

[*Then Proclamation for Silence was made.*]

Sir *Sam. Aſtry.* Gentlemen, Are you agreed on your Verdict?

Jury. Yes.

Sir *Sam. Aſtry.* Who ſhall ſay for you?

Jury. Foreman.

Sir *Sam. Aſtry.* Do you find the Defendants, or any of them, Guilty of the Miſdemeanor whereof they are impeached, or Not Guilty?

Foreman. Not Guilty.

Sir *Sam. Aſtry.* Then hearken to your Verdict, as the Court hath recorded it——You ſay, the Defendants, and every of them, are not Guilty of the Miſdemeanor whereof they are impeached; and ſo you ſay all?

Jury. Yes.

[*At which there were ſeveral great Shouts in Court, and throughout the Hall.*]

Mr. Sollicitor-General *taking Notice of ſome Perſons in Court that ſhouted, moved very earneſtly that they might be committed: Whereupon a Gentleman of* Gray's-Inn *was laid hold on, but was ſoon after diſcharged. And after the Shouting was over, the Lord Chief Juſtice reproving the Gentleman, ſaid:*

L. C. J. I am as glad as you can be that my Lords the Biſhops are acquitted; but your Manner of rejoicing here in Court is indecent, you might rejoice in your Chamber, or elſewhere, and not here.

[*Then ſpeaking to Mr. Atterney, he ſaid:*]

Have you any thing more to ſay to my Lords the Biſhops, Mr. *Atterney?*

Mr. Att. Gen. No, my Lord.

[*Then the Court aroſe, and the Biſhops went away.*]

CXLV. *Proceedings in the Houſe of Commons againſt* Roger Palmer, *Earl of* Caſtlemaine, for *High Treaſon, in going Embaſſador to* Rome, October 26, 1689. 1 W. & M.

THE Attorney General [Sir *George Treby*] being, on *Saturday* the 26th of *October*, 1689, inform'd, that the Earl of *Caſtlemaine*, Sir *Edward Hales*, and other Priſoners of the *Tower*, were brought by their *Habeas Corpus* to the Hall to be bail'd, deſir'd to know the Pleaſure of the Houſe in that Affair; who order'd that they ſhould preſently be ſent for to their Bar, which was done accordingly; only the ſaid Earl was not there; for he remain'd ſtill in the *Tower*, having, it ſeems, made uſe of no ſuch Writ: However, the Houſe directed the Governor to bring him up (as he did) the *Monday* following; and then the Speaker [*Henry Powle*] ſaid to this Effect.

MY Lord, the Houſe having underſtood that you went Embaſſador to Rome, *and alſo took your Place at the Board as a Privy-Councellor, without taking the Oaths (which are great Crimes, and againſt Law) they have ſent for you to know what you have to ſay for yourſelf.*

His Lordship's ANSWER.

IT cannot, Mr. Speaker, but put me into more than an ordinary Confuſion, when I find myſelf in this Place as a Criminal; eſpecially, ſeeing, through the whole Courſe of my Life, the Glory and Welfare of *England* has been my chief Aim and Endeavour. You are pleas'd, Sir, to lay ſo great a Charge upon me, that, without Shuffling or Impertinence, I might aſk Time to conſider it; yet ſince I well know how much you value your Time, and ſince Time alſo may make what I ſay ſuſpected more of Artifice than Candor, I ſhall now, without further Delay, let you and this great Aſſembly ſee (where ſo many of Birth and Quality are met) how far I am from deſerving either Cenſure or Reproach. But, Mr. Speaker, before I go further, I muſt humbly beg theſe few Favours of you. *Firſt*, That you would pardon all Tautologies, or Want of Method, as beginning perchance in the Middle, and ending again where I ſhould have begun. *Secondly*, That you would not take any Advantage at my Anſwers, for I ſhall be ingenuous to the utmoſt, and heſitate at nothing you ſhall aſk. And *Laſtly*, if, through Inadvertency or Haſte, I ſhould ſay what might ſhock you, that you would not ſtand upon the Rigour of the Words, but upon the Sincerity and Clearneſs of my Explanation.

Be pleas'd then to know, Sir, I was ſo far from ſeeking this Employment, that I did not ſo much as dream it was deſign'd me; and when I knew it, I us'd my utmoſt Endeavour to avoid it. My Ignorance of the King's Intentions appears by this, that, in the Year I went to *Rome*, returning out of the Country, according to my uſual Cuſtom after *Michaelmas*, I found a Proteſtant, a Perſon of Note, at my Houſe, who told me, that before I ſpoke with any Man, he was to bring me to my Lord *Sunderland*, and from thence I was to go to his Majeſty; nor would he ſcarce afford me Time to put myſelf in a tolerable Order to attend them. My Lord *Sunderland* ſoon hinted to me what the King's Intentions were; and when I recurr'd to his Friendſhip, I had this Anſwer, or Words to this Purpoſe: That if Subjects ſhould refuſe their King's Service in every thing that was troubleſome or *contre Cœur*, all Kings would be in an ill Condition; that my Requeſt was beyond his Power, and that he believed I ſhould find his Majeſty very poſitive; and ſo I did, Mr. Speaker, I'll aſſure you. Nay, to ſatisfy you yet more fully of my Backwardneſs to this Journey; can you think, Sir, that I, that had been at *Rome* more than once; that had ſeen the Grandeur of ſo many *Roman* Embaſſies, and knew they exceeded in Splendor and Expence three Times thoſe to any crown'd Head whatſoever, ſhould not be extraordinarily concern'd at an Employment which had for its Subſiſtence, as the Lords of the Treaſury well know, no other Eſtabliſhment than to *Spain* or *France*, which (being 100 *l.* a Week) amounts only to 5200 *l. per Annum?*

Having thus, Sir, ſhew'd you how little fond I was of the Thing, let me now, with Submiſſion, aſk you, what could I otherwiſe do in my Circumſtances? For firſt, I call all that's Good to witneſs, I never heard of Law againſt it, nor know of any to this very Day: And yet, on the other Side, I was not only commanded by the King, but knew his Royal and Legal Power of commanding the Service of his Subjects, and moſt particularly in Embaſſies, as appears by many old Examples; nay, by a fatal one in this very Century; I mean the Caſe of *Overbury*, to which no body here, I'm ſure, is a Stranger. In the next Place, Sir, what did I go to *Rome* for? Why only with a Letter; with a Compliment from a profeſs'd and open Catholick King to his Holineſs, as all Princes of that Communion do in the Beginning of their reſpective Reigns. Beſides, Mr. Speaker, as I know no Law that forbad my Obedience, ſo I muſt needs ſay (and this without cramping, or putting any Bounds to the Legiſlative Power), that no ſuch Law can be made: For, Sir, the Pope is a very conſiderable Temporal Prince, whoſe Territories border on two great Seas, the *Mediterranean* and *Adriatic:* If then our Merchants ſhould be by Storm, or other Neceſſities, driven into his Ports; if *Engliſhmen* ſhould be ſurpriz'd by any *Roman* Party as they travel in a neighbouring Country, ſhall our Government (not to mention a Hundred other greater Accidents) want Power to ſend a Meſſenger to ranſom and compound for them? What Law therefore was there ever yet fram'd, or can be enacted (let the Commerce or Intercourſe between Nations be never ſo much broken and prohibited) but that a Commander in Chief, a General, and much more a King, may beat a Parley, diſpatch a Trumpet; nay, ſend and receive Letters as often as Occaſion does require?

Now, Mr. Speaker, for Religion, I neither had any Commiſſion concerning it, nor tranſacted with his Holineſs about it; and as no body ever did, or could lay any thing of that Nature to my Charge, ſo for ſome Confirmation of it, I will appeal even to the *Aqua-Freſca* Houſes of *Rome*, and to all the Proteſtant Gentlemen of our Nation there during my Embaſſy; for though what I tell you, Sir, be a Wonder, yet the honourable Perſons who have reſided in thoſe Parts, know it to be true, that for a Diſh of Chocolate, or a Diſh of Lemonade, one may know the Meaſures and Particulars of an Embaſſy in that City, as well as we do what paſſes within theſe Walls at our Coffee-Houſes. I am ſure my under Servants have often ſmil'd at the Grimaces and Myſteries which my Secretaries us'd in the Beginning to make before my Audiences; for they have told them, within few Hours after my Return, almoſt Word by Word what had paſs'd. Give me alſo Leave, Sir, to add one Truth more, which will aſſure you that I had no dangerous Intrigue in Hand; and this is, that notwithſtanding his Holineſs never had the leaſt Imagination or Thought, but that I was as real and ſincere a Catholick as any Man living; and the ſame Thing alſo I can ſay of all the Cardinals; and in fine, of the whole Court in general; yet none of them (and every *Engliſhman* in Town knew it) but look'd upon me as one that if any Immunity of the Crown were in Queſtion, or any Temporal Concern of the Kingdom touch'd, would ſtand as much in the Gap, and be in as Diametrical an Oppoſition as any Perſon of the Reform'd Religion whatſoever.

You ſee then, Sir, both how and why I went; nor have I done any thing certainly to merit any Man's Unkindneſs or Ill will; nay, to lay yet further before you the Hardſhip I am under, I ſhall ſtate you a Caſe not fetch'd out of old forgotten Records, or tranſacted in an Age diſtant from ours, but of a Man attainted in this very Houſe, in the Memory of ſeveral now ſitting, and even whilſt I myſelf had the Honour to be a Member of it. The Caſe, Mr. Speaker, is *Axtel*'s the Regicide; one whoſe Crime, I dare ſay, my greateſt Enemies think I abhor in the higheſt Manner; nor do I mention the Thing in Favour of the Criminal, but in Honour of his grave and worthy Judges. *Axtel*, you know, Mr. Speaker, was indicted for the Murder of *Charles* the Firſt; and to ſhew that he maliciouſly contrived and abetted it, the King's Counſel urged his commanding in the Hall at the Trial; his placing the Centinels all about; and in ſhort, his performing there the whole Office of Captain of the Guard. The Priſoner anſwer'd, (but pray, Mr. Speaker, let me beg Pardon, if the Interval of almoſt thirty Years has made me forget his Words, I am ſure the Senſe of them I have not. I ſay, Sir, the Priſoner anſwer'd) *My Lords, I am under great Oppreſſion, I am hardly dealt with. Has* Charles *the Second been ſo gracious as to paſs over the ordinary Tranſgreſſions of his ſtrayed Subjects, and to look upon the Obedience of Soldiers to their then Superiors, as if the Authority had been more legal; And ſhall I now die (who was under Military Diſcipline) for that which I muſt have preſently died for, had I not done it*; to wit, *had I not drawn up my Regiment, kept the Poſt order'd me, and perform'd the other Duties, the Concourſe being great and troubleſome?* Upon this the Judge reply'd; I confeſs (conſidering the King's merciful Reſolutions) that your Argument is ſtrong; it has great Weight in it: but, Mr. *Axtel*, did you no more? Did you only perform the Duty of a commanded Soldier? Who was it, I pray, that animated the Rabble? Who beat the Soldiers for not crying Juſtice? Who encourag'd ſpitting in the King's Face? And who barbarouſly revil'd and threaten'd a Noble Lady, that in the Tranſport of her Zeal (when ſhe ſaw her Sovereign abus'd, when ſhe heard ſuch Blaſphemy againſt him, and all this father'd upon the Nation) made a Noiſe or Stir in the Court? Theſe Things therefore, Sir, being prov'd againſt him, he was convicted, condemn'd, and ſo paid a Debt to Juſtice, and to the ſacred Aſhes of that great and juſt Man.

Now, Mr. Speaker, to Application: And firſt (after a little Glance on the Tenderneſs of theſe Judges, when any Neceſſity could be pretended) let me, with your Pardon, aſk you, Shall I ſuffer as a Tranſgreſſor of the Law, were there any, when I muſt have ſuffer'd by the Law, had I refuſ'd his Majeſty's Orders and Commands? But, Sir, if you demand, Did I no more than carry a Letter, or go with a Ceremonious *How d'ye* from the King? I muſt anſwer, Yes, and a great deal more too. For my Houſe was an *Aſylum*, a Place of Refuge to all diſtreſs'd or oppreſs'd Fellow Subjects. If Seamen mutiny'd, or had any Conteſt with their Captains, here a Reconciliation was made, and here they return'd to their Obedience; if the Captains themſelves, fraughted for the *Camera*, were delay'd their Money, or miſus'd by under Officers, they quickly found Redreſs; and often, by my Intereſt, receiv'd more than they themſelves expected. And if the Queſtion happened about Quantity, or how Goods were condition'd at Delivery, the Verdict I am ſure went ſtill on their Side. Nor was my Care confin'd to *Rome* only, but reach'd to all the Factories of *Italy:* For the Conſuls themſelves, nay every private Perſon, found both an eaſy Acceſs to me, and an indefatigable Zeal in their Concerns: So that the Merchants in general that had to do in thoſe Parts, were far from being behind-hand in their thankful Acknowledgments. Nay, one of the greateſt Companies in our Nation, I mean that for *Turkey*, not only return'd me their Thanks very heartily by Letter, but did it again by Word of Mouth after my Arrival Home.

I am ſure, Mr. Speaker, if the Employment I ſubmitted to were a Fault, I have already not a little ſuffer'd for it; for I never put Bounds (as our Travellers, as well as my own Officers, fully know) to any Expence that could be imagin'd for the Dignity of the Nation. And give me Leave to tell you alſo, Sir, that though the Name of *Rome* may be harſh and ungrateful to your Ears, yet what I did was with a good Intention, and like a true and faithful *Engliſhman*. For had I been ſent with a Character to *Conſtantinople*, where they are *Mahometans*, or to *China*, where *Gentiles*, the *Eclat* or Figure which I ſhould have endeavour'd to make, would never be conſider'd by you as an Honour to their Religion, but our Country; therefore

ſince it is a Diſparagement and great Reflection to a Kingdom, to come below, or ſhort of others, in any thing that is Publick and of Note, I cannot but have at leaſt faint Hopes, that you will have ſome Conſideration, ſome Opinion of an Embaſſador, though at *Rome*, that kept up, to his Power, the Glory and Grandeur of *England*.

But, Mr. Speaker, not to trouble you longer on the preſent Head, I'll end when I have told you this: That if I have done amiſs in obeying the King's Commands, no Conſul that has purſued a Pirate or *Banditti* at *Rome*; no private Factor that has follow'd a Debtor thither, nor in ſhort, any Man that has written ſo much as one Letter to that City, though it were to demand his own, but is a far greater Criminal than myſelf, and lies at the Mercy of every Enemy, to be indicted as a Contemner and Breaker of the Laws.

Your ſecond Charge, Mr. Speaker, is my being a Privy Counſellor, without taking the appointed Oaths; to which I can truly ſay, they were never offer'd me; though I muſt alſo confeſs (for I ſhall be ſincere with you in every thing) that I believe, nay, that I am certain, I ſhould not have taken them, had they been offer'd: So that I do acknowledge the Omiſſion a Fault againſt Law——

[*Here the Speaker, thinking that his Lordſhip had made an End, deſir'd him to withdraw; but being inform'd that he had not done, he excus'd the Interruption, and then his Lordſhip went on.*]

I ſay, Mr. Speaker, I acknowledge this a Fault againſt Law, were there not ſeveral Things of Weight that will, I hope, juſtify me to you: And here, Sir, I muſt entreat you not to conceive that I come now to defend, or make good the Diſpenſing Power, but only to ſhew you how neceſſarily I was driven and induc'd to the aforeſaid Omiſſion; for, Mr. Speaker, in Controverſies and Diſputes, what can one do, but recur either to his own Obſervation, or to the Opinion of learned Men, and Profeſſors in the Science?

In the firſt Place, then, when I began to examine myſelf as to the Right the King claim'd and aſſerted, I ſaw *Non obſtantes* deem'd Legal, which ſignified to me Diſpenſing: I found the Power of continuing Sheriffs own'd for many Ages to be undoubted Law, and yet I knew there was a poſitive Statute againſt it: Nay, I remember'd an Act which I myſelf had in this Houſe given my Vote and Conſent to, *viz.* That about *the Regulation of Carriages and Waggons*; or if this be not the exact Title, I muſt beſeech you to pardon my treacherous Memory, and 'tis, I'll aſſure you, the only Traitor I ever yet ſuccoured or ſupported. I ſay, Sir, I remember'd this very Act, almoſt as ſoon as made, ſuſpended by *Charles* the Second's Proclamation, without the leaſt Queſtion or Murmur; and I took ſo much Notice of it, as to make even then this Reflection (and I do aſſure you upon my Honour 'tis true) That though our Monarchs could not impoſe and abrogate Laws of themſelves, yet they had the Power, I perceiv'd, to reſpite them.

In the ſecond Place, Mr. Speaker, if I went abroad; I mean, if I conſulted the Thoughts and Sentiments of others, I found not only great Men of the Long Robe, but the Judges alſo themſelves, declaring in Favour of this Prerogative; and the Interpretation or Determination of theſe Sages was always told me to be Law, till a new Law, or a new Explanation ſhould be enacted. What would you then, Mr. Speaker, have me to do, who was call'd to the Board by the King; who could not in Conſcience take the Oaths, and yet had no Reaſon to think I committed, in not taking them, a Crime, ſeeing the Law was thus openly expounded and publiſh'd?

And now, Sir, ſince I have been forc'd to mention my Religion, which I know is a legal fault, and of a high Nature, I muſt not forget alſo to celebrate the Goodneſs of this Houſe, which has pardon'd the Fault, even in the ſolemneſt Way, and by the ſolemneſt Act that ever paſs'd ſince *Magna Charta*; to wit, *The great Act of Oblivion.* Give me Leave, Sir, to ſay this too, for I can juſtly do it, that being ſo faithful and ſo true an *Engliſhman*, I neither ſhould, nor could, I am ſure, have ever, during my Life, offended my Country, but in my Religion. Pardon alſo, I humbly beſeech you, this Digreſſion, and together with it the Incoherences and Disjunctions all along; nor ſhall I any ways doubt of it, ſince you ſo well know how uneaſy and troubleſome a long Diſcourſe (which my Circumſtances have now required) muſt needs be to one that wants both Eloquence and Practice.

But, Mr. Speaker, to return where I left, and ſo conclude: How, Sir, I pray you (and I demand it again of you with great Reſpect), could I think the Omiſſion, as I ſaid, of the Oaths a Breach of the Laws, when our Guides, who had the Laws in their keeping, told us explicitely, and without Reſerve, the ſaid Oaths were not neceſſary? Shall I then ſuffer, that had neither Buoy nor Mark to direct me? Certainly no; for if there were a Fault, 'tis not I muſt ſuffer, but the Judges, and thoſe knowing and deputed Pilots, that hung out, it ſeems, the wrong Flag and Signal. I have, Sir, but one Word more to trouble you with, and this I ſpeak in Behalf of all here; nay, in Behalf of all the People of *England*; That if I now undergo your Severity, and that ſingle Perſons (notwithſtanding the Determinations and Judgments of our Courts of Juſtice) muſt be ſtill reſponſible, no Man can be ſafe, no Man can be at reſt; for no body that acts can know (as Accidents will often happen) whether he be innocent or guilty.

Mr. Speaker, I am in great Diſorder for impoſing thus on your Patience; and eſpecially ſeeing I muſt yet preſume to do it, one thing more occurring to me, as I hope, for your further Service, or at leaſt Satisfaction: And 'tis to let you know how I came to be a Priſoner, and why I continued ſo thus long. Be pleas'd then, Sir, that I tell you, that as ſoon as the King firſt left *Whitehall*, I thought it Decency to go out of Town; and therefore three Days after I took Coach for *Montgomeryſhire*, where of late I us'd to reſide in the Summer Time. On the Borders of that County, at a ſmall Corporation called *Oſweſtree*, I was firſt ſtopp'd by the Rabble, and afterwards detain'd with a ſtrong Guard, at my Inn by the Mayor; though no body, as he confeſs'd, made any Oath againſt me; and though he had no Orders, as he ſaid, from *London* for it; nay, after a Month's Reſtraint, he denied me my Liberty upon Bail, notwithſtanding two neighbouring Lawyers, whom I ſent for, aſſur'd him he could not juſtify the Refuſal by Law. I do not, Sir, complain of any Incivility, either from him or the People; for I was us'd with Reſpect enough; but I judge it extremely fit to let you ſee how the Liberty of a Subject was wilfully invaded by a Magiſtrate, and how little conſcious I was of any Guilt, ſince inſtead of Flying, I went to a Place where I was known by every body.

In fine, Mr. Speaker, after a Confinement of ſeven Weeks, I was ſent for up, and brought hither by a Party of Horſe; nor was I ever queſtion'd or examin'd by any body, but kept (upon the Suſpenſion of the *Habeas Corpus* Act) at a Meſſenger's Houſe for three Months; and when the ſaid Act was ſuſpended the laſt Time, I was committed by my Lord *Shrewſbury*'s Warrant to the *Tower*, *for Suſpicion of Treaſonable Practices.*

His Lordſhip having ended, retir'd with the Serjeant at Arms to his Room, where after a little Stay, he was ſent for in again; and then the Speaker told him, that ſince he ſaid his Journey to *Rome* was with a Letter of Civility to a Temporal Prince, and not about Religion, the Houſe (to be more fully ſatisfied of it) deſir'd to ſee his Inſtructions. To which his Lordſhip thus anſwer'd.

I hope, Mr. Speaker, though I ſhall readily acknowledge my own natural Weakneſs, you will not yet think me ſo imprudent, as that, in a Time of ſuch Troubles and Diſtraction, I would keep Papers by me; and eſpecially about *Rome*, to render myſelf liable to every malicious Man's Extravagancy and Comment. This therefore cauſed me, Sir, the Night before I went towards *Wales*, to burn all Papers that came to hand; and truly, ſome among the reſt that I have ſince wanted: Nay, this I can alſo juſtly aver, that I remember not now one Word of thoſe Inſtructions, having, I'm confident, never read them twice; only this I remember, they were Things of Courſe, Words of Form, and needed no further Conſideration. Yet, Sir, that you may plainly ſee my Sincerity, and how far I am from any Deſign of illuding and deceiving you, I ſhall ſhew you how you may retrieve them, when I tell you, that Mr. *Monſtevens* brought them me, and that they were drawn, as I take it, by Mr. *Bridgman*; for I'm certain they came from my Lord *Sunderland*'s office.

But, my Lord, reply'd the Speaker, had you no private Inſtructions? None, anſwered his Lordſhip. What, none at all? ſaid Mr. Speaker again. None, I'll aſſure, Sir, reply'd his Lordſhip; unleſs the King's Orders, to demand a Cardinal's Cap for Prince *Reinaldo* of *Eſte*, were private Inſtructions; nor do I certainly know, whether thoſe Commands were in my foremention'd Inſtructions, or whether I had them by Word of Mouth.

My Lord, ſaid the Speaker, I have another Queſtion to aſk you; to wit, Who of the Long Robe told you of the King's Power of Diſpenſing, and that there was no Neceſſity of taking the Oaths?

I am, Sir, anſwer'd his Lordſhip, infinitely troubled, if I have, through Want of Care, or by any improper Expreſſion, given you Occaſion to miſapprehend me; for I never aſk'd any particular Man of that Profeſſion about this Affair: But my Meaning was (and I hope my Words are not contrary to my Meaning) that the ſaid Power was manifeſtly and openly declar'd to be Law by Judges and Lawyers; ſo that I deem'd it no Soleciſm in Diſcourſe to mention it as if they themſelves had told it me.

Then his Lordſhip retir'd again, and after a long Debate, the Houſe paſs'd this Order, *That the Earl of* Caſtlemaine *ſtand committed to the Tower by a Warrant from this Houſe of High Treaſon, for endeavouring to reconcile this Kingdom to the See of* Rome, *and for other High Crimes and Miſdemeanors.*

As ſoon as his Lordſhip was inform'd of this Vote, he entreated a Member to let the Houſe know, that he had a Word or two more to trouble them with: So that being brought in, the Speaker told him, that the Houſe having Notice he had ſomething further to acquaint them with, was very willing to hear him.

Mr. Speaker, replied his Lordſhip, I have nothing more to ſay about the former Matters; but underſtanding your Pleaſure, I thought it my Duty to let you know, how the Cuſtom of the Tower, as to Priſoners, is changed; for in Courſe heretofore, unleſs there were a particular Order of State to the contrary, they had the Liberty of the Tower; that is to ſay, they could walk about at ſeaſonable Hours with a Warder: But now as ſoon as one is committed, though it be upon bare Suſpicion, as I was, he is confin'd to his Lodging, and hindred from the Conſolation of ſeeing his Friends, till, after much Sollicitation and Trouble, Leave be granted by the Secretaries. Therefore, Sir, being morally certain that I ſhall be confin'd again as ſoon as I return, I humbly deſire the Favour of this Freedom; it being alſo what I hitherto enjoy'd after I had been reſtrain'd for ſome Days in the aforemention'd Manner.

This ſaid, his Lordſhip went out, and then was carried to the Tower, where he was made a cloſe Priſoner, as he foretold; though what he moved, occaſioned the following Vote.

That a Committee be appointed to bring in a Bill for the better regulating the Impriſonment of the Subjects of this Kingdom, and to ſettle the Fees of Gaolers. And it was likewiſe referr'd to them to examine into the Abuſes of Gaolers towards their Priſoners which have heretofore been committed.

On *Wedneſday* the 5th of the following *February*, his Lordſhip mov'd for his *Habeas Corpus*, and was brought by the Lord *Lucas*, the preſent Governor of the Tower, to *Weſtminſter*, on the 10th. So that appearing at the *King's-Bench*, his Commitments were read, and Mr. *Atterney* having nothing to object againſt his being bail'd, the Court awarded it upon the Security of Thirty Thouſand Pounds; that is to ſay, a Recognizance of Ten Thouſand for himſelf, and Five Thouſand a-piece from his four Sureties, which were, *John* Earl of *Bath*, *Thomas* Earl of *Aileſbury*, *Thomas* Earl of *Suſſex*, *Charles* Lord *Lanſdown*.

CXLVI. *Proceedings againſt* John Price, *Eſq; late Receiver of* Ireland, *and One Hundred other Proteſtants, at the Aſſizes at* Wicklow *in* Ireland, *for* High Treaſon, *againſt King* James, March, 6, 1688-9, 1 W. & M.

JOHN PRICE, Eſq; Receiver-General to the late King *Charles* the Second, having his Country Houſe in the County of *Wicklow*, at *Ballinderry*, twenty-four Miles from *Dublin*, did for the Safety and Preſervation of himſelf and Family, obtain the Lord Deputy *Tyrconnel*'s Protection, as many more of the *Engliſh* Proteſtants living in the Country at the ſame Time did: For the late King *James* going away for *France*, and the Adminiſtration of the Government being put into the Hands of his preſent Majeſty, the Lord *Tyrconnel* gave out Commiſſions, for the raiſing a mighty Army, to any *Iriſh* Papiſt that would take one, and promiſe to Subſiſt, Maintain and Cloath their Men for three Months. Moſt of theſe new Officers are Men of mean Fortunes, not capable of ſubſiſting themſelves; their Men live altogether on the *Engliſh*, coming into their Houſes in the Day-time, and commanding from them their Meat and Drink; and often robbing them in the Night, ſtealing away their Cattle. Likewiſe the Prieſts of every Pariſh obliged all their People to furniſh themſelves with Half-pikes and Skeans, and bring them to Maſs, or not preſume to appear there, on the Penalty of Excommunication, or a ſevere Puniſhment; which cauſed all the *Iriſh* to arm themſelves with the aforeſaid Weapons; upon which, Robberies, Thefts and other Outrages were daily committed upon the *Engliſh*; particularly in the County of *Wicklow*, where ſome Hundreds were got together for that Purpoſe, who gave themſelves the Name of *Merry Boys*, and had very great Succeſs in their thieviſh Attempts upon their Proteſtant Neighbours, that lived hitherto ſecure in their own Houſes. It is obſervable, what great Power the *Romiſh* Clergy have over the *Iriſh*; they arm themſelves immediately at their Command, and yet to this Day have neither kept them from robbing of the *Engliſh*, nor reſtored them any thing taken away; which if they had been ſo minded, they might have done by the ſame Power. Several of Mr. *Price*'s Neighbours repaired to *Ballinderry*, to preſerve themſelves and Goods; but an Order coming out ſoon after, for the taking away all Horſes and Arms from the Proteſtants, both in City and Country, Colonel *Toole*, with a Party of his Men, came to demand what Arms and Horſes they had at *Ballinderry*. Mr. *Price* and the reſt having the aforementioned Protection, refuſed to obey their Orders; and Complaint coming to *Dublin*, Colonel *Sheldon* was immediately ſent away with a Body of Horſe and Foot againſt *Ballinderry*. Mr. *Price*, upon his Approach, preſently ſubmitted to him, who thereupon was made Priſoner, and all the reſt of the Men that were in the Houſe: But the Priſon of *Wicklow* not being able to contain them, ſeveral of them were admitted to Bail, until the following Aſſizes, which began *March* the fifth laſt paſt, and ended the eighth.

The Priſoners Names that were Indicted for this Treaſon, are as followeth; viz.

1 *John Price*, Eſq;
2 *Thomas King*, Gent.
3 *Richard Weſtland*, Gent.
4 *William Heatly*, Gent.
5 *James Lewis*, Gent.
6 *Edward Lewis*, Gent.
7 *John Burroughs*, Gent.
James Bacon, Gent.
8 *Thomas Burroughs*, Gent.
9 *Thomas Fetherſton*, Gent.
10 *Joſeph Chrichley*, Gent.
11 *John Chrichley*, Gent.
12 *George Chrichley*, Gent.
13 *Thomas Williams*.
14 *James Williams*.
15 *J. Clark*.
16 *Caleb Chad*.
17 *Tho. Bathe*.
18 *Joſeph Thompſon*.
19 *Thomas Halſon*.
20 *Henry Gibſon*.
21 *John Cock*.
22 *Thomas Peterſon*.
23 *John Ward*.
24 *William Turner*.
25 *Thomas Evans*.
26 *George Atkinſon*.
27 *William Evans*.
28 *Robert Milton*.
29 *William Neale*.
30 *William Hill*.
31 *George Dizy*.
32 *Stephen Robinſon*.
33 *Charles Evans*.
34 *Stephen Rathborn*, Jun.
35 *Edward Philips*.
36 *John Colſon*.
37 *William Wotton*.
38 *Henry Delauny*,
39 *Thomas Croſs*.
40 *John Kempſon*.
41 *Thomas Watts*.
42 *Edward Acton*.
43 *Robert Anthony*.
44 *Alexander Hill*.
45 *James Hill*.
46 *John Hill*.
47 *William Savill*.
48 *Edward Jones*.
49 *Peter Bland*.
50 *John Tomlinſon*.
51 *Daniel Boyce*.
52 *John Jones*.
53 *Thomas Howard*.
54 *Charles Fryers*.
55 *Andrew Wills*.
56 *Michael Wills*.
57 *Samuel Allen*.
58 *Triſtrum Tineſley*.
59 *Robert Aſhton*.
60 *Henry Tuton*.
61 *Ralph Kidd*.
62 *William Fulham*.
63 *William Erwin*.
64 *Agabus Kidd*.
65 *Thomas Page*.
66 *Thomas Allen*.
67 *Rice Bibbin*.
68 *Nicholas Scot*.
69 *Arnold Sutton*.
70 *Alexander Rathborne*.
71 *William Halſon*.
72 *Iſaac Colliſon*.
73 *Jacob Colliſon*.
74 *William Edwards*.
75 *Peter Barton*.
76 *John James*.
77 *John Jordan*.
78 *Randle Burroughs*.
79 *Richard Price*.
80 *Agabus Bardin*.
81 *Henry Moody*.
82 *John Burroughs*.
83 *Edward Hughs*.
84 *Edward Jenſon*.
85 *James Uton*.
86 *William Ryder*.
87 *Luke Young*.
88 *William Shorter*.
89 *John Goodwin*.
90 *James Tench*.
91 *Thomas Manning*.
92 *Edward Bowers*.
93 *Thomas Adams*.
94 *Robert Dunbar*.
95 *Thomas Colſton*.
96 *John Bromwell*.
97 *Samuel Price*.
98 *James Tipping*.
99 *Edward Graham*.
100 *Chriſtopher Cooper*.
101 *William Philips*.

Grand-Jurors Names. Papiſts mark'd †.

† *Chriſtopher Wickham*.
William Hoy.
Cromwell Wingfield.
† *William Wolverſton*.
† *Redmond Birne*.
† *Thomas Birne*.
† *William Birne*.
† *Peirce Cromwell*.
† *Toby Walſh*.
† *Toby Tooll*.
Edward Burly.
Leonard Froſt.
Peter Ayris.
William Baker.
† *Lawrence Tooll*.
Richard Lamb.
† *Daniel Birne*.

After they were ſworn, as uſual, they received the following Charge.

Lord Chief Juſtice Keating's *Charge to the Grand-Jury.*

GENTLEMEN,

YOU that are here returned to ſerve on this Grand-Jury, you have this Day before your Eyes the greateſt Example, and the firmeſt Proof that a Gracious Prince can give to the beſt of Subjects. You ſee his ſacred Majeſty King *James* the Second (whom God long preſerve for the Protection of all his good and dutiful Subjects, and for the Subverſion and Irradicating of all thoſe who deſire the Subverſion of his Government, either by Foreign Force or inbred Conſpiracy) notwithſtanding the great Troubles on his own Perſon, yet he is not wanting in his Care towards you; and I dare boldly ſay, it is the laſt thing he will relinquiſh in the World, after that of his own Conſcience, the Care of his Subjects. He hath ſent us with his Commiſſion to enquire into all the Maladies, Diſeaſes, and Sores within your County. He has likewiſe given us Command to apply the healing Balſam of the Laws, which will preſerve the Subject moſt entirely in his Property. And I am ſorry I muſt tell you, that there was never more need than now at this Time. I am glad at the ſame Time that I can ſay, that the Miſchiefs fallen on a great part of this Kingdom, and on no part more than on this County, that is under the very Eye of the Government: I ſay, I am glad it can be ſaid to have ariſen, for the moſt part, from a Rabble of People, who have arm'd themſelves without any Direction from the Government, and that with unuſual Weapons: I mean Half-pikes and Skeans. Gentlemen, I muſt tell you plainly, it looks rather like a Deſign to maſſacre and murder, than any thing elſe. They do not belong to the Army, neither are they any part of them; but theſe are the Vultures, Kites, and Ravens that follow Armies. Soldiers that have travelled Abroad ſay, Such are not known among them there. I am told, and very well aſſured, that in Foreign Parts, where theſe Vultures and Birds of Prey are, it is hard for an Army to lie conceal'd, without being diſcovered by them; for it is Odds, but that a Horſe or a Man drops where ſuch Multitudes of People are. I am very far from laying this to the Charge of any that are under Command; though it is poſſible that ſome of them, under the Scarcity they are in, do give their Aſſiſtance, ot at leaſt Encouragement to theſe Robbers; otherwiſe it could not be, that whole Flocks and Droves of Cattle are daily driven away, and yet no one taken or brought to Juſtice for it. The King is not wanting in his Care; he has given Directions to have the Laws put in Execution, that Criminals may be brought in and puniſhed; and the Government has iſſued out many Proclamations, but they are grown too familiar with them. You are to enquire into this Matter, in order to bring to Puniſhment, not only them that ſteal, but thoſe that receive. I am told that open Markets are ſet up in this County of *Wicklow*: A fat Bullock for Five Shillings, and a fat Sheep for One Shilling; but it will fall heavy on them at laſt. Divines ſay, that God Almighty oftentimes makes the very Crime to become their own Puniſhment; and I verily fear, that a few Months will produce a Famine

a Famine in this Kingdom; and what ſucceeds a Peſtilence, and the worſt of all Peſtilences; for it is obſerved, that a ſtarved Rot is the worſt of all Rots; it falls out unhappily at this Seaſon of the Year, when the Cattle are breeding. Under the old Law the *Jews* were not to ſeeth the Kid in the Mother's Milk; but theſe unmerciful Wretches go further than that, ſparing none, but deſtroying old and young, the Encreaſe and all. Pray, Gentlemen, conſider of it, and ſearch the Houſes of ſuch as you have Reaſon to ſuſpect, that had not any thing to eat the laſt Year; go now into their Houſes, and you will find whole Carcaſes of Beef powdered up: Nay, it may be for Want of Salt, or Money to buy it, lying rotting and ſtinking. Let me tell you, it will be your Turn next, when they have robbed and ſpoiled your Proteſtant Neighbours, they will come to you, unleſs you take ſpeedy Care to prevent it. The King has done what he can, and the Government what they can; in vain is the Law made, if Offenders be not brought to condign Puniſhment. You all know there has been an Invaſion in *England* of a foreign Enemy, the Prince of *Orange*; and the ſame is deſigned on this Kingdom: The Effects of an Invaſion is not known. Defence is natural to all Kingdons and States, and therefore the Government has given Directions for raiſing a greater Army than at any Time heretofore this Kingdom ever had. It was ſo among the *Romans* of old, who in Caſes of Neceſſity did Things clear contrary to the Fundamentals of their Laws. The ſame Neceſſity has put the King on arming here (in *France* they have their Ban, and with us our Commiſſion of Array, from ſixteen to ſixty) but without any Deſign that the Effects ſhould be to arm the Country with Half-pikes and Skeans. They are fit indeed for the Mountains, or to guard a Man's Houſe, but not to go abroad with at Noonday. Gentlemen, you that are Juſtices of the Peace, and Officers of the Army, wherever you meet, you ought to ſecure them, and bind them over, and know by what Authority they dare go abroad with ſuch Weapons. I need not ſay any thing to you in Defence of the King, for it is really and truly your own Defence; and therefore I ſhall proceed into the Heads which are prepared for your Enquiry at this Time. Our Buſineſs here is like to be very great, and our Time ſhort, and therefore I ſhall not trouble you with ſmall Things; we have greater Matters than Aſſaults and Batteries. We have Deſolations and Ruins to ſhew you, and ſet before you, and without your Care, we are like to fall into the Gulph of Miſery and Deſtruction. The firſt Thing we have to ſpeak of, is High Treaſon; we have no Petty Treaſon in *Ireland*. If any ſhall go about to conſpire the Death of the King, Queen, or the Heir apparent, the Prince of *Wales*, this is High Treaſon at all Times; it was ſo at Common Law: You muſt look to this betimes, for if a Blow be once ſtruck here, there can be no retrieving of it. If any one ſhould go about to ſeize the King's Perſon, or impriſon him, this, Gentlemen, is Treaſon; there is but few Steps between the Priſons and Graves of Kings; and by all the Obſervation that I can make out of the *Engliſh*, or *Scots*, or *Iriſh* Hiſtories, where we have had Swarms of murdered Kings, that if once they went into Priſon, they ſeldom ever eſcaped with Life. Our King has more Reaſon than any to dread this: His Father, who now is a glorious Martyr in Heaven, loſt his Life; and the King himſelf, ever ſince his Eſcape with Colonel *Bamfield* from St. *James*'s, has had ſo many miraculous Deliverances both by Sea and Land, that we may conclude he is Preſerved for ſome mighty Matter, or elſe Providence had not done ſuch great Things for him; and 'tis but of late that he himſelf is eſcaped out of Priſon. I am told by Authority, and am ordered to tell you, that he is expected in this Kingdom very ſuddenly, as a Place of Refuge. He is the firſt King, I think, ſince *Henry* the Second, except *Richard*, that has been in this Kingdom. It is a great Misfortune that he ſhould be forced to it, but we may look upon it as a great Bleſſing, that he ſhould think himſelf ſafe here, when he cannot be ſo elſewhere.

To ſeize any of the King's Forts or Ships of War (for theſe are the Bulwarks to defend him againſt his Enemies) this, Gentlemen, is Treaſon.

To hold Correſpondence with any of the King's Enemies, or with Rebels in actual Rebellion, or to join with them, this is Treaſon. You are not to enquire into the Puniſhment, but to open a Door for the petty Jury to enquire into the Matter of Fact, and what the Law is, ſhall by the Bleſſing of God be our Buſineſs.

To counterfeit the King's Coin, or clip it (and you have very little of it at this Time, therefore you had need be careful in a more eſpecial Manner) this likewiſe is Treaſon.

It is likewiſe Treaſon to counterfeit the Great Seal of the King; for 'tis the common Security, by which many hold their Eſtates, and ſome their Lives.

The killing of the Chancellor, or any of the Judges or Juſtices of *Oyer* and *Terminer*, in the doing of their Duty, this likewiſe is Treaſon, not ſo much with Regard to their Perſons, as to the Work that they are about, they repreſenting the King's Perſon. The meaneſt Conſtable there, if he has his Staff in his Hand, and doing his Duty, he that kills him ſhall die the ſame Death as he that kills the beſt Man that wears Scarlet on the Bench. Gentlemen, I muſt tell you another Crime, and it looks like a Mark of Infamy on this Kingdom. Murder in *England* is but Felony, but it has been thought fit to make it Treaſon here, and they that go out on burning and robbing Houſes, they ſhall be indicted for Treaſon: And Clerk of the Crown, if any ſuch be here, now take Notice, I will have them indicted for Treaſon.

The next Thing for your Enquiry is Felony, that concerning the Life of the Subject. For a Man to kill his Fellow Subject, this is Felony, if he does it on a ſudden Paſſion and Heat: A Man may kill another in his own Defence; for 'tis natural for a man to kill rather than be killed, and therefore he ſhall have his Pardon of Courſe. But, Gentlemen, this is not in Favour of Duels, and only where there is a great Provocation: There is not a Man but has ſome Paſſion about him; but for a Man to go to Bed with Malice, and ariſe the next Morning and go meet his Fellow Subject and kill him, this is Murder and Treaſon in *Ireland*.

The next Thing that is Felony, is concerning the Goods of the Subject; for an honeſt labouring Man, that by the Induſtry of his whole Life has gotten a fair Stock for the Maintenance of himſelf, his Wife and Children, at Night goes to Bed, and next Morning when he ariſes, he is a Beggar, and wants Bread. Gentlemen, it would make every honeſt Man's Heart bleed to hear what I have heard ſince I came into this Country. It is ill in other Parts of the Country, but here they ſpare not even the wearing Cloaths and Habit of Women and Children, that they are forced to come abroad naked, without any thing to cover their Nakedneſs: So that beſides the Oath you have taken, and the Obligation of Chriſtianity that lies upon you as you are Chriſtians, I conjure you by all that is ſacred, and as ever you expect Eternal Salvation, that you make diligent Enquiry. Let it never be ſaid by any of you, that it was your Neighbour, or your Neighbour's Servant did it, and you are ſorry for it, but will not trouble yourſelves: I tell you it is every Man's Buſineſs, and I beſeech you look into it.

To break into any Man's Houſe after Night-fall, is Felony. It is a ſound Sleep that the labouring Man takes, but the idle Rogue that lies lurking and ſleeping all the Day, at Night he ariſes and ſeeks whom he may devour. If you were to do the moſt charitable Work, as building of a Bridge or Chappel, or mending a High-way, how many do you think of theſe Men with half Pikes and Skeans would come to your Aſſiſtance? Not one of them, I'll engage. But if a Houſe or Town be to be plundered, they all run thither. All Riots and Routs are to be enquired into. Numbers of People may meet for their own Defence, if they ſhould hear or ſee the Country robbing and ſpoiling, by a riotous Multitude coming to burn and rob their Houſes. In this Caſe they may meet and defend their Goods, and apprehend the Robbers, in order to bring them to Juſtice; but after all this, they are not to conteſt with the Government, nor do any thing to the Prejudice of that. I told you, I would not trouble you with unneceſſary Matters: All are loſt in the greateſt of Crimes and Outrages that are committed daily in the Country round about.

If I ſhould go through all the Heads of this Charge, it would take up more time than we have to ſpend here; and therefore I ſhould ſhut up all and ſay no more than this, that every Man do apply himſelf to his Huſbandry and Tillage, to prevent that imminent Danger of an approaching Famine that ſeems to be coming upon us, and that you make it your Buſineſs to ſearch after, and bring to Judgment thoſe Robbers that live on the Mountains; and while you continue to do your Duty, you ſhall have all the Protection the Government can give you. So upon Complaint of any Juſtice of the Peace that ſhall be backward or unwilling to appear againſt them, Care ſhall be taken to puniſh ſuch, and make them Examples. Go together, Gentlemen, and conſider of theſe Things.

[*The Priſoners brought into Court.*]

Clerk of the Crown. Set *John Price* to the Bar, *Tho. King* to the Bar, *W. Lewis*, *James Beacon*, *William Heatly*, *Tho. Burroughs* to the Bar, *&c.*

Hold up your Right Hands.

Clerk. *John Price*, *Tho. King*, &c. You ſtand here indicted, for that you on the 25th Day of *February*, in the fifth Year of the Reign of our Sovereign Lord King *James* the Second, at *Ballindery* in the County of *Wicklow*, with divers other wicked Traitors and Rebels, in a warlike Manner then and there did aſſemble yourſelves, and a cruel and open War and Rebellion againſt our Sovereign Lord the King, and his faithful Subjects of this his Majeſty's Kingdom of *Ireland*, did raiſe and levy, and did intend our Sovereign Lord the King to Death and Deſtruction to bring, and to depoſe him from his Kingly Authority and Government of this his Kingdom of *Ireland*: And to fulfil and accompliſh theſe your ſaid traiterous Intentions and Deſigns, you the ſaid perſons with others ſaid wicked Traitors and Rebels, the Day, Year, and Place aforeſaid, did arm yourſelves with divers warlike Weapons, as well offenſive as defenſive; and did move and excite divers others the Subjects of our Sovereign Lord the King, to join themſelves wickedly and traiterouſly, againſt the Peace of our Sovereign Lord the King, and the Duty of your Allegiance, and the Statute in that Caſe made and provided, *&c.*

Clerk. How ſayeſt thou, *John Price*, art thou guilty of the Treaſon that thou ſtandeſt here indicted, *&c.* or not guilty?

Mr. *Price.* Not Guilty.

Clerk. *Culprit*, How wilt thou be tried?

Priſoner. By God and the Country.

Clerk. God ſend you a good Deliverance.

Note, *The Priſoners were brought into Court in ſeveral Parties, to be arraigned, as many as the Dock would hold at one Time.*

[*The ſecond Time the Dock was filled.*]

Clerk Cr. Set *William Fulham* to the Bar, *&c.*

[Thady Brine, *the High-Sheriff*, *ſtood up and ſaid*, *My Lord*, Fulham *was cleared.*]

Bar. *Lynch.* Pray, Sir, who cleared him?

High-Sheriff. The chief commiſſioned Officer that was here; Colonel *Shelden* did acquit him.

Bar. *Lynch.* He acquit him! how could that be? If there be nothing againſt him, we ſhall acquit him.

J. Keating. Clerk of the Crown, is he indicted?

Clerk. Yes, my Lord, a Bill of Indictment is found againſt him.

Pendergraſs, the *Sub-Sheriff.* My Lord, I will tell you, Mr. *Sheriff* is miſtaken; there was ſome Boys diſcharged, and he thinks *Fulham* is one of thoſe Boys.

Bar. *Lynch.* Sir, you do well to reflect on your Employer.

High-Sheriff to the *Sub-Sheriff.* You have done this to get Money for yourſelf. My Lord, *Fulham* was not concerned at all, and therefore was diſcharged.

Priſoner Lewis. My Lord, we are ſo crowded with a File of Muſqueteers and a Serjeant, that they take up our Chairs, that we cannot ſit down; and they come with their lighted Matches to our very Noſes; and laſt Night a Piece went off in the Room among us: We have not the Conveniency of quiet Repoſe, nor our Friends the Liberty of ſeeing us. My Lord, we were not born Lawyers, therefore deſire we may have our Friends come to us, and Counſel to adviſe with.

[*This* Lewis *and Lord* Galmoy *are Brother and Siſter's Children, and was offered a Troop if he would turn Papiſt.*]

J. Keating. Mr. *Lewis*, you have been bred to the Law; but you ſhall have Counſel allowed you; and you, Mr. *Sheriff*, you are not to keep them with Fire-Arms, nor with your Soldiers. I ſaw a Centry at this Door Yeſterday, and forbad it—I remember that when *Warren*, *Jephſon*, and *Thompſon*

Thompson were tried in 1663, for a Deſign to ſurprize *Dublin* Caſtle, becauſe this was a great Matter, forſooth, they muſt be guarded with Soldiers---------(They were tried at the King's Bench; and ſeveral Perſons deſirous to ſee or hear, being gotten up into the Arch in the Wall next the Court of Common Pleas) as they were going up Stairs, a Piece went off, and ſhot a Man through the Head. I tell you, Mr. Sheriff, that brown Bill is your Guard [*pointing at one in Court*] the Law knows nothing of Fire Arms; [*ſpeaking to the Priſoners*] Gentlemen, I muſt tell you plainly, that I received Directions from my Lord Deputy, by the *Attorney General*, that you ſhould have all the Juſtice imaginable.

Bar. *Lynch.* Mr. Sheriff, you muſt command thoſe Soldiers to be civil, they are your Guards when you employ them.

Seventy priſoners were arraigned and returned back to Priſon; 31 more that were indicted, and upon Bail, did not appear.

Next Day-----*Thurſday March* the 7th, they were again brought to Court to their Trials, and the Jury was impanneled, whoſe Names were as followeth, Papiſts marked thus †; *viz.*

† *Thomas Cowdell.*	*Daniel Powell.*
Philip Cradock.	† *Richard Johnſton.*
John Pew.	† *Theophilus Higgens.*
† *Alexander Higden.*	† *Nicholas Wall.*
† *Chriſtopher Talbot.*	† *Charles Tool.*
† *Garret Birne.*	† *Anthony Archer.*
† *Dudley Keogh.*	† *Charles Birne.*
† *John Keogh.*	† *Cornelius Kenan.*
† *David Toole.*	*Tho. Elliet.*
† *James White.*	*Richard Baker.*
† *Darby Toole.*	† *Thady Birne.*
† *Gerrard Harold.*	† *Francis Tute.*
† *Daniel Birne.*	† *James Moore.*
† *Patrick Mac Donnel.*	† *Hugh Birne.*
† *Patrick O Donnelly.*	† *Bryan O-Neal.*
† *Chriſtopher Birne.*	† *Dennis Cullen.*

Jailor, ſet the Priſoners to the Bar.

Clerk Cr. You good Men that are to try the ſeveral Iſſues between the King and *John Price*, &c. and other Priſoners at the Bar, that ſhall be given you in Charge, *&c.* Jury, look at the Priſoners; Priſoners, look at the Jury.

Clerk Cr. Thomas Cowdell, to the Book.

Priſoner Lewis. I challenge him.

Clerk. What is your Cauſe of Challenge?

Deputy King's Counſel, Fitz-Patrick. My Lord, before they begin their Challenges, let us know whether they will all agree in their Challenges, otherwiſe we muſt be forced to try them ſeverally.

It was at length agreed, that if any one made a peremptory Challenge, the other Priſoners were to be ſatisfied with it.

[*Col.* Tool *on the Bench, ſpeaking to the L. Chief Juſtice* Keating.]

My Lord, Mr. *Lewis* has been Sub-Sheriff of the County, and knows all that have Freehold.

J. Keating. It is the better for himſelf that he does know them.

Priſoner Lewis *continued to challenge, until they had gone through the Pannel, and only two Gentlemen that were Proteſtants, Mr.* Craddock *and Mr.* Pew, *were ſworn.*

Clerk Cr. Mr. Sheriff, a new Pannel----The Sheriff gave in another of eleven in Number, which were all likewiſe challenged by Mr. *Lewis.*---- Whilſt both the High and Sub-Sheriff were looking about the Court, for to make up a third Pannel, ſays

L. C. J. Keating. Mr. Sheriff, How many Freeholders have you on the Grand-Jury?

Sheriff. Six or Seven, my Lord.

J. Keating. You have been ſparing enough of your Freeholders. The Law requires that all the Grand-Jury ſhould be Freeholders, and have you but ſix?

Sheriff. There is but very few Freeholders in the County, my Lord.

Counſ. *Fitz-Patrick.* In Caſes of Neceſſity, my Lord-------

J. Keating. You know the Law is ſo.

Counſ. *Fitz-Patrick.* Yes, there is a Statute for it.

J. Keating. The Priſoner for his Life may challenge twenty peremptorily, without ſhewing Cauſe; and the whole World for Want of Freehold-----And ſhall I put ſuch a one on for his Life? Sir, I will not be hanged for any body.

Fitz-Patrick. Was ever a Judge hanged?

Mr. Handcock, *Counſel for the Priſoners.* Yes, above twenty in a few Years.

J. Keating. Mr. *Fitz-Patrick*, I will not be hanged with Juſtice *Belknap*, nor *Trſilian* neither.

Counſ. Handcock. My Lord, they were hanged at *Tyburn.*

J. Keating. I think they were.----- The greateſt Part of this County is in the Hands of two or three Men, my Lord *Strafford* and *Roſs.*

J. Keating. Who is here that is concerned for my Lord *Strafford* and my Lord *Roſs?*

Court. Here is Dr. *Hall* on the Bench for the Lord *Strafford*, and the Sheriff is concerned for my Lord *Roſs.*

J. Keating, Dr. *Hall*, and you Mr. Sheriff, let me tell you, I do not know but that their Lordſhips have forfeited their Eſtates for this Day's Work. In the Act for Plantation, there was Proviſion made for Freeholds, and there were enough before the Wars. I fear theſe great Lords have ſwallowed up the Freeholds their Anceſtors made. I only tell you this.

The Sheriff by this Time had drawn up a third Pannel, being eight in Number.

J. Keating. Mr. Sheriff, have you all your Freeholders here?

Sheriff. My Lord, we ſummoned all here.

J. Keating. On the firſt Pannel you might have returned forty, becauſe you do not know how far peremptory Challenges will run; and you are obliged after to return a fewer Number when you enlarge your Pannel; but you can never enlarge it farther than it was at firſt.

Clerk Cr. Birne, to the Book.

Priſ. *Lewis.* I challenge him for Want of Freehold.

J. Keating. Mr. *Birne*, have you a Freehold in this County?

Birne. My Lord, I have a Leaſe of Lives.

Priſ. *Weſtland.* I challenge him peremptorily.

Bar. *Lynch.* What, Sir, do you begin to challenge? This ſhall not be allowed you, to challenge one upon another.

Counſ. *Hancock.* My Lord, you are Counſel for the Priſoners.

Bar. *Lynch.* Sir, you are not to tell me my Duty; I will have you to know, Sir, I ſhall give an Account for myſelf. I am Judge for the King too, as well as Counſel for the Priſoners; and I am concern'd for the King.

J. Keating. [*Turning towards him.*] And do you think I am not concerned as well as you?

Bar. *Lynch.* Yes, my Lord, I ſpeak for you as well as myſelf.

Counſ. *Fitz-Patrick.* My Lord, they agreed at firſt, that one Man ſhould challenge for them all----At this Rate we are never like to get a Jury for them. It is but an ill Sign of their Innocency, that they are not willing to come to a Trial.

[*Mr.* Hancock *Counſel for the Priſoners.*]

In the peremptory Challenges they agreed (but not in the Challenges for Freehold), and this peremptory Challenge we will ſtand by.

J. Keating. I will tell you how I underſtood it: That in their peremptory Challenges, if any one of them challenged, the reſt ſhould be concluded by it. Mr. *Weſtland* has made a peremptory Challenge, and they are willing to ſtand by that----However, Mr. *Birne*, ſtand by, do not go away, we may call you again. Clerk of the Crown proceed----*&c.*----which he did, until he ended the third Pannel.

[*Sub-Sheriff calls* William Baker.]

Anſw. My Lord, he has a Freehold.

Baker. My Lord, I have no Freehold.

J. Keating. You ſee the Sub-Sheriff is a fit Man to be an Officer; he is blind----he is indifferent.

[*High-Sheriff calls* Peter Ayris.]

Anſw. He is on the Grand-Jury.

J. Keating. Mr. Sheriff, why do you call ſuch?

Sheriff. I ſaw him in Court, and ſo I called him, my Lord.

J. Keating. There is already but five peremptory Challenges made, ſo that they may challenge fifteen more peremptorily; and there is but two ſworn, ſo that there wants ten.

Cl. Cr. Sheriff, ſee if you can get any more.

Sheriff. I ſee never a Freeholder in the Court.

Counſ. *Fitz-Patrick.* My Lord, the Sheriff ought to be puniſhed for his Neglect.

Bar. *Lynch.* Sir, why did you not take care to return a Jury of Freeholders? You ſhall be fined for it.

High-Sheriff. My Lord, I have returned all the Freeholders there is in the County (I ſent Yeſterday above twenty Miles for one Gentleman here) they are all gone out of the Country.----I hope you do not expect I ſhould go to the North, or *Iſle of Man*, or *England*, or *Scotland*, among the Rebels, to ſummon them.

J. Keating. I do really believe you, Mr. Sheriff; you have done like an honeſt Man-----Mr. *Fitz-Patrick*, what do you ſay in this Caſe?

Fitz-Patrick. My Lord, I cannot tell what to ſay.

Deputy King's Counſ. *Hammond.* What if there was not one Freeholder in the County, muſt not Juſtice be done?

J. Keating. Can we make a Law for it?

Hammond. My Lord, I know that in Caſe of an Ejectment, a Trial has been removed from one County to another.

J. Keating. Can you by Law go to another County in Caſe of Life?

Hammond. It appears there is not ſufficient Freeholders in this County, the Lands being in ſome few Hands.

J. Keating. You know the Law is otherwiſe, and what would you have us that are Judges do? Pray tell us, Sir, what you would be at?

Hammond. We would have it removed to the next County, or another County.

J. Keating. For God's ſake, Mr. *Hammond*, do not put us on making Law.

Bar. *Lynch.* Mr. *Hammond*, when did you hear that ever a Matter capital was tried in a Foreign County? In Matters Civil, by Rule of Court, or Order of Chancery it may be, but of a capital Offence it was never known; and we are by our Commiſſion to try Offences committed againſt the Law in the Counties where the Fact was committed.-----We muſt try them in this County, and cannot remove them from one County to another.

J. Keating. Mr. *Hammond*, becauſe I would take you off of this new Law that you ſo much inſiſt on, that in Caſe of an Ejectment it may be tried in a Foreign County----I tell you it cannot be tried in a Foreign County: We have no Law for it but that of K. *James*, and the Reaſon was, becauſe of the Story that was here on Foot; for an Heir Male, if collateral, he carried it againſt the Heir general. K. *James* he gave Direction that in that Caſe it ſhould be tried in a different County. And that my Brother tells you of trying in a different County by Order of Chancery, is this: A Perſon comes in Chancery, and he ſuggeſts that ſuch an one was too potent in ſuch a County, and therefore he deſired it might be tried in an indifferent County, or get ſuch a Rule of Court on ſuch a Suggeſtion. And this was the Caſe of the Archbiſhop of------- when he was Biſhop of *Limerick.* And if *Walcot* might be believed, he ſaid, was the Occaſion of his running into Rebellion.

C. There is a Caſe in *Hobart*, &c.

J. Keating. I would undeceive you in that Particular: As in the Caſe of *Auſten* and Colonel *Garret Moor.* If in the County of *Galloway* it was *Auſten*'s; if in the King's County, it was Colonel *Moor*'s. So that you ſee, in diſputable Caſes, the Law has Regard that it be tried by Juries in proper Counties: And truly I think it one of the moſt reaſonable Laws in the World, that a Man ſhall be tried by his County, by the Neighbourhood; and it has given Ground to a good *Engliſh* Proverb, *He that has an ill Name, is half-hanged.* A Man's Repute among his Neighbours goes a great Way in this Matter: When his Neighbours ſhall ſay they never knew ill by him. And this Man to be carried out of the County of *Wicklow*, to be tried at *Wexford*; you may by the ſame Rule bring a Jury from *Tyrone*, or the fartheſt Part of *Connaught.* There is nothing like what you ſay in the Law.

Hamond. I do not ſay that ever I met with ſuch a Thing in the Law.

Bar. *Lynch.* And do you think that we will make the Precedent?

Hamond. That two or three Perſons ſhould have almoſt the whole County.

J. Keating. Before God, I believe they think they have little enough, whatever you may think of their having too much.

Bar. *Lynch.* What you ſay, Mr. *Hamond*, if there be any thing in it, we ſhall adviſe with all the Judges.

The Judges declaring their Opinion, that the Priſoners after being arraigned, could not be admitted to Bail,

Coun. *Suxborough to Bar. Lynch.* My Lord, you took Bail for Captain *Ruth* at *Kilkenny*, after his Arraignment.

Bar. *Lynch.* What, Sir, do you reflect on me? There was no Evidence appeared, and my Brother bailed him as well as I.

Coun. *Suxborough.* I ſay he was bailed.

Mr. *Hancock.* My Lord, Mr. *Cooper* at *Galloway* was bailed by your Lordſhip likewiſe.

Lord Chief Juſtice *Keating* ſent privately to *Dublin* to the Deputy, acquainting him, that if they were left in Priſon until the next Aſſizes, they would certainly periſh, they having loſt all they had, and the County was not able to maintain them; upon which he received Orders to bail all but ſeven of the Principal; *viz.*

John Price, Eſq.
Thomas King,
Richard Weſtland,
William Lewis,
James Bacon,
Joſeph Crichley,
George Crichley,

Who are kept cloſe Priſoners, in order to their Trial the next Aſſizes, which will be in this Month of *July*. Upon the taking theſe Gentlemen Priſoners, the Soldiers and Rabble plundered and ſpoiled all the *Engliſh* Families in *Balinderry*, *Redrum*, *Balina-Claſh*, &c. and the *Iriſh* Women with their Skeans came afterwards and ſtripp'd the Women and Children naked, leaving them in a moſt miſerable and deplorable Condition, having not left them either Bread, or any Food in ſeveral Towns, but carried all away with them. And as an *Iriſhman*, a Tanner, declared to ſeveral at the Aſſizes, in the Hearing of this Relator, that one Capt. *Tool* had for his Share twenty-ſix Horſe-Loads, or more, of Plunder; and the Lord of *Lowth*'s Troop of Dragoons that were quarter'd in *Wicklow* Town, had great Quantities of Woollen and Linnen Cloth, Women's Cloaths, Pewter, and other Goods in Abundance. But the Lord Chief Juſtice *Keating* coming there to the Aſſizes, and having an Account of the extream Poverty and Miſery the Proteſtants thereabouts were reduced to, did encourage their Petitioning, and where they could find their Cloaths, &c. he endeavoured to help them in the Recovery of them. And Mr. *Richard Lamb* having ten fat Bullocks taken away by Col. *Tool*'s Men, and brought to *Wicklow*, and there killed and eaten by the Soldiers, he preferred a Petition to the Court, Col. *Tool* being preſent on the Bench.

J. Keating. Colonel *Tool*, you heard the Petition read; do you know any thing of theſe Oxen Mr. *Lamb* had taken from him by your Soldiers?

C. Tool. My Lord, I will tell you how it was: Mr. *Lamb* had ſold the Bullocks to Mr. *Price*, and as they were driving them to *Balinderry*, the Soldiers met them and took them away.

J. Keating. But Mr. *Lamb* was at home at his own Houſe, and not at *Balinderry*; the Bullocks were to be paid for upon Mr. *Lamb*'s delivering them to Mr. *Price* at *Balinderry*; your Soldiers took them away from his Servant ſeveral Miles from *Balinderry*: I ſee no Reaſon why Mr. *Lamb* ſhould not be paid for them.

C. Tool. My Lord, Colonel *Sheldon* came down ſoon after with the King's Army, and I adviſed with him, and he ordered they ſhould be killed for the Army, which was done accordingly.

J. Keating. Pray Colonel *Tool*, however, Mr. *Lamb* ought to be paid for them; he was not concerned with *Balinderry*, but kept his own Houſe.

Coun. *Fitzpatrick.* My Lord, his Houſe was a Garriſon too.

Mr. *Hancock.* For Shame, Mr. *Fitzpatrick*, a Thatch'd Cabin a Garriſon! I find you are for making all Proteſtants Rebels that live peaceably at home in their own Houſes.

C. Tool. My Lord, I have no more to ſay to the Matter.

Clerk of the Crown, calling over the Gentlemen of the County, called one —— *Savil*, Gent.

Mr. *Savil.* Here I am, my Lord, God knows, a poor Gentleman, being robb'd of all, and not a Penny left me to buy a Pint of Drink.

J. Keating. Pray, Sir, when were you robb'd?

Mr. *Savil.* The laſt *Wedneſday* they came and took away what little they had left untaken before, my Wife and Children's Cloaths, robbing me of all.

J. Keating. Pray, Sir, what Value may your Loſs be?

Mr. *Savil.* Truly, my Lord, I have not yet computed my Loſs, but they have taken away all; I deſire your Lordſhip will diſcharge me from attending the Court, for I have not wherewithal to ſubſiſt while I am here.

J. Keating. Sir, I am ſorry for you, I diſcharge you.

J. Keating. Col. *Tool*, let the Officers be ſent for into Court, to hear this Proclamation read, that is ſent down here by the Government.

C. Tool. My Lord, they are here moſt of them. Here is Captain *Archbold*, Captain *Tool*, &c.

Clerk of the Crown read the Proclamation, the Subſtance whereof was, That they ſhould reſtore the Proteſtants ſuch of their Horſes again, as were not fit for the King's Service, *&c.*

J. Keating. Calls for it from the Clerk, and giving it into Col. *Tool*'s Hand, who ſtood next him on the Bench; Sir, Pray take this Proclamation, and I hope you will take Care that Obedience be given to it.

C. Tool. My Lord, we have received other Orders; Colonel *Sheldon*, who is our chief Commander, has given Directions to have them kept for Draught for Carriages.

J. Keating. Nay, Sir, if Colonel *Sheldon* muſt be obeyed before the Government, I have no more to ſay, I have done.

C. Tool. My Lord, I ſhall obey it.

J. Keating. Pray then, Colonel *Tool*, let the Horſes be ſent for while that I am here, that what Horſes are not muſterable may be return'd: I cannot in my Conſcience go about to fine Men for not appearing at the Aſſizes, when they have not a Horſe left them to ride on.

CXLVII. *The Trial of* Maurice Cavenagh, Edmund Poor, *and* William Bowland, *in* Ireland, *for* Felony, *in ſtealing Cows*, March 7. 1688-9. 1 W. & M.

Several were arraigned for ſtealing conſiderable Numbers of Cows, Sheep, *&c.* but the Evidence againſt moſt of them durſt not appear to proſecute.

Leaghlin Birne indicted for ſtealing nine Head of Black Cattle from one *Colwell*; no Perſon appearing to proſecute, ſays

Juſtice Keating [*to the Jury*]. Gentlemen, you have nothing againſt this Man; he was born in the State of Innocency; but the Truth is, the Parties dare not appear againſt him.

[*Witneſſes came in againſt three Fellows*; *viz.* Maurice Cavenagh, Edmund Poor, William Bowland.]

[*Clerk of the Crown calling them to come and proſecute, and they appearing.*]

J. Keating. You that are Evidences againſt the Priſoners at the Bar, I charge you, as you will anſwer it before God, that you neither for Favour or Affection be inclined to ſpare any of theſe Villains; and likewiſe, that you will conceal nothing of the Truth, as you will anſwer it at the Great Day; for I tell you, the Cries and Groans of the poor Women and Children, and the many Families that are ruined, and in great Diſtreſs, will go up to Heaven againſt you.

Evidence againſt Edm. Poor. My Lord, when I came to him, and aſked him why he ſtole my Cows, he ſaid, the Devil did make him do it. I ſpake him fair, and he gave me Money for my Cows.

Poor. Ay, my Lord, and he promiſed not to trouble me.

J. Keating. It was an unlawful Promiſe; the Law would not juſtify him in it; he has done like an honeſt Man. If you paid the Money out of Conſcience, you did well; but I fear it was your Danger of the Halter made you part with your Money; for if twenty-two Shillings and Damnation ſtood in the Way, I believe you would have kept the Money. I am ſure, without Satisfaction, you cannot expect Abſolution; the Prieſt that gave the other Advice for the Maddoge or Skean, will, I ſuppoſe, tell you ſo.

Two Proteſtant Evidences againſt Maurice Cavenagh, *for ſtealing ſeveral Head of Black Cattle, hearing Judge* Keating *ſpeak againſt Skeans, ſaid.*

Evidence. My Lord, when we ſeized him, we took a Skean away from him.

J. Keating. Sir, How durſt you carry ſuch an unlawful Weapon?

Cavenagh. My Lord, I am a Butcher, it was a Butcher's Knife.

J. Keating. Ay, I do not queſtion but thou canſt butcher upon Occaſion.

One Hicky *ſpeke.* My Lord, He is no Butcher, but one of the greateſt Rogues in the County round us. I have been in Purſuit of him ſeveral times.

Cavenagh. He is a Murderer, my Lord, do not believe him.

Evidence. My Lord, it was near ten Inches long, thick at the Back, and ſharp Point, every way a Skean.

J. Keating. Is that your Butcher's Knife? You are a great Villain, for carrying ſuch a Weapon.

Cavenagh. I was ordered to have a Skean, my Lord.

J. Keating. Pray, Sir, who ordered you?

Cavenagh. The Prieſt of the Pariſh.

J. Keating. A Prieſt, Sir! [*turning to his Brother Judge*] Do you hear that, Brother?

Bar. *Lynch.* What Prieſt, Sir? What Prieſt? What is your Prieſt's Name?

J. Keating. Hold, Brother. Come, Sir, I ſhall not aſk your Prieſt's Name: I believe you will have Occaſion to ſee your Prieſt ſoon, to do you a better Office than to adviſe you to carry Skeans.

[*And looking towards Col.* Tool, *and two Prieſts on the Bench, next Sheriff* Birne.]

J. Keating. A Prieſt, Gentlemen! A Prieſt is a Miniſter, and a Miniſter of the Goſpel; his Doctrine ought to be Peace, for the Goſpel is a Doctrine of Peace. When our Saviour came into the World Peace was proclaimed; and when he went out of the World he left it for a Legacy to his Diſciples: *My Peace be with you.* And pray, Sir, tell your Prieſt ſo from me when you ſee him. It is not for Prieſts to arm or animate ſuch Villains as you are for Miſchief. I ſhall not aſk your Prieſt's Name.

Clancy, *an* Iriſh *Gentleman.* My Lord, he belies the Prieſt; he is a Rogue.

Cavenagh. I do not: The Prieſts of every Pariſh did give Orders to get Half-pikes and Skeans; and they were getting together in Companies in every Pariſh.

J. Keating. Who were they that were gotten together; ſuch Fellows as you?—*Cavenagh.* No, my Lord, better Men than I; a great many that are here in Court.

[*The Jury withdrawing, and returning ſoon again, brought* Poor *and* Bowland *in guilty*, Cavenagh *not guilty.*]

J. Keating. Gentlemen, you have acquitted the greater Villain; at your Door let it lie.

[*The Ordinary being called to give* Bowland *and* Poor *the Book, for their Clergy.*]

J. Keating. Sir, I expect as true a Return from you, as if I were there myſelf. The Times are ſo, that Men muſt forget Bowels of Mercy. Ordinary, do your Duty: What Place do you ſhew them?

Ordinary. My Lord, I ſhew them the fiftieth Pſalm.

J. Keating. Let them read the fifth Verſe.—This is an Act of Mercy, and I know not why it ſhould not be in *Iriſh* rather, the Country Language.

guage. It was formerly in *Latin*, becauſe the *Romiſh* Church hath their Worſhip in *Latin*.

[*The Ordinary return'd them both*, Non legit.]

J. Keating. You *William Bowland*, and you *Edmund Poer*, you have been arraigned for ſtealing of Cows, two ſeveral Thefts: It is a great Misfortune and Sin to be guilty of ſuch Crimes at any Time; but yours is ſo much the worſe, becauſe it falls in a Time when there are ſuch general and vaſt Depredations in the Country, that many honeſt Men go to Bed poſſeſſed of conſiderable Stocks of black and white Cattle, gotten by great Labour and Pains, the Induſtry of their whole Lives, and in the Morning when they ariſe not any thing left them, but turn'd out of all, to go a begging all being, taken away by Rebels, by Thieves and Robbers, the Sons of Violence, that make every thing they lay their Hands on their own. On this ſide the *Cape of Good Hope*, where are the moſt brutiſh and barbarous People we read of, there is none like the People of this Country; nor ſo great a Deſolation as in this Kingdom, at this Day any where to be found, and particularly in this County. It is come to that paſs, that a Man that loſes the better Part of his Subſtance, chooſes rather to let that, and what he has beſides go, than come to give Evidence: And why? Becauſe he is certain to have his Houſe burnt, and his Throat cut, if he appears againſt them. Good God! what a Paſs are we come to! For what has any Man, if the ſtronger Hand can take it from him? It is better to live under no Law, than in ſuch a Place. We have lived to ſee twenty-nine Years of Peace paſs over our Heads, and I have ſat on this Bench before now: I pray God that my Lenity, and others, has not given Encouragement to theſe Thieves and Robbers. There may be a Rogue in the Court, or one that is evilly inclined (I know none), but take Notice of this, the Government is at length tir'd with Mercy; they ſee it does no good, and Examples and Puniſhments of this Kind are not intended ſo much in a great Part for the Puniſhment of the Offender, as for diſcouraging of others, to make them take Warning by their Example, that, ſeeing what evil Courſes bring Men to, they may reform.

I will not take up Time to tell you how the Benefit of Clergy came; whether in the room of the Cities of Refuge that were in the old Times. I know that Reſtitution was under the *Jewiſh* Law ſufficient Satisfaction; and if the Thief could not make Reſtitution, he was to be ſold for a Slave, and the Money given to the Party. But as the World grows old it grows worſe, and thoſe Lenitives ſignify nothing for preventing Thieving and Robbery; for Thieves and Robbers are like a Gangreen in the Commonwealth; they are worſe than Drones in the Hive. I cannot tell myſelf, that under the Circumſtances we are in, I ſhould adviſe to pardon any that are taken in this general Depredation that we are under; and therefore you *Bowland* and *Poor*, that might have lived as ſafely under the Laws as the biggeſt Man in the Kingdom, and none of your Fellow Subjects durſt lay his Hand upon you, but he was liable to anſwer for it: And thus you might have lived to a fair old Age, and ended your Days in Peace; but you have choſen the quite contrary, for the Law provides likewiſe for the Puniſhment of wicked and offending Perſons, among which Number you are found by a Jury of twelve able Men of your Country; and therefore the Sentence of the Law is this, *That you be both, and each of you, taken from this Place, to the Place from whence you came, and there your Irons to be ſtruck off, and from thence to the Place of Execution, and there you ſhall be hanged by the Neck till you are dead, and the Lord have Mercy upon your Souls.*

And now let me give you Advice: Your Time is ſhort, ſpend it well, and flatter not yourſelves with the Hopes of a Reprieve or Pardon: And for you, *Poor*, you have ſhortened the Work of your Life; you have gone a great Way towards Heaven, if that Reſtitution you made was out of Conſcience. Mr. *Sheriff*, let them have a Confeſſor ſent to them, for *Saturday* is the Day of their Execution.

[*The Women, their Friends, ſetting up their Cry in the Court.*]

J. Keating. They did not cry thus when the Cows were brought Home to them, they were buſied then in the killing and the powdering them up.

The Copy of a Protection or Paſs, given by an *Iriſh* Officer to ſome Notorious Robbers of the County of *Wicklow*.

I James Byrne, *Enſign to Captain* Charles Byrne, *do hereby certify to you*, Terlagh Kelly, Patrick Byrne, *and* Patrick Mac-Teige, *and* William Doyle, *to ſave you Harmleſs from any Miſdemeanors whatſoever. As witneſs my Hand this 24th of* April, 1689.

JAMES BYRNE.

The following Letter being ſent by the Lord-Deputy to the Judges of Aſſize, was read in Court to the Grand-Jury, *&c.*

By the Lord-Deputy General, and General Governor of *Ireland*.

'AFTER Our hearty Commendations, We Greet you well. As 'his Majeſty was graciouſly pleaſed to entruſt us with the Go-'vernment of this his Kingdom, ſo upon the invading of *England*, and 'upon receiving certain Information, that the Prince of *Orange* doth in-'tend alſo to invade this Realm, We have, for the Defence thereof, rai-'ſed a conſiderable Army, far above what could be maintained by the 'King's Revenue at the beſt of Times, and when the Trade of this 'Country was in the moſt flouriſhing Condition. This we have done 'by the King's Command, to ſupport his Regal Authority, Crown 'and Dignity, and to preſerve the Lives, Liberties and Properties of all 'his Liege People within this Kingdom. And ſince our Dangers are 'at Hand, and that we may daily expect the Landing of an Enemy, who 'intends the Subverſion of his Majeſty's Government, and the total De-'ſtruction of all his good Subjects here, we find ourſelves under an ab-'ſolute Neceſſity to keep the King's Army ſtill on foot, in order to our 'Preſervation from the approaching Dangers. And tho' we have hither-'to with all the Care and Induſtry imaginable, and by the generous 'concurence of the Officers, ſupported the new-raiſed Forces without 'being a Burthen to any of his Majeſty's People: Yet conſidering the 'Decay of Trade, the great Fall of the Revenue in theſe diſtracted 'Times, the great Charges the Officers have been at in ſubſiſting Men, 'it cannot be expected that the ſtanding Forces can hereafter be main-'tained without Supplies. And ſince the ſame cannot be done by Parlia-'ment, We cannot think of a more effectual Expedient, than by volun-'tary Subſcriptions, by way of Loan, from the People; which, if gene-'rouſly done, with what may be made of the Revenue, may ſupport the 'Army, and will ſtop all the Diſorders that may be committed by the Sol-'diers, which we ſhall always endeavour to prevent with all the Care 'and Induſtry poſſible. By this, Huſbandry may go on as formerly, and 'we ſhall be in a Capacity to form the Army, ſo as that, with the Aſſiſt-'ance of Almighty God, we do not doubt to put this Kingdom in a per-'fect Poſture of Defence. We do therefore pray your Lordſhips to re-'commend this weighty Matter effectually at the open Aſſizes in every 'County when you ſit, to all the Inhabitants of ſuch Counties, and to 'appoint the reſpective Sheriffs of ſuch Counties to procure voluntary 'Subſcriptions, by way of Loan, from the Inhabitants of ſuch Counties, 'of ſome certain Sum of Money from each, to be ſubſcribed to their 'Names, to be afterwards ſatisfied by them reſpectively, in Money, 'Wheat, Oats or Oatmeal, towards the Maintenance of the Army, to be 'paid in, or delivered to the reſpective Sheriffs, or their Order, and in 'ſuch Places as the ſaid Sheriffs ſhall reſpectively appoint, from whom 'we expect an Account of their Proceedings herein, and a Copy of ſuch 'Subſcriptions as ſhall be made. We do not doubt but every true and 'loyal Subject will, according to his Ability, and the Excellency of the 'Subject Matter, generouſly and chearfully contribute towards the carry-'ing on of ſo great, ſo neceſſary, and ſo glorious a Work. We expect 'your diligent Care herein, and ſo we bid you heartily Farewell.

From his Majeſty's Caſtle of *Dublin*, *March* 2, 1688.

'Your very loving Friend,

'TYRCONNEL.'

An Anſwer to the foregoing Letter being drawn up by the Grand Jury and entered into their Book, and preſented to Sir *Henry Lynch*, ſetting forth the extreme Poverty of their Country, occaſioned by the daily Ruin of the *Engliſh*, &c. that they were not in a Capacity to ſubſiſt themſelves, and therefore not capable to raiſe any thing conſiderable for the Army (Chief Juſtice *Keating* returning to *Dublin*, and leaving Baron *Lynch* to go on to the other Counties, *&c.*) the ſaid *Lynch* told the Grand Jury, before he diſcharged them, that the Writing they had drawn up, was a Reflection and Scandal to their Country, would be taken very ill by the Government, and did not queſtion but it would be brought in hereafter as an Evidence againſt them, and therefore ordered it ſhould be torn out of the Book; which was done accordingly.

CXLVIII. *The Trials of Sir* RICHARD GRAHME, *Baronet, Viſcount* Preſton *in the Kingdom of* Scotland, *and* JOHN ASHTON, *at the* Old Bailey, *for* High-Treaſon, Jan. 17, 1690. 2 W. & M.

Die Veneris, 16. *Die Januarij, Anno Dom.* 1690.

THE King and Queen's Writ of *Habeas Corpora* was ſent to the Governor of the Tower of *London*, to bring up the Bodies of Sir *Richard Grahme*, Baronet, Viſcount *Preſton*, in the Kingdom of *Scotland*, *John Aſhton* and *Edmund Elliot*, Gent. to the Seſſions-Houſe in the *Old-Bailey*, *London*; where they were brought between the Hours of Ten and Eleven in the Forenoon; and being placed at the Bar, were arraigned upon an Indictment of High-Treaſon, found the Day before by the Grand Jury for the County of *Middleſex*, at *Hicks*'s *Hall*, in Manner following:

Clerk of Arraignments. "SIR *Richard Grahme*, hold up your Hand [*which he did, and ſo the other two*]: You ſtand indicted by the "Names of Sir *Richard Grahme*, late of the Pariſh of St. *Anne* within "the Liberty of *Weſtminſter*, in the County of *Middleſex*, Baronet; *John* "*Aſhton*, late of the Pariſh of St. *Paul*, *Covent-Garden*, in the County "aforeſaid, Gentleman; and *Edmund Elliot*, late of the Pariſh of St. "*James* within the Liberty aforeſaid, in the County aforeſaid, Gent. "for that you, as falſe Traitors againſt the moſt Illuſtrious and moſt "Excellent Princes *William* and *Mary*, King and Queen of *England*, "Defenders of the Faith, *&c.* your Sovereign Lord and Lady, not having the Fear of God in your Hearts, nor weighing the Duty of your "Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, the cordial Love, and true, due, and natural Obedience which "every true and faithful Subject of our ſaid Sovereign Lord and Lady, "the King and Queen that now are, towards them our ſaid Sovereign "Lord and Lady, the King and Queen ſhould, and of Right ought to "bear, wholly withdrawing, and contriving, practiſing, and with all "your Strength intending the Peace and common Tranquility of this "Kingdom of *England* to diſquiet, moleſt, and diſturb, and War and "Rebellion againſt our ſaid Sovereign Lord and Lady, the King and "Queen that now are, within this Kingdom of *England* to ſtir up, move, "and procure; and the Government of our ſaid Lord and Lady, the King "and Queen of this Kingdom of *England*, to ſubvert, change and alter; and our ſaid Lord and Lady, the King and Queen, from the "Title, Honour, and Royal Name, of the Imperial Crown of this their "Kingdom of *England* to depoſe and deprive; and our ſaid Lord and Lady, "the King and Queen, to Death and final Deſtruction to bring and put; "you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot*, the "nine-and-twentieth Day of *December*, in the ſecond Year of the Reign "of our ſaid Lord and Lady, the King and Queen that now are; "and divers other Days and Times, as well before as after, at the Pariſh "of

" of St. *Clement Danes*, in the County aforesaid, falsly, maliciously, de-
" vilishly, and traiterously, with Force and Arms, *&c.* with divers false
" Rebels and Traitors, to the Jurors unknown, did conspire, treat of,
" compass, imagine, and intend our said Lord and Lady, the King and
" Queen that now are (your supreme and natural Lord and Lady) from
" the Royal State, Crown, Title, Power, and Government of their
" Kingdom of *England*, to deprive, depose, and cast down; and the
" same our Lord and Lady, the King and Queen that now are, to kill,
" and bring and put to death; and the Government of this Kingdom of
" *England* to change, alter, and wholly to subvert; and a miserable
" Slaughter among the Subjects of our said Lord and Lady, the King
" and Queen, within their Kingdom of *England*, to cause and procure;
" and an Insurrection, War, and Rebellion, against our said Lord and
" Lady, the King and Queen that now are, within this Kingdom of
" *England* to move, procure, and aid; and the same your most evil,
" wicked, and devilish Treasons, and traiterous Compassings, Imagina-
" tions, and Purposes aforesaid, to fulfil, perfect, and bring to Effect,
" you the said Sir *Richard Grahme*, *John Ashton*, and *Edmund Elliot*, as
" false Traitors, then and there, to wit, the said nine-and-twentieth
" Day of *December*, in the said second Year of the Reign of our said Lord
" and Lady, the King and Queen that now are, and divers other Days
" and Times, as well before as after, at the Parish of St. *Clement Danes*
" aforesaid, in the County aforesaid, with Force and Arms, *&c.* falsly,
" unlawfully, wickedly, and traiterously, did propose, consult, and
" agree to procure and prepare great Numbers of armed Men, War and
" Rebellion against our said Lord and Lady, the King and Queen, within
" this Kingdom of *England* to levy and make; and that you the said Sir
" *Richard Grahme*, *John Ashton*, and *Edmund Elliot*, afterwards, to wit,
" the same nine and-twentieth Day of *December*, in the aforesaid second
" Year of the Reign of our said Lord and Lady, the King and Queen
" that now are, at the Parish of St. *Clement Danes* aforesaid, in the
" County aforesaid, falsly, maliciously, and traiterously, did prepare,
" and compose, and then and there did cause, and procure to be prepared,
" and composed, several traiterous Letters, Notes, Memorandums, and
" Instructions in Writing, to shew and inform *Lewis*, then and yet the
" *French* King, and his Subjects, then and yet Enemies of our said Lord
" and Lady, the King and Queen that now are, and very many other evil-
" disposed Persons, and false Traitors, to the Jurors unknown, of and
" concerning the Number, Force, and Condition of certain Ships, for,
" and on the Behalf of our said Lord and Lady, the King and Queen of
" *England*, then, and there designed and prepared for the Defence of their
" Kingdom of *England*, and their Enemies aforesaid to repel and resist;
" and how some of the same Ships were Manned, and of the Names of
" the Captains of several of the said Ships; and how the Castles
" and Fortresses of our said Lord and Lady, the King and Queen,
" called *Portsmouth*, *South-Sea*, and *Gosport*, within this Kingdom of
" *England*, were strengthened and fortified, and how the same Castles and
" Fortresses, into the Hands and Possession of Enemies and false
" Traitors against our said Lord and Lady, the King and Queen, might
" be taken and seized; as also of the Time, Places, Ways, Manners,
" and Means, by which, when, and where the same Enemies of our said
" Lord and Lady, the King and Queen, this Kingdom of *England* might
" invade and infest; and the same Enemies, and the Ships of the Enemies
" of this Kingdom of *England*, should fight against our said Lord and
" Lady, the King and Queen, and their faithful Subjects; as also to pro-
" cure, provide, prepare, and obtain against our said Lord and Lady,
" the King and Queen that now are, Assistance and armed Men, our said
" Lord and Lady, the King and Queen that now are, from their Royal
" State and Government of this Kingdom of *England* to cast down
" and depose, and to stir up, promote, and procure the aforesaid *Lewis*
" the *French* King (then, and yet an Enemy of our said Lord and Lady,
" the King and Queen) this Kingdom of *England* to invade; and to send
" Ships within this Kingdom of *England*, the City of *London*, of our said
" Lord and Lady, the King and Queen that now are, to plague; as also
" to cause very many Subjects of our said Lord and Lady, the King and
" Queen that now are, to rise, and War and Rebellion against our said
" Lord and Lady, the King and Queen, within this Kingdom of *England*,
" to move, procure, make, and levy. And you, the said Sir *Richard*
" *Grahme*, *John Ashton*, and *Edmund Elliot*, afterwards, to wit, the same
" Day and Year, at the aforesaid Parish of St. *Clement Danes*, in the Coun-
" ty of *Middlesex*, of and for the same your Treasons and traiterous Com-
" passings, Imaginations, and Purposes aforesaid, to execute, fulfil, per-
" fect, and bring to Effect into your Hands, Custody, and Possession,
" then and there secretly, knowingly, unlawfully, and traiterously did
" obtain, procure, detain, had, concealed, and kept two several Bills of
" Exchange then before made, for the Payment of several Sums of Money
" to the Enemies of our said Lord and Lady, the King and Queen that
" now are; as also very many traiterous Letters, Notes, Memo-
" randums, and Instructions in Writing, then and there composed and
" prepared with an Intent to shew and inform *Lewis*, then and yet the *French*
" King, and his Subjects, then and yet Enemies of our said Lord and
" Lady, the King and Queen that now are, and very many other evil-
" disposed Persons, and false Traitors, to the Jurors unknown, of and
" concerning the Number, Force and Condition of the Ships, for and
" on Behalf of them our said Lord and Lady, the King and Queen of
" *England*, then and there designed, and prepared for the Defence of
" their Kingdom of *England*, and to repel, and resist their Enemies, and
" how some of the same Ships were Manned, and of the Names of the
" Captains of divers of the same Ships, and how the Castles and Fortresses
" of our said Lord and Lady, the King and Queen, called *Portsmouth*,
" *South-Sea* and *Gosport*, within this Kingdom of *England*, were
" strengthened and fortified, and how the same Castles and Forts into the
" Hands and Possession of Enemies and false Traitors against our said
" Lord and Lady, the King and Queen, might be taken and seized; as
" also the Times, Places, Ways, Manners, and Means, by which,
" when, and where the same Enemies of our said Lord and Lady, the
" King and Queen, this Kingdom of *England* might invade and infest,
" and the Enemies, and Ships of the Enemies of this Kingdom of *Eng-*
" *land*, should fight against the same, our Lord and Lady, the King and
" Queen of *England*, and their faithful Subjects; as also to procure, pro-
" vide, prepare, and obtain against our said Lord and Lady, the King and
" Queen, Assistance and armed Men, to invade this Kingdom of *England*,
" and our said Lord and Lady, the King and Queen that now are, from
" their Royal State and Government of this Kingdom of *England*, to cast
" down and depose, and to stir up, promote, and procure the aforesaid
" *Lewis* the *French* King, then, and yet an Enemy of our said Lord and
" Lady the King and Queen, to invade this Kingdom of *England*, and to
" send Ships within this Kingdom of *England*, the City of *London*, of
" our said Lord and Lady, the King and Queen, to plague; as also to
" cause very many Subjects of our said Lord and Lady, the King and
" Queen, to raise, and War and Rebellion against our said Lord and Lady,
" the King and Queen, within this Kingdom of *England*, to move, pro-
" cure, make, and levy. And you, the said Sir *Richard Grahme*, *John*
" *Ashton*, and *Edmund Elliot*, afterwards, to wit, the thirtieth Day of
" *December*, now last past, at the aforesaid Parish of St. *Clement Danes*,
" in the County of *Middlesex*, concerning, and for the same your Trea-
" sons, and traiterous Compassings, Imaginations, and Purposes afore-
" said, to execute, fulfil, perfect, and bring to Effect, for one hundred
" Pounds in Moneys, numbred by you the said Sir *Richard Grahme*, *John*
" *Ashton*, and *Edmund Elliot*, then and there paid, and deposited, un-
" lawfully and traiterously did hire and prepare, and then and there did
" cause and procure to be hired and prepared a certain Ship, and three
" Men; you, the said Sir *Richard Grahme*, *John Ashton*, and *Edmund*
" *Elliot*, with the said Bills of Exchange, and the aforesaid trai-
" terous Letters, Notes, Memorandums, and Instructions in Writing,
" into the Hands, Custody and Possession of you the said Sir *Rich-*
" *ard Grahme*, *John Ashton*, and *Edmund Elliot*, secretly, unlawfully,
" and traiterously kept, concealed and detained, from this King-
" dom of *England*, unto, and into *France*, in Parts beyond the
" Seas, then and yet under the Rule and Government of the said
" *Lewis* the *French* King, then and yet an Enemy of our said Lord
" and Lady, the King and Queen, secretly to carry and transport,
" with that Intent, the said Bills of Exchange, traiterous Letters, Notes
" and Memorandums, and Instructions in Writing there in Parts beyond
" the Seas, to the Enemies of our said Lord and Lady, the King and
" Queen, and other evil-disposed Persons to deliver and disperse. And the
" said most wicked Treasons, and traiterous Compassings and Imagina-
" tions aforesaid, to fulfil, perfect, and bring to Effect; as also to
" cause, promote and procure the aforesaid Enemies of our said Lord and
" Lady, the King and Queen, to invade this Kingdom of *England* with
" Ships and armed Men. And you, the said Sir *Richard Grahme*, *John*
" *Ashton*, and *Edmund Elliot*, afterwards, to wit, the thirtieth Day of
" *December* now last past, at the aforesaid Parish of St. *Clement Danes*, in
" the County aforesaid, concerning, and for the same your Treasons,
" and traiterous Compassings, Imaginations and Purposes aforesaid, to
" execute and fulfil, maliciously, traiterously, and advisedly, then and
" there, and diverse other Days and Times, as well before as after, took
" upon yourselves to very many other Traitors to be aiding and assisting
" in the Execution of the Treasons, and traiterous Compassings, Ima-
" ginations and Purposes aforesaid; and then and there, to wit, the same
" thirtieth Day of *December* now last past, at the Parish of St. *Clement*
" *Danes*, in the County aforesaid, maliciously, secretly and traiterously
" did hire, and prepare, and then and there did cause and procure to be
" hired and prepared a certain Boat, and one Man, to the Jurors aforesaid
" unknown; you, the said Sir *Richard Grahme*, *John Ashton*, and *Edmund*
" *Elliot*, from thence to, and into the aforesaid Ship, so as aforesaid
" hired and prepared, to carry and convey. And you the said Sir *Richard*
" *Grahme*, *John Ashton*, and *Edmund Elliot*, maliciously and traiterously
" into the same Boat, then and there did enter; and yourselves from
" thence, in and by that same Boat, unto and into the Ship aforesaid,
" and there unlawfully and traiterously did cause, and procure to be
" carried with the Intention aforesaid. And you the said Sir *Richard*
" *Grahme*, *John Ashton*, and *Edmund Elliot*, with the same Bills of Ex-
" change, and the aforesaid traiterous Letters, Notes, Memorandums
" and Instructions in Writing, and in your Hands, Custody and Pos-
" session then and there, in and with the Ship aforesaid, did sail, and de-
" part towards the aforesaid Kingdom of *France*, in Parts beyond the
" Seas; the same your most wicked, evil, and traiterous Intentions, Pur-
" poses, Compassings and Imaginations aforesaid to fulfil, perfect and
" promote, against the Duty of your Allegiance, against the Peace of our
" said Lord and Lady, the King and Queen that now are, their Crown
" and Dignity, and against the Form of the Statute in that Case made
" and provided. *And the Indictment further set forth*, that long before
" the aforesaid nine-and-twentieth Day of *December* now last past,
" open War between our said Lord and Lady, the King and Queen,
" and the aforesaid *Lewis* the *French* King was begun, declared, and
" waged, and yet is: Which said *Lewis* the *French* King, and his Sub-
" jects, and the Men of those Parts, then and yet, were, and are, Ene-
" mies to our said Lord and Lady, the King and Queen that now are,
" and to their Kingdom of *England*: And that in the Time of the afore-
" said War between them our said Lord and Lady, the King and Queen,
" and the aforesaid *Lewis* the *French* King, you the said Sir *Richard*
" *Grahme*, *John Ashton*, and *Edmund Elliot*, being Subjects of our said
" Lord and Lady, the King and Queen that now are, as false Traitors
" against our said Lord and Lady, the King and Queen, during the War
" aforesaid, to wit, the nine-and-twentieth Day of *December*, in the second
" Year of the Reign of our said Lord and Lady, the King and Queen
" that now are, and diverse other Days and Times as well before as after,
" at the Parish of St. *Clement Danes* aforesaid, in the County aforesaid,
" with Force and Arms, *&c.* to the aforesaid Enemies of our said Lord and
" Lady, the King and Queen that now are, unlawfully, and traiterously
" were adhering, and assisting, and in Execution, and Performance

" of

" of the ſame adhering, you the ſaid Sir *Richard Grahme*, *John Aſhton*, and " *Edmund Elliot*, then, and there, to wit, the ſame nine-and-twentieth " Day of *December*, in the ſecond Year of the Reign of our ſaid Lord and " Lady the King and Queen that now are, aboveſaid, at the aforeſaid Pa- " riſh of St. *Clement Danes* in the County aforeſaid, falſly, maliciouſly, and " traiterouſly did prepare and compoſe, and then and there did cauſe and " procure to be prepared and compoſed, as alſo into your Cuſtody and " Poſſeſſion, then and there unlawfully, ſecretly, and traiterouſly, did ob- " tain, detain, conceal, and keep, divers traiterous Letters, Notes, Memo- " randums, and Inſtructions in Writing, to ſhew and inform the aforeſaid " *Lewis*, then and yet the *French* King, and his Subjects, then and yet " Enemies of our ſaid Lord and Lady, the King and Queen that now are, " of and concerning the Number, Force, and Condition of certain Ships, " for and on the Behalf of our ſaid Lord and Lady, the King and Queen " of *England*, then and there deſigned, and preparing, for their Defence " of their Kingdom of *England*, and their Enemies aforeſaid to repel, and " reſiſt; and how ſome of the ſame Ships were manned, and of the Names " of ſeveral of our Captains of the ſaid Ships; and how the Caſtles and " Fortreſſes of our ſaid Lord and Lady, the King and Queen, called " *Portſmouth*, *South-Sea*, and *Goſport*, within this Kingdom of *England*, " were ſtrengthened, and fortified, and how thoſe ſame Caſtles and For- " treſſes into the Hands and Poſſeſſion of the ſame Enemies of our ſaid " Lord and Lady, the King and Queen, might be taken, and ſeized; as " alſo of the Time, Places, Ways, Manners, and Means, by which, " when and where the ſame Enemies of our ſaid Lord and Lady, the King " and Queen that now are, this Kingdom of *England* might invade, and " infeſt; and they the ſaid Enemies, and the Ships of the ſaid Enemies " of this Kingdom of *England* ſhould fight againſt our ſaid Lord and La- " dy, the King and Queen, and their faithful Subjects. And that du- " ring the War aforeſaid, to wit, the aforeſaid thirtieth Day of *December* " now laſt paſt, you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Ed- " mund Elliot*, at the aforeſaid Pariſh of St. *Clement Danes* in the County " aforeſaid, unlawfully, and traiterouſly did hire, and prepare, and then " and there did cauſe and procure to be hired and prepared a certain Ship, " and three Men, you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Ed- " mund Elliot*, with the ſame traiterous Letters, Notes, Memorandums, " and Inſtructions in Writing, from this Kingdom of *England*, unto, and " into *France* in Parts beyond the Seas, then and there under the Rule " and Government of the aforeſaid *Lewis* the *French* King, then and yet " an Enemy of our ſaid Lord and Lady, the King and Queen, ſecretly, " during the War aforeſaid, to carry, and tranſport, to the Intent the " ſame traiterous Letters, Notes, Memorandums, and Inſtructions in " Writing there, in Parts beyond the Seas, to the aforeſaid Enemies of " our ſaid Lord and Lady, the King and Queen that now are, to deliver, " and diſperſe during the War aforeſaid, in Aid of the ſaid Enemies of our " ſaid Lord and Lady, the King and Queen, in the War aforeſaid: And " that you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot*, " during the War aforeſaid, to wit, the aforeſaid thirtieth Day of *Decem- " ber* now paſt, at the Pariſh of St. *Clement Danes*, in the County afore- " ſaid, concerning, and for the ſame your Treaſons and traiterous Adher- " ings and Purpoſes aforeſaid to execute and fulfil, maliciouſly, traiter- " ouſly, and adviſedly, then and there did hire and prepare, and then and " there did cauſe, and procure to be hired and prepared a certain Boat, " and one Man to the Jurors unknown, you the ſaid Sir *Richard Grahme*, " *John Aſhton*, and *Edmund Elliot*, from thence to and into the Ship afore- " ſaid, by you as aforeſaid, hired and prepared to carry and convey: " And that you the ſaid Sir *Richard Grahme*, *John Aſhton*, and *Edmund El- " liot*, maliciouſly and traiterouſly into the ſame Boat, then and there did " enter, and yourſelves from thence ſecretly in and by the ſame Boat un- " to and into the ſame Ship, then and there did cauſe and procure to be " carried, in Proſecution of the Adhering aforeſaid. And you the ſaid " Sir *Richard Grahme*, *John Aſhton*, and *Edmund Elliot*, then and there " with the ſame traiterous Letters, Notes, Memorandums, and Inſtruc- " tions in Writing, in your Cuſtody and Poſſeſſion being, during the War " aforeſaid, to wit, the ſame Day and Year, in and with the Ship afore- " ſaid did ſail, and depart towards the aforeſaid Kingdom of *France*, to " the Intent the ſame traiterous Letters, Notes, Memorandums, and In- " ſtructions in Writing, in Parts beyond the Seas, to the ſaid Enemies of " our ſaid Lord and Lady, the King and Queen that now are, to deliver, " concerning and for Aid, Intelligence, and Council, by you the ſaid Sir " *Richard Grahme*, *John Aſhton*, and *Edmund Elliot*, to the ſame Enemies " of our ſaid Lord and Lady, the King and Queen that now are, to give " and yield, during the War aforeſaid, againſt the Duty of your Allegi- " ance, againſt the Peace of our ſaid Sovereign Lord and Lady, the King " and Queen that now are, their Crown and Dignity, and againſt the " Form of the Statute in that Caſe made and provided." *How ſay you, Sir* Richard Grahme, *are you Guilty of this Felony and High Treaſon whereof you ſtand indicted, or Not Guilty?*

L. *Preſton.* My Lord, I have ſomething humbly to offer to your Lordſhips.

L. C. J. Holt. What is it your Lordſhip would ſay?

L. *Preſton.* My Lord, I find I ſtand indicted by the Name of Sir *Richard Grahme*, Baronet, but I do take myſelf to be entituled to another way of Trial, as being a Peer of *England*, by Virtue of a Patent before the Vote of Abdication was made; and it was in a Time when all your Proceſſes, and all your Writs went in the King's Name, and all Officers acted by Virtue of his Commiſſions. My Lord, this is a Matter that concerns me in Point of Life, Eſtate, Poſterity, and all that's dear to me; and therefore I deſire to know whether your Lordſhips think fit to allow me my Peerage; I offer it, my Lord, with all the Reſpect and Modeſty imaginable.

L. C. J. Holt. My Lord, I apprehend your Lordſhip to offer againſt your being tried here, that you are a Peer.

L. *Preſton.* I take myſelf to be ſo, my Lord.

L. C. J. Holt. My Lord, you muſt make that out to the Court.

L. *Preſton.* I told your Lordſhips the Ground of my Claim and Appre- henſion: It is from a Patent I received before the Vote of Abdication, when all Commiſſions, and all Proceſs, and all the Courts of Judicature run in that Name.

L. C. J. Holt. Where is that Patent, my Lord?

L. *Preſton.* It is in the Hands of the Houſe of Lords.

L. C. J. Holt. My Lord *Preſton*, we cannot take Notice of that Patent: If your Lordſhip plead that you were made a Peer by a Patent under the Great Seal of *England*, you muſt produce it under the Great Seal, that the Court may ſee what it is, and whether it be ſufficient to juſtify your Plea.

L. *Preſton.* I hope your Lordſhip and this Court will enable me to do that, by ſending an Order to the Clerk of the Houſe of Lords, to bring the Patent hither; for it is in his Hands.

L. C. J. Holt. My Lord, that is not in our Power: If your Lordſhip take yourſelf to be a Peer, and would thereby ſtop this Court from proceeding to try you, you muſt be ready to make it out.

L. *Preſton.* I am ready to make it out: If I had my Patent here, that would make it out. Certainly there is ſome Authority now in being (I humbly offer it with all Submiſſion and Reſpect) that may order the Clerk of the Houſe of Lords to attend this Court, and produce this Patent.

L. C. J. Holt. My Lord *Preſton*, we are not to enable you to plead to the Juriſdiction of the Court.

L. *Preſton.* My Lord, I offer it with all Reſpect to the Court: I am concerned in it for my Life, and my All, and if that be over-ruled, this I hope you will do before you go on, you will hear me by my Counſel.

L. C. J. Holt. My Lord, it is nothing that you have ſaid; for if your Lordſhip plead this Plea to the Juriſdiction of the Court, it ought not to be received without ſhewing your Patent.

L. *Preſton.* My Lord, I deſire my Counſel to be heard to this Matter.

L. C. J. Holt. I know your Lordſhip has had the Benefit of Counſel, and I know your Counſel muſt tell you, that what you ſay goes for nothing, unleſs you put in your Plea, and produce your Patent, that the Court may judge upon it.

* *Mr. Sol. Gen.* My Lord, I have obſerved what my Lord *Preſton* has mentioned——— * Sir *John Somers.*

L. *Preſton.* Pray, Mr. *Sollicitor*, will you ſpeak out, that I may hear what you ſay?

Mr. Sol. Gen. My Lord, I ſay, I have taken Notice of what your Lordſhip has offered: It has been moſt truly obſerved by the Court, that it is your Lordſhip's Part to make good your Plea, and it ought not to be expected that any Court ſhould help a Perſon to plead to its Juriſdiction: But becauſe it ſhould not be pretended that an Advantage was taken againſt the Priſoner for a Defect in Point of Form, or that any thing was inſiſted on which ſhould have the leaſt Appearance of a Hardſhip, and that we may proceed in the moſt clear and unexceptionable Manner that can be, I muſt beg leave to obſerve to your Lordſhip and the Court, how far this Matter which my Lord *Preſton* has inſiſted on, has been debated and determined in another Place.

L. C. J. Holt. So; on, Mr. *Sollicitor.*

Mr. Sol. Gen. My Lord, upon the eleventh of *November* 1689, my Lord *Preſton* did make ſome Claim in the Houſe of Lords that he was a Peer of the Realm. The Houſe of Lords demanding of him upon what he founded his Pretence; he ſaid he claimed by Letters Patent from the late King *James*, which paſſed the Great Seal before the Time of the Vote of Abdication. The Lords required that thoſe Letters ſhould be produced, which being done, and my Lord *Preſton* inſiſting upon his Claim to be a Peer of *England*, the Lords thought fit that Day to commit my Lord *Preſton* to the Cuſtody of the Black Rod. The next Day being the twelfth of *November*, upon ſolemn Debate of the Validity of theſe Letters Patents, and conſulting with the Judges then preſent, the Lords, *nemine contradicente*, did adjudge and declare thoſe Letters Patents to be void and null: And by another Order of the ſame Date, they did order Mr. *Attorney General* to proſecute my Lord *Preſton* in the *King's Bench* for a High Miſdemeanor, in preſuming to claim Peerage by thoſe Letters Patents. And by a Third, it was ordered, that the Letters Patents ſhould remain in Cuſtody of the Clerk of the Parliament. Thus you ſee, my Lord, this Matter hath had already a ſolemn Determination in a Court which had the moſt proper Conuſance and Juriſdiction of Claims in this Nature. And they having pronounced their Judgment, I did not think it would have been urged again in this Place. I thought it proper to mention theſe Things, to ſhew how it comes to paſs that my Lord *Preſton* has not his Letters Patents to produce, and to ſatisfy every Man that there is no Hardſhip put upon my Lord *Preſton*, by trying him here, when he ought to be tried by another Judicature. The Lords have given Judgment againſt theſe Letters Patents, and have ordered that they ſhall remain in Cuſtody of the Clerk of the Parliament, and my Lord *Preſton* is not a Stranger to theſe Tranſactions; and therefore if my Lord's Counſel had been of Opinion he could have made any uſe of them, they would have inform'd him he muſt have taken another Courſe to have got them, and could not expect this Court ſhould make an Order for him, contrary to the Order of the Houſe of Lords, to take the Letters Patents out of the Hands of the Clerk of the Parliament, and this, to help him to a Plea againſt their own Juriſdiction. I omitted one thing, that upon the 27th of the ſame Month of *November*, upon my Lord *Preſton*'s humble Submiſſion and Petition, his Lordſhip was diſcharged of his Impriſonment, and the Houſe of Lords were pleaſed to remit the Order given to Mr. *Attorney*, for proſecuting him in the *King's-Bench* for the Miſdemeanor: So that I cannot but wonder to hear of this Claim of Peerage after that Submiſſion. But there is nothing offered to the Court by my Lord that the Court can take any legal Notice of. If my Lord will plead any thing to the Juriſdiction of the Court, he ought to have his Plea in Form, and be ready with his Proofs to make it good.

Mr. Serj. *Thompſon.* My Lord *Preſton*, upon this laſt Order of the Houſe of Lords, has diſclaimed any Right of Peerage when he made his Petition, otherwiſe he had not been diſcharged.———

L. *Preſton.* My Lord, I beg leave——

Mr. Serj. *Thompſon.* Beſides, my Lord, what my Lord *Preſton* offers is a Matter of Record, as all Letters Patents are; and though out of his Hands, he might have had Recourſe to the Record of the Enrollment.

L. *Preſton.* For that, my Lord, I muſt humbly beg of your Lordſhips a little Time to put myſelf in a Capacity to plead it in Form. If you will over-rule it, I can ſay nothing to it; I offer it with all the Modeſty and Reſpect imaginable.

L. C. J. Holt. It ſhall do your Lordſhip no Prejudice, my Lord: God forbid but that you ſhould make uſe of all Advantages that you can invent for your Defence! But, my Lord, we muſt tell you, what you have offered is nothing that we can take any Notice of, unleſs you had your Patent to produce; and we cannot give your Lordſhip Time to plead to the Juriſdiction of the Court.

L. *Preſton.* Then if your Lordſhips are pleaſed to over-rule this Matter, I ſubmit; but I hope you will give me leave to make all the juſt Defence I can make for myſelf. Does your Lordſhip over-rule me in it?

L. C. J. Holt. I ſuppoſe we are all of the ſame Opinion; if not, I ſuppoſe they will declare their Minds.

L. C. J. Pollexfen. That which has been ſaid by *Mr. Sollicitor*, was only that you and all the World may be ſatisfied, that there is nothing of Hardſhip put upon you. But the Court, if this had not been ſaid, yet could take no Notice of what you ſay, unleſs it were pleaded, and pleaded in legal Form. But if the Matter be as the King's Counſel have repreſented it, That this Patent you now pretend to have, hath already had its Determination in a proper Place; this Court, which is an inferior Court to that of the Lords in Parliament, cannot intermeddle with it. We cannot help you, nor can we ſet up what was condemned there. So that you can entertain no Hope or Expectation of our doing any thing for you in this Matter, or any Relief or Help by ſuch a Plea.

* *L. C. Baron.* My Lord *Preſton*, you may remember (I am ſure ſome of us that were there preſent do) that you did decline further inſiſting upon this Matter in the Houſe of Lords; and thereupon you had that great Favour from the Houſe ſhewn you, as the King's Counſel have opened.

* Sir *Robert Atkins.*

L. *Preſton.* I did decline it, 'tis true, my Lord: When they had declared it a Miſdemeanor, I made my Application to the Court, and therein declared I was ſorry for having miſdemeaned myſelf.

Mr. Serj. *Thompſon.* If your Lordſhips pleaſe, we will read the very Orders of the Houſe of Lords, to ſatisfy my Lord *Preſton*, that we put no Hardſhip upon him.

L. *Preſton.* If there be any thing of Hardſhip upon me in this Caſe, it is becauſe I think I have a Right to inſiſt upon this Matter, and cannot have an Occaſion or Power to have that which I would make my Defence by.

L. C. J. Holt. Your Lordſhip ſhall have a fair Trial, if you will pleaſe to put yourſelf in a Condition to be tried, by pleading to the Indictment.

Mr. Bar. *Lechmere.* The Lords in Parliament have diſclaimed you for being a Peer, and we cannot make you one.

L. *Preſton.* My Lord, I hope your Lordſhips will put no hard Thing upon me, but give me Leave and your Lordſhips Help to make my Defence.

L. C. J. Holt. You ſhall, by the Grace of God, have all the Liberty you can deſire to make your Defence; but you muſt firſt plead.

L. *Preſton.* Since your Lordſhips are pleaſed to over-rule me in this Caſe, I ſhall ſay no more of it. I did not intend to offer any thing that might be an Offence to the Court.

L. C. J. Holt. As I told your Lordſhip before, ſo I aſſure you now again, it ſhall do you no Prejudice.

L. *Preſton.* Then, if your Lordſhip pleaſe, ſince the Language is different in which the Indictment is written, from that in which it was read, and ſome Things may be of different Signification in both Languages, I deſire the Indictment may be read in *Latin.*

L. C. J. Holt. Read it in *Latin.*

L. *Preſton.* I have one Thing to beg of your Lordſhip before it be read.

L. C. J. Holt. What is it you deſire, my Lord?

L. *Preſton.* My Lord, I humbly deſire, becauſe I cannot retain all the Contents in my Memory, that my Sollicitor may have Leave to ſtand by me.

L. C. J. Pollexfen. Do you all join in this Deſire? For if you ſhould each of you ſeverally have it read a great many Times over, they that take Notes in Short-hand may take a Copy of it, as it is read, and a Copy is not to be allowed.

L. C. J. Holt. If we find they deſire to be troubleſome, we can over-rule them.

L. *Preſton.* I would be guilty of nothing that may give the Court Offence, nor offer any thing that ſhould take up the Time of the Court unneceſſarily.

L. C. J. Holt. If they would have it read in *Latin*, let it be read.

L. *Preſton.* If it be troubleſome to the Court, I wave it, my Lord.

L. C. J. Holt. No, we do not think it troubleſome.

L. C. J. Pollexfen. Mr. *Aſhton*, and Mr. *Elliot*, do you deſire to have it read again?

Aſhton, Elliot. We all join with my Lord, and deſire it may be read in *Latin.*

L. C. J. Holt. Read it. [*Which was done.*]

Cl. of Arr. *Juratores pro Domino Rege & Domina Regina, ſuper Sacramentum ſuum præſentant quod——& contra Formam Statuti in eo Caſu editi & proviſi.*

L. *Preſton.* My Lord, I am ſorry I have taken up ſo much of your Time; I thought the Difference of Language might have made ſome Miſtake, which I thought would be of Advantage to me in my Trial: And for the ſame Reaſon, I humbly requeſt you will pleaſe to order me a Copy of the Indictment.

L. C. J. Holt. My Lord, That we cannot do; it hath been frequently demanded upon theſe Occaſions, but always denied. I have always known it denied.

L. *Preſton.* Your Lordſhip will give me leave to ſay, what your Lordſhip muſt needs know much better than I: There is a Statute in the 46th of *Ed.* III. that doth order a Copy of any Record to any Priſoner, or other Perſon, if he demand it: And it has been granted, as I am informed, in other Caſes, particularly in the Caſe of Colonel *Sidney.*

L. C. J. Holt. No, my Lord; it was denied in Colonel *Sidney*'s Caſe.

L. *Preſton.* If I miſtake, I beg your Lordſhip's Pardon. It is a Reaſon in a late Law made for the Reverſal of Mr. *Corniſh*'s Attainder. The Parliament do there ſay, that it was not a legal Trial, becauſe he had not a Copy of the Indictment, and Time given him to prepare for his Defence.

L. C. J. Holt. Truly, my Lord, I do not know how that Matter ſtands: That Reverſal of Mr. *Corniſh*'s Attainder is but a private Act of Parliament. I never ſaw it, nor heard it read, nor can we take Notice of it. But your Lordſhip is to be tried by the ſame Methods of Law that all Perſons that have gone before you have always been. It has always been the Courſe, that the Priſoner ſhould not have a Copy of his Indictment: Colonel *Sidney* had it not; and I remember, in the Caſe of Sir *Henry Vane*, in the Year 1662, he demanded a Copy of the Indictment, and it was denied him; and it has been conſtantly denied ever ſince in ſuch Caſes.

L. *Preſton.* I humbly deſire to know, whether it was not granted in the Caſe of my Lord *Ruſſel?*

L. C. J. Holt. No, indeed, my Lord; my Lord *Ruſſel* had it not; I can take it upon me to ſay that, for I know all the Proceedings in that Cauſe.

L. C. J. Pollexfen. No, my Lord; never any Man had it, in all my Experience.

L. C. J. Holt. Some of us that are here were of Counſel for my Lord *Ruſſel* at that Time; and we did not adviſe him to demand a Copy of the Indictment, for we knew he could not have it by Law.

L. *Preſton.* I am very tender of taking up your Lordſhips Time unneceſſarily, but it ſtands me upon to do all I can to defend myſelf; may not I have my Counſel heard to that Point? Becauſe, if it be a Point of Law, though your Lordſhips are of Counſel for the Priſoner, yet I beg that I may have my Counſel heard to argue it.

L. C. J. Holt. To what Point would you have your Counſel heard?

L. *Preſton.* To that Point, whether I may not have a Copy of my Indictment, according to the 46th of *Edward* the Third. That is the Point I would have my Counſel heard to.

L. C. J. Holt. There is no ſuch Statute as your Lordſhip mentions, that gives the Priſoner a Copy of his Indictment.

Mr. *Jones.* If your Lordſhip pleaſe to hear me for my Lord *Preſton*---

L. C. J. Holt. Nay, Mr. *Jones*, you are miſtaken in this Matter: If my Lord himſelf will ſhew that there is any ſuch Statute, we will conſider of it; and if it be a Matter that requires Debate, we may aſſign my Lord Counſel to argue it; but till then Counſel are not to be heard. My Lord *Preſton*, if your Lordſhip can ſhew us that Statute, pray do.

L. *Preſton.* My Lord, I deſire none, if it be not ſo.

L. C. J. Holt. I have heard a Diſcourſe concerning ſuch a Statute, but I could never find it.

L. *Preſton.* I ſuppoſe my Sollicitor is here with it; there is ſuch a Statute, my Lord.

L. C. J. Pollexfen. The Court over-ruled it in the Caſe of Sir *Henry Vane.*

L. C. J. Holt. And ſo it was, I remember, in another Caſe; and in none of the Trials that have been ſince King *Charles* the Second came in, was ever a Copy given, that I know or heard of.

Mr. Sol. Gen. My Lord, this Statute that my Lord *Preſton* mentions, 46 of *Ed.* III. is printed at large in the Preface to my Lord *Coke*'s Third Report; and has been inſiſted upon in ſeveral Caſes in the *King*'s-*Bench*, where the Priſoner has deſired a Copy of his Indictment; but a Copy has been always denied; and this Statute has been taken to extend only to Records which may be Evidence for the Subject.

L. C. J. Pollexfen. 'Twas always ruled, that it did not extend to this Matter.

L. C. J. Holt. My Lord, 'tis a Miſconſtruction of that Statute, that your Lordſhip thinks that it gives the Priſoner a Copy of his Indictment: For that Statute ſays, that all Perſons ſhall be free to make uſe of the publick Records, and take Copies of them, becauſe oftentimes the Records are Evidences of Men's Eſtates, and their Titles.

L. *Preſton.* My Lord, an Indictment, I ſuppoſe, is a Record?

L. C. J. Holt. But not ſuch a Record as is within the Intent of that Statute.

L. *Preſton.* My Lord, I am tender of taking up your Lordſhips Time; but ſince all that is dear to me is at Stake, I deſire to this Point I may be heard by Counſel.

L. C. J. Pollexfen. My Lord, I am ſatisfied you have had Counſel with you; I have heard, a great many. Does any one of them tell you, that this has been done? If ever any one of them will come and ſhew us when it has been done, you ſay ſomething; but I dare ſay none of them will, or can. Mr. *Jones*, there, is as like as any body; but I believe he will not ſay it ever was done.

L. *Preſton.* My Lord, I cannot ſay my Counſel has told me ſo, but I have read ſuch a Statute myſelf; for it ſtands me upon it, and I believe there is ſuch a Statute, and it will be produced before your Lordſhips. If your Lordſhips will inſiſt upon not allowing me a Copy, I deſire I may be heard to it by my Counſel; for I take it to be a Point of Law, with humble Submiſſion to your Lordſhips.

L. C. J. Holt. My Lord, we muſt not hear Counſel to debate plain Points that have no manner of Queſtion in them: It has been always diſallowed; and 'tis a ſettled Point at Law, and as plain as any whatſoever, that no Copy of an Indictment ought to be allowed to a Priſoner in Felony or Treaſon.

L. *Preſton.* My Lord, there is a Statute that ſays, it ſhall be allowed to all Perſons to have Copies of Records, as well for as againſt the King; and certainly the Indictment is a Record, and a Record of great Conſequence to me at this Time; and though my Counſel has not told me when it was done, yet thoſe that I have adviſed with do ſay, that the Statute is expreſs.

L. C. Baron. If any doubtful Words be in ſuch a Statute, yet the conſtant Practice muſt expound it; and ſince it has been ſo often denied, nay always, the Law is now ſettled, that it is not within the Meaning of that Statute.

L. C. J. Holt. We muſt go in the Way of our Predeceſſors; we received the Law from them, and muſt not contradict the received Practice or

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the Judges in all Ages, nor alter the Determinations that have been made in all Caſes of the like Nature.

L. *Preſton.* I hope your Lordſhips intend, and I don't queſtion it, that my Trial ſhould be a legal Trial. If there be ſuch a Statute that gives me a Copy of the Indictment, and the Court deny it me, I am not legally tried.

L. C. J. Pollexfen. If you pleaſe to name the Statute, my Lord, it ſhall be read to you; but you are miſtaken if you think there is any thing in that Statute that will do your Lordſhip Service in this Point.

L. C. J. Holt. See the 46th of *Ed.* III. Read it.

L. *Preſton.* Here is a Copy of the Record in Court.

L. C. J. Pollexfen. It is not printed, but it is mentioned in the Preface to my Lord *Coke*'s third Report, and 'tis mentioned no where but there that I know of; but whether there were any ſuch Statute or no, *Non conſtat*; for it is not printed. But if it be a Statute, it does not meddle with Things of this Nature, ſuch as Indictments; for you muſt conſider, my Lord, yours is not a Caſe different from all other Caſes of like Nature as to this; but it is the Caſe of all Men that are tried as you are to be. And if all People were to have Copies of their Indictments to make Exceptions out of them before they plead, inſtead of Days of Goal Delivery, the whole Year would not be ſufficient, but would be ſpent before they could be brought to their Trial.

L. *Preſton.* My Lord, I am to defend myſelf as I can by Law, and not to conſider what other People's Caſes are. It is my particular Caſe now; what the Caſe may be as to any other hereafter, or what the general Conſequence may be, is not to be conſidered; but if there be any thing that is legal, that can give me an Advantage in making my Defence, I know your Lordſhips are too juſt to hinder me from taking Advantage of it.

L. C. Baron. My Lord, it is no new Thing to demand it; it has been frequently demanded, but it has been always over-ruled.

L. *Preſton.* My Lord, it is now deſired, and a Reaſon is given you that perhaps was not given before: There is ſuch a Law. My Lord Chief Juſtice ſays well, it is not printed, but it is a Record, and there is a Copy of that Record in Court. I deſired there ſhould be, I am ſure.

L. C. J. Holt. If you have a Copy of any Record of an Act of Parliament, it ſhall be read, if it be proved.

L. *Preſton.* Nay, we offer nothing if we don't prove it; but there is ſuch a Record, and the *Sollicitor* is ready to atteſt it. Pray ſwear Mr. *Whitaker:*

Mr. Serj. *Thompſon.* Swear him.

Cl. of Arr. You ſhall true Anſwer make to all ſuch Queſtions as ſhall be demanded of you by the Court. So help you God. Is this a true Copy?

Mr. *Whitaker.* It is a true Copy.

L. C. J. Holt. Where did you examine it?

Mr *Whitaker.* My Lord, it is a true Copy of the Record, I examined it at Mr. *Pettyt*'s Office in the Tower.

L. C. J. Pollexfen. Upon what Number Roll is it?

Mr. *Whitaker.* There is the Number Roll and all upon the Book.

Clerk Reads. *Item pria les Commons que come recorde & queconque choſe en la Court le Roy de reaſon devoient demurrer illeoques pur perpetual evidence & eide de touts partie a ycelly & de touts ceux a queux en nul manner ills atteignent quant, meſtier lour fuit. Et ja de nouvel refuſent en la Court noſtre dit Seignior de ſerche ou evidence encountre le Roy ou diſadvantage de luy. Que pleaſe os deiner per eſtatute que Serche & Exemplification ſoit faitz as toutz Gentz de queconque Recorde que les touche en aſcun manner auxy bien de ce que chiet encountre le Roy come autres Gentz. Le Roy le voet.*

L. C. J. Pollexfen. It is only Copies of Records that they ſhall have for Evidence.

L. C. J. Holt. My Lord *Preſton*, your Lordſhip hears by this Record, you may as well pray that an Exemplification be made of this Indictment as a Copy; for ſo the Words of this Act run; it is only meant of thoſe Records that were to be given in Evidence. But this Indictment that you would have a Copy of, is not now to be given in Evidence, nor to be exemplified, and ſo it does not reach your Caſe.

L. *Preſton.* My Lord, this Indictment is a Record, and a Record againſt me, and I think it is given in Evidence againſt me.

Mr. J. *Eyres.* No, my Lord, it is no Evidence, but an Accuſation; it is no Proof at all.

L. *Preſton.* It is always ſworn unto.

Mr. J. *Eyres.* The Witneſſes are ſworn that teſtify the Matter of it to the Grand Jury, but the Indictment itſelf is no Evidence.

L. C. J. Holt. Suppoſe a Statute be doubtful, as truly I do not take this to be, we are to expound the Statute as it has been expounded in all Ages. It was never thought by any Judges in any Reign, that this Statute did entitle a Priſoner to have a Copy of his Indictment, but always held the contrary.

L. *Preſton.* Will your Lordſhip be pleaſed then to allow me Counſel to be heard to it?

L. C. J. Holt. No, my Lord, not Counſel in a plain Caſe: If the Court apprehend there is any Matter that may be debateable, or whereupon a Doubt may be made, we may aſſign Counſel, and ſhall; but never in a plain Caſe, where there is no Manner of Queſtion.

L. *Preſton.* My Lord, here is a Doubt in this Caſe.

L. C. Baron. But, my Lord, it's not the Doubt of the Priſoner, but the Doubt of the Court, that will occaſion the aſſigning Counſel.

L. *Preſton.* But the Priſoner may offer his Doubt to the Court, and your Lordſhips are ſo juſt, that you will take Care that the Doubt may be legally reſolved.

L. C. J. Holt. My Lord, it is our Duty to ſee Juſtice and Right done, and God willing, it ſhall be.

L. *Preſton.* And I am bound in Duty to myſelf, in ſuch a Caſe, to inſiſt upon all Advantages I can have by Law.

L. C. J. Holt. My Lord, no body blames you, though your Lordſhip do urge Things that are unneceſſary, or improper; and we ſhall take Care that it ſhall not tend to your Lordſhip's Prejudice. We conſider the Condition you are in; you ſtand at the Bar for your Life; you ſhall have all the fair and juſt Dealings that can be; and the Court, as in Duty bound, will ſee that you have no Wrong done you.

L. C. J. Pollexfen. My Lord *Preſton*, for this Thing that you now mention, in all Ages, in all our Books, it is the ſame Thing, and has been in all Men's Caſes that have been for their Lives, denied; and this Statute that you bring is quite of another Intent: For it is ſaid, the Records ſhall remain in Court for perpetual Evidence, and the aiding of all Perſons to whom they ſhall belong. My Lord, this is none of your Caſe; for God knows, you expect no Aid from this Indictment: But this is meant of all Copies that concern the Eſtates of Men, that they may have Recourſe to their Records to make out their Evidences to their Eſtates, or to have them exemplified under the Seal of the Court for Evidence: But to have a Copy of an Indictment, thereby to be enabled to conſult with Counſel how to make Exceptions to that Indictment, is a Thing that has been denied in all Ages, by all the Judges that ever were. If any one can ſay to the contrary, it were ſomething; but ſhall we now admit Counſel to debate a Thing that has been in all Ages denied, and never admitted ſo much as once? That cannot be expected from us.

L. *Preſton.* The Act ſays, That it ſhall be all Records that ſhall be in Aid to any Perſon that ſhall deſire it. Here is no Diſtinction made of what Kind the Records are to be. If it be for the Aid of any Perſon, it ought to be granted, and I may be aided by this Record, if I have a Copy of it; and I think it is hard, when I am ſo much concerned in this Record, that I cannot be help'd to it by this Law.

L. C. J. Pollexfen. Conſtant Experience has gone according to what we ſay.

L. *Preſton.* If that be Law, and it has not been demanded, then they are not entituled to have the Benefit of it: But now I demand it, ſure it is good Law.

L. C. J. Holt. It is no Queſtion a good Law, but not applicable to your Lordſhip's Caſe: I ſuppoſe we are all of the ſame Opinion; if any think otherwiſe, I deſire they would ſpeak.

L. *Preſton.* My Lord, I ſubmit to the Court, but then I deſire one Thing. You know my Life, my Fortune, my Reputation, my Poſterity, and all are at a Stake, and all that is dear to me muſt fall with me if I miſcarry: Therefore I take Leave to repreſent, that I have had very ſhort Notice of my Trial. I do aſſure you, I have not had above ſix or ſeven Days Notice: I hope you will not refuſe me a little longer Time before I come to my Trial; and I have had no Copy of the Jury yet.

Mr. Sol. Gen. If my Lord pleaſe to plead to the Indictment, that will be Time enough to move afterwards, and till Iſſue is joined, it cannot properly be moved for.

L. C. J. Holt. It is not proper to deſire Time yet, till you have put yourſelf upon your Trial, by pleading to the Indictment.

L. *Preſton.* It was granted in Colonel *Sidney*'s Caſe: He had eight or ten Days granted him after he had pleaded; and in the Act for the Reverſal of Mr. *Corniſh*'s Attainder, it is given as one Cauſe for the Reverſal, that he had not Time to prepare for his Defence.

L. C. J. Holt. My Lord, ſeven Days is very fair Notice. Your Lordſhip knew when the Seſſions would be, and your Lordſhip might reaſonably expect, that you ſhould be tried here: I think truly you have had very fair Notice.

Mr. *Aſhton.* My Lord, we have had ſeven Days Notice of our Trial, 'tis true. This Day Sevennight, at Night, we had Notice we were to be tried as this Day; but three of the ſeven, we had not the Liberty of ſeeing any Friend, or Counſel, or any body, not till *Tueſday* Night, and that we got with great Application, and great Charge, to get an Order for Counſel to come to us: So that though we had ſeven Days Notice, yet we have had but three Days in all to conſult with any body; and we never have had a Copy of our Jury till this Minute.

L. C. J. Pollexfen. We ſee the Nature of the Thing, and I am ſorry that I muſt ſay, it is fit that we ſhould take Notice of it. Perhaps the Thing that you are accuſed of is not true; but if it be true, you ſee what it is, that there are Letters and Papers preparing for a Deſign to ſet all the Kingdom in Confuſion. Men that will venture upon ſuch ſort of Things, are not to condemn the Law, if it be a little hard upon them; for 'tis the common Preſervation that is principally aimed at in Proſecutions of this Nature; and if this Accuſation be true, 'tis but juſt and reaſonable, that all Speed ſhould be uſed to enquire into, and prevent it; and as it falls out in this Caſe, it is not in our Power to do it. This Seſſions is ſet before this Buſineſs is known, and this is an Act done in this County, and therefore the Seſſions is the proper Place for the Trial; and ſo you have the ſame ſort of Proceedings that all other Criminals have, which are very many, though I hope not many of ſo high a Nature. Seven Days Notice you have had, you acknowledge; if my Lords pleaſe we will indulge you as far as we can, and give you Time for your Trial till To-Morrow, but you muſt plead preſently.

L. C. J. Holt. My Lord, we debate the Time of your Trial too early; for you muſt put yourſelf upon your Trial firſt, by pleading.

L. *Preſton.* My Lord, I hope I ſhall always carry myſelf as becomes me towards the Court; but I do not really think that you have any Trials that are of ſo great Concernment, and this ſure is a fit Time for me to offer it; for it may be I have a great many Witneſſes in the Country, and at Diſtance from this Place, and one another.

L. C. J. Holt. My Lord, we cannot diſpute with you concerning your Trial, till you have pleaded. I know not what you will ſay to it, for aught I know there may be no Occaſion for a Trial. I cannot tell what you will plead; your Lordſhip muſt anſwer to the Indictment before we can enter into the Debate of this Matter.

L. *Preſton.* Will your Lordſhip give me Leave to move it afterwards?

L. C. J. Holt. You may offer any thing then concerning your Trial: If you can ſhew any Reaſon to defer it, it will be proper to do it then.

L. *Preſton.* Truly, my Lord, I think one Reaſon why my Trial ought to be put off is, becauſe I have Privilege of excepting againſt ſo many of my Jury; but if I have not Time to look into the Pannel, I ſhall loſe that Privilege.

L. C. J. Holt. We are not come to that yet, you are to plead now.

L. *Preſton.* Then your Lordſhips are pleaſed to over-rule my Claim of Peerage.

L. C. J. Holt. My Lord, we are of Opinion you ought to plead to this Indictment.

Clerk of Arr. What ſays your Lordſhip, are you guilty of this High-Treaſon, or not guilty?

L. *Preſton,*

L. *Preſton.* Not guilty.

Clerk of Arr. Culprit, How wilt thou be tried?

L. *Preſton.* By God and my Country.

Clerk of Arr. God ſend you a good Deliverance.

John Aſhton, What ſayeſt thou? Art thou guilty of the ſame High Treaſon, or not guilty?

Mr. *Aſhton.* My Lord, I have only this to obſerve, beſides what my Lord *Preſton* has offered: As to the Buſineſs of the Act of Parliament, your Lordſhips have been pleaſed to over-rule that Plea; but, my Lord, I am told, that if an Indictment be faulty, but even in a Letter, we cannot be found guilty upon that Indictment. Now, if we never have a Copy of that Indictment, how ſhall we know whether there be any ſuch Fault in it? Your Lordſhips, who are our Counſel, I ſuppoſe have never ſeen the Indictment, and ſuppoſe there be twenty Faults, we have not the Advantage of them, by not having a Copy; and how ſhall we come to have any Advantage, if neither your Lordſhips, who are our Counſel, nor we ourſelves, can ſee them. It may turn upon that.

L. C. J. Holt. But we will ſee it when you come upon your Trial.

L. C. J. Pollexfen. That is a Miſ-information, for it may be ſuch a Letter as is not material, and it may be ſuch as is material; as I ſuppoſe, your Name being *Aſhton*, the *A* ſhould be left out, it would then be a Queſtion, what there would be to charge you,

Mr. *Aſhton.* We know that it has been ſo in ſeveral Inſtances.

L. C. J. Pollexfen. It may be ſuch an Omiſſion that may make it no Crime, but we muſt not preſently conclude that it is ſo; but you have heard it read, and ſo have we; if there had been any ſuch Letter miſtaken, it would have been taken Notice of.

Mr. *Aſhton.* As to the reading, there may in the reading of the Indictment be many Words not nicely obſerved. I ſuppoſe the Indictment be right; I ſay it is poſſible it may, or it may not; but if your Lordſhip never ſee it, who are our Counſel by Law, nor you will allow us Counſel to look into it, if there be forty Faults in it, we have no Advantage of it.

L. C. J. Holt. We muſt not allow you Counſel to pick Holes in the Indictment; that never was done. If you aſſign any Reaſon, we may aſſign you Counſel to debate any Matter of Law that may ariſe; but never was Counſel allowed to find out Faults in an Indictment. When you come to your Trial we ſhall try you upon your Indictment, and if there be any thing conſiderable, you are to ſuppoſe we ſhall obſerve it for your Advantage.

Mr. *Aſhton.* My Lord, we never had a Copy of the Pannel of our Jury. I pray we may have it.

L. C. J. Holt. That you cannot have till you have pleaded.

L. C. Baron. Mr. *Aſhton*, we have over-ruled my Lord *Preſton* about a Copy of the Indictment: Do you think we ſhall grant it you, when we have denied it him?

Mr. *Aſhton.* My Lord, I deſire we may have a Copy of the Pannel.

L. C. J. Holt. You muſt plead firſt.

Clerk of Arr. Are you guilty of the High Treaſon, or not guilty?

Mr. *Aſhton.* Not guilty.

Clerk of Arr. How will you be tried?

Mr. *Aſhton.* By God and my Country.

Clerk of Arr. God ſend you a good Deliverance.

Edmund Elliot, How ſay you, Are you guilty of the ſame High Treaſon, or not guilty?

Mr. *Elliot.* Not guilty.

Clerk of Arr. How will you be tried?

Mr. *Elliot.* By God and my Country.

Clerk of Arr. God ſend you a good Deliverance.

L. *Preſton.* My Lord, I hope now it may be Time to pray that my Trial may be deferred.

L. C. J. Holt. Why would you have it deferred?

L. *Preſton.* Becauſe of the Diſtance of my Witneſſes, and other Things that would be neceſſary for me to have to prepare me for my Defence; and beſides, we have not had a Copy of the Pannel of our Jury, and the Reaſon of the Law does order, that becauſe it gives us Liberty to except againſt them, and that we cannot know how to do, unleſs we inform ourſelves of the Men; and therefore I beg that I may have a Copy of the Pannel.

L. C. J. Holt. As for having a Copy of the Pannel, the Court grants it. Let them have a Copy of the Pannel.

Clerk of Arr. Here is one ready for you.

Mr. Sol. Gen. There was Direction given that there ſhould be one ready.

Mr. *Aſhton.* We have demanded it every Day ſince we had Notice of our Trial.

L. C. Baron. You could not have it till there was an Iſſue joined, and that could not be till you had pleaded.

L. C. J. Holt. And as to the putting off your Trial, I know not to what Time to put it off.

L. *Preſton.* My Lord, I am willing to have this Matter tried as ſoon as poſſible, for it cannot but be uneaſy to me to lie under theſe Accuſations; but ſome of my Witneſſes live in the Country, at a remote Diſtance. If it may be, next Term, my Lord, or the next Seſſions; for, if I have a Copy of the Pannel To-Night, and am to be tried To-Morrow Morning, how can I provide for my Defence? I cannot be prepared to except againſt the Jury, and I am ſure you will be tender, and conſider the Caſe of a Man, whoſe Life and Fortune are concerned in this Buſineſs.

L. C. J. Holt. To put it off till the next Term, is to remove it out of this Court; that we cannot do; and to put it off till after the Term, will be too long a Time.

L. C. J. Pollexfen. We cannot ſit here after *Monday*, becauſe the Term begins on *Tueſday*.

L. *Preſton.* My Lord, this Term is always a ſhort Term, and if I be tried To-Morrow, it is trying me without giving me Time for my Defence.

Mr. Sol. Gen. My Lord, there has been all the Care taken that the Nature of the Thing was capable of, to prevent any Complaint of this kind. Order was given, that my Lord and theſe Gentlemen ſhould have Notice as early as was poſſible. As ſoon as ever Mr. *Attorney-General* had had an Opportunity of looking into the Evidence, Notice was given them, that they ſhould be tried, and that this was the Day appointed for their Trial. But there ſhall be no contending in a Matter of this Nature for a Day. If it be deſired, and the Court pleaſe to put it off till To-Morrow, we are contented; but there can be no Reaſon to put it off for a longer Time. As there is always a Tenderneſs to be uſed, and I know will be, and as far as I am concerned, always ſhall be towards Perſons in theſe Circumſtances; ſo there is a Regard to be had towards the Government and the Publick. I am ſure, if the Accuſation that is againſt theſe Gentlemen is true, the Government is highly concerned that this Matter ſhould come to a ſpeedy Examination, and that Perſons that enter into ſuch Deſigns be brought to Judgment. The Charge in the Indictment is of ſuch a Nature as draws very great Conſequences along with it; it concerns no leſs than the Life of the King and Queen, the Deſtruction of the Fleet of the Kingdom, and the Invaſion of the Realm by the Forces of a Declared Enemy. Theſe are the Things that the Priſoners are charged with; and certainly there ought to be no Delay in the ſearching into ſuch Matters as theſe. They have had a Week's Notice of Trial already, and for many Days of that Week, at leaſt they have had as many Counſel to aſſiſt them as they deſired, and all the Sollicitors that they had a Mind to, have had free Acceſs to them; ſo that they have wanted no Opportunity to prepare for their Trial, that Men in their Circumſtances could have. As to what has been ſaid with relation to the Jury, the Law indulges them in the Number of their peremptory Challenges, without being put to ſhew Cauſe, and the Court, hath granted, them at the very Inſtant of their Pleading, a Copy of the Pannel; and there is a reaſonable Time between this and To-Morrow for their making ſuch Enquiry into the Jury as is juſtifiable, and fit to be made: But if by Time to look into the Jury, it be meant, that there may be a Time for tampering, that I am ſure your Tenderneſs of the Government will not permit; you will take Care as much that no ſuch thing be done, as you will that they ſhould not be ſurprized. If your Lordſhips are pleaſed that the Trial be put off till To-Morrow, we will be ready To-Morrow to attend it.

L. *Preſton.* My Lord, 'tis a very hard Preſumption that Mr. *Sollicitor* makes of our aſking a Copy of the Pannel, that it is with a Deſign to tamper with the Jury.

Mr. Sol. Gen. I did not ſay ſo, but I ſaid till To-Morrow was Time enough to make a juſtifiable Enquiry.

L. *Preſton.* But if I be to be tried To-Morrow, I am willing to be tried To-Day, for I am as ready now as I ſhall be then.

L. C. J. Holt. It may be ſo, and as ready as you will be after the Term; but I know not what your Lordſhip means by expreſſing ſuch Reſentment, that becauſe you can't have what Time allowed you would, therefore you will have none, but be tried now.

L. C. J. Pollexfen. You may have Time enough to prepare yourſelf as to the Jury, certainly, between this and To-Morrow.

Mr. Serj. *Thompſon.* My Lord, we that are for the King, have given theſe Gentlemen Notice long enough to be prepared, if we ſhould try them now; for that's the Time we gave Notice for: But becauſe we would indulge them as far as we could, we are willing that they ſhould have till To-Morrow, and intending them that Kindneſs, are not ready to try them To-Day, and there can be no Pretence for them to put off their Trial any longer; for there can be no want of Evidence as to the Fact we can charge them with; for all the Evidence that we ſhall bring againſt them was taken from themſelves, or the greateſt Part of it.

L. C. J. Holt. Well, what Time will you be ready then?

Mr. Serj. *Thompſon.* To-Morrow Morning.

L. C. J. Holt. Then To-Morrow at Eight o'Clock you are to be tried.

L. C. J. Pollexfen. My Lord *Preſton*, do but conſider you have had ſeven Days Notice, and To-Morrow makes eight.

L. C. J. Holt. You had Notice for this Day, this Day ſeven-night.

Mr. *Aſhton.* But we have had only three Days Time to conſult with our Counſel, though we deſired we might have our Counſel come to us that Day.

Mr. Sol. Gen. They were told, they muſt apply themſelves to the King for that at the ſame Time.

Mr. *Aſhton.* We did ſo that Night to my Lord *Sidney*, then *Sunday* interven'd, which was no Day for Buſineſs, and we could not have our Order. On *Monday* we could not have it till Night; ſo that it was *Tueſday* before we could get any body to us. My Lord, it is a weighty Concern, and all ſuch haſty Proceedings were thought very hard in the late Times, and particularly the denying Mr. *Corniſh* Time; and 'tis one of the Reaſons given in the King's Declaration for his coming here into *England*, the Hardſhips that the Law laid upon Men in their Trials, which he came to prevent.

L. C. J. Pollexfen. The Hardſhip that was upon Mr. *Corniſh* was, that he was taken upon the *Tueſday* off from the *Exchange*, and tried before that Day ſeven-night, and that was hard indeed: But beſides, he was taken about his Buſineſs off from the *Exchange*. I know not whether you were about your Buſineſs, your lawful Buſineſs, when you were taken, God of Heaven knows that. And pray conſider, here is a Matter of very great Conſequence on the one Side, and on the other: For if Men be plotting againſt the Government, to give them Time to carry on their Plots will be miſchievous on that Side.

Mr. *Aſhton.* My Lord, till that be legally proved before your Lordſhips, that is but a Suppoſition.

L. C. J. Pollexfen. That will lie upon them to prove.

L. C. J. Holt. Mr. *Aſhton*, we are to ſuppoſe you not guilty, 'till you are proved guilty.

Mr. *Aſhton.* Then, my Lord, the Law ſays, we may except againſt ſo many Perſons; what is the End of the giving us a Copy of the Pannel? 'Tis not to be preſumed we can do it by their Faces; for what can I ſay to the Face of one I never ſaw? We muſt enquire concerning the Men, and that is a Work of Time; for ſome of theſe Gentlemen, I preſume, live eight or ten Miles out of Town. Is it poſſible for me before To-Morrow Morning eight o'Clock to ſend to thirty-five Men to enquire after them?

L. C. J. Holt. No, nor is it intended you ſhould.

L. C. J. Pollexfen. Nay, if you intend to ſend to the Jury-men, we have no Reaſon to give you Time.

Mr. *Aſhton.* I mean to enquire after the Men, their Lives, what Religion they are of, what ſort of Men they are.

L. C. J. Holt. I ſuppoſe they are all Proteſtants of the Church of *England*; but ſuppoſe they are all Strangers to you, and yet good and

lawful

lawful Men of the County, and there be no Difference between you and them, then they are fit to try you.

Mr. Aſhton. 'Tis true, my Lord, but if I have Liberty to except againſt thirty-five, I ought to know ſomething of them.

L. C. J. Pollexfen. Yes, and inform yourſelf as well as you can of them, but not to ſend to them, that is not to be permitted.

L. Preſton. There is another Point to enquire of them, and that is, whether they be Freeholders or not.

L. C. J. Pollexfen. We have neither your Lordſhip's Affidavit, nor the Oath of any other Perſon, only an Allegation.

L. C. J. Holt. My Lord, you muſt expect your Trial To-morrow Morning; we cannot put it off, we are limited in Time, the Seſſions can hold no longer than *Monday*, becauſe of the Term.

Mr. Aſhton. Then will your Lordſhip pleaſe to put it off till *Monday?*

L. C. J. Holt. No, we ſhall not have Time to do it, it may be a long Trial.

L. Preſton. I proteſt to your Lordſhips, I cannot be ready To-morrow to make that Defence I deſire, and deſign to make, and which I may make, if your Lordſhips give me a longer Day.

Clerk of Arr. Here is a Copy of the Pannel for your Lordſhip.

[*It was delivered to the Lord* Preſton, *who gave it to his Sollicitor.*

Mr. Aſhton. My Lord, we ſhall not have Time to enquire into the Jury.

L. C. J. Holt. Look you, we are not bound to do this, but you have it as ſoon as you have pleaded.

Mr. Aſhton. My Lord, it will take up five or ſix Hours in writing of it out, and we muſt each have a Copy.

Mr. Soll. Gen. They are all joined in one Indictment, and have joint Counſel, and joint Sollicitors, as we are informed.

Mr. Aſhton. Then I hope you will allow us Liberty till *Monday* for our Trial.

L. C. J. Pollexfen. The Court cannot allow longer Time; the Court here can ſit no longer than *Monday*, and here muſt needs be a great deal of Buſineſs to do of the ordinary Buſineſs of the Seſſions, and when that Day comes, perhaps it will not ſerve to go through with the Trial, and then it muſt be adjourned till after the Term, and in the mean while ſome are in hopes the King of *France* may come and determine the Matter.

Mr. Aſhton. Pray, my Lord, let no Suggeſtion againſt us prepoſſeſs the Opinion of the Court before we be tried.

L. C. J. Pollexfen. I don't ſuggeſt any thing, but 'tis in the Indictment alledged againſt you, and that you are to be tried upon, and if ſuch Things be there ſuggeſted, as we would give you all reaſonable Time for your Defence, ſo we muſt take Care that the Government ſuſtain no Hurt by Delays.

L. C. J. Holt. It is obſerved by the King's Counſel, that they are Things of very great Conſequence, and therefore they preſs for the Trial.

L. C. J. Pollexfen. I cannot believe but that you will be as ready To-morrow, as you can be on *Monday.*

Mr. Aſhton. The Government cannot be prejudiced by putting it off till *Monday*, ſure.

L. C. J. Pollexfen. The Evidence that is to convict you, lies all on their Side that are for the King, and I cannot imagine where your Witneſſes ſhould be, unleſs they are in *France*; but you had Reaſon to expect your Trial, being apprehended in the Manner as you were, and to provide for it.

L. C. J. Holt. The Want of Witneſſes is only a Surmiſe, and a Preſence; for there is no Oath of any Witneſſes that they want, or who they are: Indeed, if we had Oath made that they wanted material Witneſſes, and to material Points for their Defence, that might be Occaſion for our further Conſideration; but ſhall we put off a Trial upon a bare Suggeſtion of the Want of Witneſſes? Sure that was never done.

L. C. J. Pollexfen. Name any one particular Man that is your Witneſs, and the particular Thing that he can prove; for if any of your Witneſſes do know any thing of this Kind, it muſt be Particulars, and not Generals; if you will not name them, it is plain it is only a Pretence you inſiſt upon for Delay.

Mr. Aſhton. My Lord, I inſiſt upon the Point of the Jury, that we have not Time to look after them.

L. C. J. Holt. Then that of the Witneſſes is waved.

L. Preſton. 'Twas I that deſired Time for my Witneſſes.

L. C. J. Pollexfen. But you neither name them, nor bring us any Oath about them, or of any Thing they can prove for you.

L. C. J. Holt. Pray, don't ſpend the Time of the Court, nor your own Time unneceſſarily, you muſt prepare for your Trial To-morrow.

Mr. Aſhton. My Lord, there is not a Perſon in Court, I believe, but will think it hard that we are ſo ſtreightned in Time.

L. C. J. Holt. The Time you have had Notice to prepare for your Trial is ſufficient.

Mr. Aſhton. Mr. *Corniſh*'s Caſe has been complained of as a very hard Caſe in this very Reſpect, and we would hope, the King that now is, came to reform ſuch Abuſes.

L. C. J. Holt. You have been already told, wherein the Hardſhip of that Caſe lay. I am ſure yours is not like it; but take Notice we will be ſitting here punctually at Eight.

L. Preſton. Will your Lordſhip pleaſe to let us have our Counſel come to us, and our Friends?

L. C. J. Holt. Yes ſure, you ſhall have all that is neceſſary for your Defence that we can allow you, but unneceſſary Delays muſt be avoided.

[*Then the Priſoners were taken away by the Keeper of* Newgate *to the Gaol.*]

Sabbati, 17 *January*, 1690.

THIS Day, between the Hours of Eight and Nine in the Morning, the Court being ſat, and thoſe Perſons who were return'd upon the Jury were called over twice, and their Appearances recorded; then the Priſoners were brought to the Bar.

Clerk of Arr. You the Priſoners at the Bar, theſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord and Lady, our King and Queen, and you, upon Trial of your ſeveral Lives and Deaths; if therefore you, or any of you, will challenge them, or any of them, your Time is to challenge them as they come to the Book to be ſworn, and before they be ſworn.

L. Preſton. My Lord, I beg your Lordſhip will inform me, whether, if I have any thing to offer to the Court, it is proper before the Jury be impannelled, or after.

L. C. J. Holt. My Lord, I don't know what your Lordſhip has to offer; I think you have nothing to offer why the Jury ſhould not be ſworn, for now your Lordſhip has put yourſelf upon your Trial, and are going to proceed in that Trial, and the Jury are going to be ſworn: If you have any thing to offer, as to them, you may challenge them.

L. Preſton. Truly, my Lord, I have ſomething to offer, but it is only what I did humbly offer Yeſterday, and that is, That my Warning was ſo ſhort, that I am not prepared for my Trial. We had not above three or four Days wherein we might conſult about it, all the former Time we have been kept cloſe Priſoners; we are now brought here to be tried, without having Time to look into the Pannel of our Jury. The Pannel we had not till Yeſterday, and I humbly beg, that I may have ſome Time to prepare for my Defence.

L. C. J. Holt. My Lord, this is that which you inſiſted upon Yeſterday. Your Lordſhip ſaid you wanted Witneſſes, and your Lordſhip did not then mention what Witneſſes you wanted, nor was any Oath made of any one that you wanted; and therefore the Court over-ruled you, and wiſhed you to prepare for your Trial, and would not put it off: For if it ſhould not be To-day, but ſhould be put off till another Time, it muſt be the putting of it off till another Seſſions; for we are ſtreightned with it in point of Time, for the Seſſion can laſt no longer than *Monday*, and you have had convenient Notice.

L. Preſton. Truly, my Lord, I think it is hard, when my Life and Fortune, and all are concerned, that I ſhould be hurried on to a Trial, only becauſe the Court is ſtreightned in point of Time; and yet that is the only Reaſon that I can perceive why ſuch Haſte is made. I deſire a little more Time to prepare myſelf, and I think it very hard I ſhould be denied; I muſt ſubmit it to your Lordſhips: If you will not allow me Time, I cannot make my Defence as I would.

L. C. J. Holt. My Lord, as to the Shortneſs of the Time, that is no Objection; you have had convenient Notice; as much Notice as the Law requires, and as much Time as without particular Cauſe ſhewn, hath here at any Time been given in ſuch a Caſe. If indeed there had been any particular Reaſon offered for putting off the Trial, and you had made it appear by Oath, the Court poſſibly might have put off the Trial; but becauſe your Lordſhip only ſuggeſted you wanted a Witneſs, naming neither Perſon, nor Place, or Matter ſuch Witneſs ſhould prove, they are of Opinion no Cauſe appears for ſuch Delay of your Trial.

L. Preſton. My Lord, I aſſure you I am not prepared for my Trial.

L. C. J. Holt. My Lord, the Court over-ruled this Matter Yeſterday, it cannot be put off.

Mr. Soll. Gen. My Lord, I would humbly offer your Lordſhip one Thing before the Jury be called and ſworn. By the Law, theſe Gentlemen at the Bar have the Privilege to challenge peremptorily to the Number of Thirty-five; which is ſo great a Number, that if each of them ſeverally take Advantage of it (as they may do by Law, and God forbid they ſhould be denied any Advantage the Law gives them) it will be next to impoſſible to have a ſufficient Number of Jurors appear ſo as that we may proceed in the Trial.

L. Preſton. Truly, my Lord, we don't hear what Mr. *Sollicitor* ſays.

L. C. J. Holt. Do you not? Then I'll tell you what he ſays, when he has done: Go on, Mr. *Sollicitor.*

Mr. Soll. Gen. My Lord, all that I would know of them is, whether they intend to take the Advantage that the Law gives them, of ſingle and particular Challenges; for then they muſt be tried ſeverally; or whether they will be content that the ſame Perſons that are challenged by any one, ſhall ſtand challenged for all three. I leave it to them to take their own Choice; let them do what they pleaſe in it.

L. C. J. Holt. My Lord *Preſton*, Mr. *Sollicitor* tells you what the Law is, that every one of you may challenge five and thirty without Cauſe; and if the Court ſhould proceed to try you all together, and every one of you ſhould challenge five and thirty, perhaps a ſufficient Number will be wanting to try you: The Number challenged will then amount to 105 in all. If ſo be you agree in your Challenges, that what one challenges ſhall be challenged by the other two, then the Court will go on, and try you all together; otherwiſe they will be forced to ſever you; therefore he deſires to know whether you will join or ſever in your Challenges.

Mr. Soll. Gen. Take your own Choice, Gentlemen; and do what you think beſt.

L. Preſton. My Lord, the Matter of Challenging is ſo great an Advantage to a Man upon his Life, that for my Part I muſt inſiſt upon that which the Law gives me, to challenge as many for myſelf as I think fit, to the Number that the Law allows me.

L. C. J. Holt. My Lord *Preſton* ſays he will, as 'tis fit he ſhould, take all Advantages he can: What ſays Mr. *Aſhton* to it?

Mr. Aſhton. My Lord, I expect the ſame Advantage.

L. C. J. Holt. You muſt have it; it is not propoſed to preclude you from any Advantage that the Law allows you: If you inſiſt upon that Advantage, you muſt have it, and then you muſt be tried ſeverally.

Mr. Soll. Gen. Then, my Lord, ſince they are pleaſed to declare they will ſever in their Challenges, we muſt deſire to ſever them in their Trial, and to begin with the Trial of my Lord *Preſton.*

Mr. Aſhton. My Lord, I deſire the Liberty to be by when my Lord is tried.

L. C. J. Holt. No, no, that is not to be permitted.

Mr. Serj. Thompſon. If you had joined in your Challenges, then you had been tried all together.

L. C. J. Pollexfen. That Advantage you loſe by ſevering in your Challenges; you loſe the Aſſiſtance of each other at your Trial.

L. C. J. Holt. That is the Conſequence; but do as you pleaſe; ſet them by.

L. C. J. Pollexfen. It may be, they do not ſo well weigh the Conſequence, therefore call them again. Gentlemen, do you conſider the Conſequence of your not joining in your Challenges? You muſt not be by, if my Lord *Preſton* be tried by himſelf, but muſt withdraw, and thereby you will loſe the Advantage of helping one another.

Mr. Elliot.

Mr. Elliot. My Lord, I desire to be tried alone.
Mr. Ashton. And so do I, my Lord.
L. C. J. Holt. Then, Captain *Richardson*, take them away.
[*Afterwards the Court was informed that Mr.* Elliot *desired to be tried with my Lord* Preston, *and thereupon they were called again.*
L. C. J. Holt. Gentlemen, do you desire to be tried alone, or with my Lord *Preston?*
Mr. Elliot. My Lord, if you please, I desire to be tried with my Lord.
Mr. Soll. Gen. Then we will try my Lord *Preston* by himself.
Mr. Soll. Gen. Does Mr. *Ashton* desire it too?
Mr. Ashton. No, my Lord, I desire to be tried by myself.
Mr. Soll. Gen. Then we will try my Lord *Preston* by himself.
L. C. J. Holt. Mr. *Elliot*, the King's Counsel do not think fit to try you with my Lord *Preston*, without Mr. *Ashton*; and unless you will all join, you must all be tried severally.
Mr. Elliot. I can only answer for myself.
Mr. Ashton. I am for being tried alone.
L. C. J. Holt. Then my Lord *Preston* must be tried alone.
[*The other two were carried back to* Newgate, *and the Lord* Preston *was bid by the Clerk to look to his Challenges.*
Clerk of Arr. Sir *Goddard Nelthrop*, Baronet, *Challenged.*
Sir *Thomas Cooke*, Knt. *Challenged.*
Sir *William Hedges*, Knt. *Challenged.*
James Boddington, Esq; *Challenged.*
Thomas Johnson, Esq; *Challenged.*
Ralph Bucknal, Esq; *Challenged.*
Craven Peyton, Esq;
L. Preston. I do not except against him. [*Sworn.*
Clerk of Arr. Then swear Mr. *Peyton.* [*Which was done.*]
Lucy Knightley, Esq; *Challenged.*
Scory Barker, Esq; *Challenged.*
Thomas Cuthbert, Esq; *Challenged.*
Alban Chaire, Esq; *Challenged.*
John Herbert, Esq; *Challenged.*
Hugh Squire, Esq;
L. Preston. I have nothing to say against him. [*Sworn.*
Clerk of Arr. John Tully, Esq; *Challenged.*
George Ford, Esq;
L. Preston. I do not challenge him. [*Sworn.*
Clerk of Arr. Henry Whitchot, Esq; *Challenged.*
John Crosse, Esq; *Not appeared.*
Thomas Smith, Esq; *Challenged.*
William Withers, Esq; *Challenged.*
Richard Cradock, Esq;
Mr. Cradock. My Lord, I know not how I came to be summoned upon this Jury; for I am no Freeholder.
L. C. J. Holt. Then set him aside.
Clerk of Arr. John Cane, Esq; *Challenged.*
William Jacomb, Esq;
Mr. Jacomb. My Lord, I am no Freeholder.
L. C. J. Holt. How long have you not been a Freeholder?
Mr. Jacomb. Near to four Months.
L. C. J. Holt. Give him his Oath. [*Which was done.*]
Have you no Freehold in the County of *Middlesex* in your own Right, nor in the Right of your Wife? —— *Mr. Jacomb.* No, my Lord.
L. C. J. Holt. Then you must go on to the next.
Clerk of Arr. Joseph Dawson, Esq;
Mr. Dawson. My Lord, I am an antient Man, and not fit to serve upon the Jury.
L. C. J. Holt. Well, now you are here, for this Time serve; we will excuse you hereafter.
Mr. Sell. Gen. My Lord, we challenge him for the King.
L. Preston. My Lord, I desire to know when any one is challenged for the King, whether they must not shew Cause.
L. C. J. Holt. By and by, if there be not enough, they shall shew Cause.
L. C. J. Pollexfen. You shall have all that the Law allows you certainly, my Lord.
Clerk of Arr. Thomas Austin, Esq; *Not appeared.*
Richard Paget, Esq;
L. Preston. Has this Gentleman any Freehold?
Mr. Paget. Yes, my Lord, I have in the County of *Middlesex.*
L. Preston. I do not except against him.
Mr. Serj. Tremain. My Lord, we challenge him for the King.
L. Preston. My Lord, I humbly desire they may shew their Cause.
L. C. J. Holt. My Lord, Cause is not to be shewn by the King's Counsel till all the Pannel be gone through; and then, if there be not twelve left to try, then they are bound to shew Cause; that is the Law.
L. Preston. My Lord, it is a thing of a very tender Concern to me; I desire to know, if it be not usual that they should assign the Cause, when they challenge any for the King: For if it be not according to Law, it may be a Prejudice to me; and I desire I may have Counsel heard to that Point.
L. C. J. Holt. My Lord, shall we assign Counsel to dispute Matters not disputable? There is not any more clear Case in all our Law than that: if your Lordship please, you shall have a Book to read, that the King is not bound to shew Cause till the Pannel is gone through.
L. Preston. Then I don't insist upon it.
Clerk of Arr. Walter Bridal, Esq; *Challenged.*
Samuel Hodgkins, Esq; *Challenged.*
Thomas Elton, Esq;
L. Preston. I do not challenge him.
Mr. Serj. Tremain. Then we challenge him for the King.
Clerk of Arr. Arthur Bayly, Esq;
L. Preston. I have nothing to say against him. [*Sworn.*
Clerk of Arr. John Milner, Esq; *Not appeared.*
Richard Page, Esq;
L. Preston. I do not except against him.
Mr. Serj. Thompson. Then we challenge him for the King.
Clerk of Arr. Richard Marsh, Esq;
Mr. Marsh. My Lord, I desire to be excused; I am not fit to serve upon a Jury.
L. C. J. Holt. Why? —— *Mr. Marsh.* I am thick of Hearing.
L. C. J. Holt. Methinks you hear me very well.
Mr. Marsh. Truly, my Lord, I do not hear well.
L. C. J. Holt. Well, you may spare him if there be enough.
L. Preston. My Lord, I do not challenge him; I desire he may be sworn.
Mr. Serj. Tremain. We challenge him for the King.
Clerk of Arr. Thomas Harriot, Esq; *Challenged.*
Nath. Wall, Esq;
L. Preston. I do not except against him.
Mr. Soll. Gen. We challenge him for the King.
Clerk of Arr. Matthew Browne, Gent.
L. Preston. I do not challenge him.
Mr. Serj. Tremain. We challenge him for the King.
Clerk of Arr. Thomas Crosse, Gent. *Not appeared.*
Robert Breedon, Gent.
L. Preston. I have nothing to say against him. *Sworn.*
Clerk of Arr. James Partherick, Gent. *Challenged.*
John Baily, Gent. *Challenged.*
William Bourne, Gent. *Challenged.*
Henry Gerrard, Gent. *Challenged.*
Richard Cooper, Gent.
L. Preston. I say nothing to him.
Mr. Serj. Thompson. I challenge him for the King.
Clerk of Arr. John Bignal.
L. Preston. I do not challenge him. *Sworn.*
Clerk of Arr. James Ferne, Gent.
L. Preston. I do not challenge him. *Sworn.*
Clerk of Arr. Robert Longland, Gent. *Challenged.*
Edmund Salter, Gent. *Challenged.*
John Howlet, Gent. *Challenged.*
Richard Fitz-Gerald.
L. Preston. I do not except against him.
Mr. Serj. Tremain. We challenge him for the King.
Clerk of Arr. John Owting, Gent.
L. Preston. I do not except against him. *Sworn.*
Clerk of Arr. Mark Lawne.
L. Preston. I do not challenge him. *Sworn.*
Clerk of Arr. Thomas Battle. *Not appeared.*
Francis Chapman, Gent. *Challenged.*
Gilbert Urwin, Gent. *Challenged.*
Richard Bealing, Gent. *Challenged.*
Edward Fuller, Gent.
L. Preston. I do not challenge him. *Sworn.*
Clerk of Arr. John Collins, Gent.
L. Preston. I do not challenge him. *Sworn.*
Clerk of Arr. Thomas Hollins.
L. Preston. I have nothing to say against him.
Mr. Serj. Tremain. We challenge him for the King.
Clerk of Arr. William Silcock, Gent.
L. Preston. I do not challenge him.
Mr. Serj. Tremain. We challenge him for the King.
Clerk of Arr. John Preston, Gent. *Challenged.*
Thomas Wright, Gent. *Challenged.*
Benjamin Boultby, Gent.
L. Preston. I do not challenge him. *Sworn.*

Then they were counted, and the twelve sworn were those whose Names follow.

J U R O R S.

Craven Peyton, Esq;	*James Ferne*, Gent.
Hugh Squire, Esq;	*John Owting*, Gent.
George Ford, Esq;	*Mark Lawne*, Gent.
Arthur Bailey, Esq;	*Edward Fuller*, Gent.
Robert Breedon, Gent.	*John Collins*, Gent.
John Bignal, Gent.	*Benjamin Boultby*, Gent.

Then Proclamation for Information and Evidence was made as usual.
Clerk of Arr. Sir *Richard Grahme*, Hold up your Hand —— [*Which he did.*] —— Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Sir *Richard Grahme*, late of the Parish St. *Anne* within the Liberty of *Westminster*, Baronet, together with *John Ashton*, &c. —— *prout* in the Indictment *mutatis mutandis* —— and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to enquire, whether he be Guilty of this Felony and High Treason whereof he stands indicted, or Not Guilty. If you find that he is Guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the Felony and High Treason committed, or at any Time since. If you find him Not Guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty. If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Knapp. May it please your Lordship, and you Gentlemen of the Jury, This is an Indictment of High Treason against my Lord *Preston*, who is indicted by the Name of Sir *Richard Grahme*, Baronet, and stands now Prisoner before you at the Bar; and the Indictment sets forth, that the Prisoner, together with one *John Ashton* and *Edmund Elliot*, as false Traitors against our Sovereign Lord and Lady, King *William* and Queen *Mary*, not weighing the Duty of their Allegiance, the 29th of *December*, in the second Year of their now Majesties Reign, at the Parish of St. *Clement Danes*, in this County of *Middlesex*, did conspire, consult and imagine, to depose their Majesties from the Throne and Government of these Kingdoms, and to bring the King and Queen to final Death and Destruction, and levy War within this Kingdom, and procure an Invasion to be made here; and that to bring their Treasons to pass, they did prepare and compose, and cause to be prepared and composed divers treasonable Letters, Notes, Memorandums, and Instructions in Writing, which were to inform the *French* King and his Subjects, and other Enemies of the King and Queen, of the Number, Force and Condition of their Majesties Ships, and how some of them were Mann'd, and the Names of several of the Commanders of them, and how the Castles and

Forts of *Portſmouth*, *South-Sea*, and *Goſport*, within this Kingdom were fortified, and how they might be ſeized and ſurprized by the King's Enemies; as alſo to inform them of the Time, Places, Ways and Means how they might invade this Kingdom, depoſe their Majeſties, and fight with their Ships againſt their Majeſties Ships, and cauſe and procure great Forces to be raiſed againſt the King and Queen, and ſend Ships to plague the City of *London*, and War and Rebellion within the Kingdom to procure; and that they did knowingly and ſecretly prepare and conceal two ſeveral Bills of Exchange for the Payment of Money to the King's Enemies, and got theſe Bills of Exchange, Letters, Notes and Memorandums, into their Cuſtody; and afterwards, the 30th of *December*, for the Sum of one hundred Pounds, by them, or ſome of them paid, they did hire a Ship to carry them and the ſaid Bills of Exchange, Letters, Notes, Memorandums, and Inſtructions, into Parts beyond the Seas, to, and among their Majeſties Enemies; and did alſo prepare a Boat, which was to carry them to the Ship, and accordingly they went into the Boat, and went on Board the Ship with the Bills of Exchange, and Papers aforeſaid; and being on Board they ſet Sail, and made away towards *France* with thoſe Bills of Exchange and Papers, with Intention to diſperſe them, and to perfect their ſaid Treaſons. And the Indictment further ſets forth, that there was, and is a War between our King and Queen and the *French* King, and the People of thoſe Parts, under his Dominions, who are Enemies of the King and Queen. The Priſoner, together with thoſe other two named before, as falſe Traitors, did adhere to the Enemies of the King and Queen; and to bring about this Treaſon, they did procure ſuch Bills of Exchange, Letters, Notes, Memorandums and Inſtructions, and did hire ſuch Ship and Boat to carry them and thoſe Papers into *France*; and did go on Board the ſaid Ship, and ſailed away for *France*, with Intention to aid and aſſiſt the King's Enemies in Counſel and Intelligence, by thoſe Papers, and Bills of Exchange, as I before opened unto you; and this is laid to be againſt the Duty of his Allegiance, againſt the Peace of their Majeſties, their Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. To this Indictment, Gentlemen, the Priſoner pleaded, he is not guilty; and for his Trial hath put himſelf upon his Country, which you are. If we prove him guilty, it is your Duty to find him ſo.

Mr. Soll. Gen. My Lords and Gentlemen of the Jury, the Indictment hath been opened to you at large, and I do not doubt but you have obſerved it: It conſiſts of two Parts, which are formed upon two ſeveral Branches of the Statute of the 25th of *Edward* III. The one is for compaſſing and imagining the Depoſing and Deſtruction of the King and Queen; the other for aiding and aſſiſting the King and Queen's Enemies.

Treaſon, Gentlemen, conſiſts in the Imagination of the Heart; but becauſe that Imagination of the Heart can be diſcovered no other way but by ſome open Act, therefore the Law doth require, that ſome Overt-Act, manifeſting that Intention and Imagination, be aſſigned and proved. I doubt not but you have obſerved that there are ſeveral Overt-Acts of both theſe kinds of Treaſon, aſſigned in this Indictment.

Gentlemen, the general Deſign of the Conſpiracy (as will appear by the Evidence) was this: The King and Queen were to be depoſed, and this was to be effected by a *French* Army, and a *French* Fleet.

It will be eaſily granted, that nothing more dreadful can enter into the Imagination of an *Engliſhman*, than the Deſtruction of our Fleet, and the Conqueſt of the Kingdom by the Arms of *France*.

But yet it will be part of the Evidence that we ſhall offer to you, that the Priſoners, and others of the Conſpirators ſeem to be of another Mind; for amongſt the Papers which were taken with the Priſoners, you will ſee one, which is ſtiled, *The Reſult of a Conference*, wherein they pretend to ſhew the Poſſibility of Reſtoring King *James* by the Power of the *French* King, and yet to preſerve the Proteſtant Religion, and the Laws and Liberties of the Kingdom. They themſelves went no farther than to think it poſſible; and I believe it will be hard to perſwade any other *Engliſhman*, that it is poſſible, unleſs one Inſtance could be given, that the *French* King ever employed his Arms for ſetting up any body but himſelf, his own Religion, and his own Government. I never heard that he did pretend to form any Part of his Glories upon the Virtue of Moderation, or Self-denial. And there can hardly be imagined a greater Inſtance of Self-denial, than for the *French* King, after he had deſtroyed the *Dutch* and *Engliſh* Fleets, and ſubdued our Forces at Land, not to make uſe of his Succeſs, ſo as to add theſe three Kingdoms to his Conqueſts, and poſſeſs himſelf of the unconteſted Dominion of the Sea for ever, but only to entitle him, at ſo great Hazard and Expence, to become a Mediator between King *James* and the People of *England*, and, by his Mediation, to eſtabliſh the Proteſtant Religion, and the Liberties of the People: And yet, as abſurd as this ſeems, you will find this to be the Reſult of one of their Conferences. I did never think it was the Part of any who were of Counſel for the King in Caſes of this Nature, to endeavour to aggravate the Crime of the Priſoners, by going about to put falſe Colours upon Evidence, or to give it more than its due Weight; and therefore I ſhall be ſure to forbear any thing of that Nature. But I think it my Duty to give ſome ſhort Account of the Nature and Courſe of the Evidence to be produced to you; which conſiſting of ſeveral Sorts, it will be in ſome ſort neceſſary to open it, that you may the more clearly apprehend it, and with more Eaſe make your Obſervations upon it.

Gentlemen, we ſhall produce in Evidence, as well living Witneſſes, as Papers and Writings, which by a ſtrange kind of Providence were taken upon my Lord *Preſton*, and the other two Perſons named in the Indictment, when they were apprehended; and therein this Deſign that I have opened to you, will be made evident beyond all Contradiction.

As to the living Witneſſes, the Courſe of the Evidence will be this. One *Nicholas Pratt* is the Owner of a Smack, called the *Thomas* and *Elizabeth*, he does uſually entruſt his Wife, *Jane Pratt*, with the hiring out of this Smack; *William Paſely* is Maſter of the Veſſel, and has of late been made a Part-Owner, to protect him from being preſs'd; for it is a Privilege that the Owners of the Veſſels claim, not to be preſs'd.

Some Time ſince (the Witneſſes will tell you the preciſe Time) this *Jane Pratt* was ſent for to one Mr. *Burdet*'s Houſe in the City, where ſhe met with Mr. *Aſhton*, who deſired to know, whether ſhe could undertake to convey him and ſome others, with Safety into *France*. She ſaid, ſhe did not doubt but ſhe could do ſo; and thereupon Mr. *Aſhton* told her, that he and his Friends were Merchants, and Traders, and that they ſhould make great Advantage, to the Value of a Thouſand Pounds at leaſt, if they could be there quickly. Their Diſcourſe went no farther at that Time; but Mrs. *Pratt* was appointed by Mr. *Aſhton* to bring the Maſter of the Veſſel along with her, for he had a Mind to diſcourſe himſelf with the Maſter, and they were to meet at the *Wonder*-Tavern in *Ludgate-ſtreet*; and becauſe there ſhould be no Miſtake about the Meeting, Mr. *Aſhton* gave the Woman a Note of Direction in Writing, ready to be produced.

Accordingly, by the 29th of *December*, Mrs. *Pratt* and the Maſter, came to the *Wonder*-Tavern, where Mr. *Aſhton* met with them, and there they treated of the Price to be given for the hiring of this Veſſel to carry them to *France*, and I think 150 Guineas was the Sum then inſiſted upon, but no Bargain was made at this Time; but there was a new Appointment to meet the next Day, which was the 30th of *December*, at Mr. *Burdet*'s Houſe.

The next Day, when ſhe and the Maſter came thither, they found there together *Aſhton* and *Elliot*, the two other Perſons named in the Indictment, and there this Matter was treated of with great Secreſy in Mrs. *Burdet*'s Bed-Chamber.

And they came to an Agreement that 100*l.* ſhould be the Sum to be paid to Mrs. *Pratt* for conveying into *France*, *Aſhton* and *Elliot*, and two other Perſons. So the Contract was originally made for others beſides Mr. *Aſhton* and *Elliot*, and the Money was actually depoſited by Mr. *Aſhton* and *Elliot* in Mrs. *Burdet*'s Hands, and a Six-pence was broken; one Half of which was delivered to Mrs. *Burdet* to keep, the other Half Mr. *Aſhton* was to take along with him, and when the Maſter had ſafely landed them in *France*, Mr. *Aſhton* was to deliver his Half of the Six-pence to the Maſter; which being brought to Mrs. *Burdet*, either by him or Mrs. *Pratt*, upon the joining of the two Pieces together, the Maſter was entituled to receive the hundred Pounds.

The next Appointment was to meet at one Mr. *Rigby*'s Houſe in *Covent-Garden*, and that was to be on the one and thirtieth of *December*, when the Voyage was to be begun: And the Tide not ſerving to go through Bridge till late, the Appointment was to meet the later. When they, Mrs. *Pratt* and the Maſter, came there, they found only Mr. *Aſhton* and Mr. *Elliot*; but before that Time Care was taken to provide a Sculler at *Surrey*-Stairs, to be ready to carry them on Board the Smack, and the Waterman was appointed to ſtay in a little Ale-houſe thereabouts, to be ready when he ſhould be called.

About ten o'Clock at Night four Perſons came down together, and went into this Sculler with the Maſter of the Smack, and made what Haſte they could through Bridge till they came to *Pickle-Herring* Stairs, over-againſt the Tower, where the Smack lay, and there went aboard the Maſter and theſe four Perſons, my Lord *Preſton*, a Servant of my Lord *Preſton*'s, Mr. *Aſhton*, and Mr. *Elliot*.

The Smack ſet Sail immediately after they were on Board, and their Haſte made them carry away the Waterman's Coat, which he had lent them whilſt they were in the Sculler, and that Accident was the Occaſion of diſcovering who the Waterman was that carried them from *Surry* Stairs.

After they were on Board the Smack, they were poſſeſſed with great Fear of being ſurprized. They knew the Nature of the Buſineſs they were about, and the Danger they were in, if they ſhould be diſcovered; and therefore when they were to paſs by the *George* Frigate, a Man of War that lay in the River, they deſired the Maſter to hide them, which he did, by putting them under the Quarter-Hatches, a Place where they could not ſtand or ſit, but muſt lie along on the Ballaſt. When they were paſſed by the *George* Frigate, they quitted that Place; but when they were near the *Block-Houſe* at *Graves*, they grew apprehenſive, and they deſired to be hid a ſecond Time, which was accordingly done.

And they continued to lie in that Place till they were taken; and it was a happy Thing they did ſo. The Place was ſuch, that they had not any Poſſibility of throwing away their Letters and Papers, though they had made Preparation for it in Caſe of any Accident, having tied them together, and fix'd a Piece of Lead to them, that ſo if they ſaw themſelves in Danger of being taken, they might eaſily ſink the Packet: But being ſo cloſe ſhut up in this Place, that they could not execute their Purpoſe, the Papers were taken, and will be offered to you in Evidence.

Gentlemen, Captain *Billop*, by the Order of a noble Lord, now preſent, was directed to uſe his utmoſt Diligence to ſeize ſome dangerous Perſons, of whoſe Deſign of going beyond Sea for ſome very ill Ends, an Intimation had been given. He got ready a Pinnace well Mann'd, and went in Purſuit of them down the River; and both as he went and return'd, he took Care to ſearch ſuſpected Veſſels. When he came to this, he demanded of the Maſter what Number of Men he had on Board, pretending he came to preſs Men: The Maſter told him he had but three, and for thoſe he had a Protection. But the Captain ſaid he muſt be better ſatisfied, and muſt ſearch the Veſſel; and in the Search he found theſe four Perſons lying concealed in this ſecret Place, under the Quarter-Hatches.

As they were taken out one after another, one of the Seamen obſerv'd Mr. *Aſhton* to take up a Bundle of Papers from off the Ballaſt, and put it in his Boſom; and near the Place where the Papers lay, he took up two Seals, which after proved to be my Lord *Preſton*'s Seals when he was Secretary. Captain *Billop* being inform'd of this by that Seaman, he put his Hand into Mr. *Aſhton*'s Boſom, and took away from him the Bundle of Papers with the Lead fix'd to it.

When they were put on Board the Captain's Pinnace, they all preſſed him much, that he would let them go on Shore at *Graveſend*, pretending want of Refreſhment, they not having eaten, and the Night having been cold; but he did not think that proper nor ſafe, but told them, they ſhould go on Board the *George* Frigate, and refreſh themſelves there.

When they came on Board the *George* Frigate, all the three Gentlemen, and my Lord *Preſton* in particular, were very earneſt with Captain *Billop* to diſpoſe of the Bundle of Papers, mixing extraordinary Promiſes with great Compliments.

Not

Not prevailing there, when they were returned to the Pinnace, they renewed their Sollicitations, and one of them told him, it would be eaſy to remove all Suſpicion, by fixing the Lead to ſome other Papers of little Signification, which were found in my Lord *Preſton*'s Pocket, which he might produce, and they would without Difficulty paſs for the Papers that were taken.

But the Captain was too juſt to comply with this Propoſal. When they found he was not to be moved, you will find from the Witneſſes, that their Promiſes were turned into Threats, and they uſed another Sort of Language.

When they were brought to *Whitehall* Stairs, upon their Landing they gave Money to the Maſter and the Seamen, deſiring them to ſay, they were hired to go for *Flanders* and not for *France*.

Gentlemen, Theſe Things which I have open'd, carry a ſtrong Preſumption of Guilt, for *Engliſhmen*, eſpecially one of that Quality of my Lord *Preſton*, to go into the Country of an Enemy, without any manner of Paſs-port, and in ſuch a Manner as they could not expect but to be ſeiżed as Spies, unleſs they were aſſured, that their Character was ſo well known there, that they ſhould be look'd upon, not as Perſons coming to get Intelligence, but to give it; unleſs they were well aſſured of a good Reception when they came there.

But there is no Occaſion to leave any Thing to Conjecture in this Caſe; what is contained in theſe Papers makes the Deſign of the Voyage beyond Diſpute. I think, Gentlemen, after you have heard the Evidence, you will be very well ſatisfied, that my Lord *Preſton*, and the other two who ſtand indicted, were equally concerned in the Papers; they were all alike earneſt to preſerve them from being ſeen; they all ſollicited for the diſpoſing of them, and promiſed Rewards if they might prevail.

Gentlemen, Theſe Papers are of various Natures.

One I mentioned before, is intituled, *The Reſult of a Conference between ſeveral Lords and Gentlemen, both Tories and Whigs*; in which it was undertaken to prove the Poſſibility and Methods of Reſtoring King *James* by a *French* Power, without endangering the Proteſtant Religion, and the Civil Adminiſtration, according to the Laws of this Kingdom.

Another contains Heads for a Declaration to be prepared, in order to be publiſhed when the *French* have had Succeſs at Sea, and are landing; and that is filled with ſuch Pretences as they thought moſt ſpecious, and moſt likely to amuſe and delude the People.

There is another Sort of theſe Papers which conſiſts of Letters. Theſe Letters are directed in falſe Names, and are not ſubſcribed; and it is not to be imagined it ſhould be otherwiſe. Yet, Gentlemen, (though that is not the preſent Buſineſs) the Hands of the Writers of theſe Letters are very well known, and the Subject-Matter of them will eaſily reveal to you for whom they were intended; for though theſe Letters are moſt of them written under divers Cants, ſome under the Colour of Trade, ſome of them under the Colour of a Law-ſuit for the Redeeming of a Mortgage, others under the Notion of a Match, and a Settlement to be made upon that Match, yet the real Buſineſs is ſo plain, that you need but hear them read, to ſee through the Diſguiſe.

Though they begin generally in the Stile of Merchants writing to one another, or the like, yet towards the End of the Letters, you will obſerve Expreſſions of Duty and Reverence (Terms which do not uſually paſs in Correſpondence between Perſons of that Sort) ſufficient to ſhew that ſomewhat elſe was intended to be covered in what went before.

Gentlemen, It will appear to you, that ſome of the Writers of theſe Letters were of the Number of thoſe who were ſecured the laſt Summer, when the *French* Fleet was upon our Coaſts, and you will obſerve they complain, that by reaſon of that Reſtraint the Deſign was very much hindred, though they have endeavoured to redeem that Loſs of Time ſince their Diſcharge, and have carried on the Buſineſs with more Vigour than ever.

In ſhort, the Deſign of theſe Letters is to importune the ſetting out of the *French* Fleet with all poſſible Expedition: They ſay they muſt not ſuffer ſuch a fit Seaſon to be ſpent unprofitably: That the beſt Time is between this and the firſt of *March* to come to a good Market; and if they come not before the tenth of *March*, all will be loſt. In another of their Letters they ſay, If the Suit be well ſollicited and managed, it may come to a final Hearing before the End of *Eaſter* Term.

They complain, that there are ſeveral indiſcreet Letters came from St. *Germains*, that turn to the Prejudice of the Deſign. Thoſe Letters are not enough diſguiſed to deceive the People here, but ſpeak too plainly what is to be expected from themſelves, and from the *French*. You will take Notice, that the Letters which all you will hear, are all Bills with high Characters of the Bearer; for which Reaſon they write in ſuch general Terms, becauſe the Bearer was entruſted with the whole. Some of the Letters ſay, no Particulars are, or need be expreſſed, becauſe he will inform them of every thing: Others, that they could not write ſo much as he could ſay; and that nothing was wanting, but to allow him a full and fit Seaſon to give an Account of all the Buſineſs; and that they entirely depend upon his Account of them, and their Condition.

And, Gentlemen, in one of the Letters the Bearer is ſtiled a Lord; and to whom can that be applied unleſs to the Priſoner at the Bar?

In another Letter, when they ſpeak of ſending the Copper and the Linnen (the Goods pretended for carrying on the Trade) it is added, And what the Meaning of that is, they muſt refer to the Bearer, who was able to give them a particular Account.

I have mentioned ſo much of the Papers only that you might have a general Notion of them; that ſo when you hear them read, you may more readily make your Obſervations. I aſſure you, I have been as careful as I could, not to exceed the Truth in opening any Part of the Evidence: But it is your Part to ſee whether what I have opened be made out in Proof.

There is another Paper that gives an Account of their Majeſties Fleet to be ſent out this Summer; and there is an Obſervation at the End of it, that it was hoped it may be out in *March*. But you will find by other Papers (and particularly by one of my Lord's own Hand-writing) that he was of another Mind, that the Fleet would not be out before *June*.

Gentlemen, the laſt Sort of Papers which I will mention to you, are ſome *Memorandums* and Notes written by my Lord *Preſton*, wherein he gives an Account of ſeveral Things of great Moment; which, as his Memory ſerved him, are put together without Connexion or Method, being only to remind him of them when he ſhould have Occaſion to mention them.

He therein gives an Account of the Number and Strength of the *Engliſh* Fleet; how they are Manned, and who are the principal Officers and Commanders, and in what Time they will be out.

He likewiſe gives an Account of the Number and State of the *Dutch* Fleet, and how that is to be divided and diſpoſed of.

And with relation to the *French* Fleet, there is a particular *Memorandum*, That they muſt be out at fartheſt in *April*, that they muſt be out ſo as to ſeparate the *Dutch* Fleet and ours; that they muſt be ſure to look in at *Spithead* as they come by, and ſecure what Ships ſhould be in that Harbour from joining the reſt.

There is alſo a Hint given of thoſe that were moſt likely to come in to them: And there is Advice in what Place their Fleet ſhould fight ours. They muſt not come ſo high as *Beachy*, where they fought the laſt Year, but rather chooſe to fight in the Chops of the Channel.

There is an Account of *Portſmouth*, how fortified and garriſon'd, that it has but five hundred Men; that *Goſport* had nothing but Palliſadoes about it, and *South-Sea-Caſtle* very weak.

There are *Memorandums* of other Heads proper for a Declaration.

There are the Names of ſeveral Perſons, ſome of them with particular Characters, and ſome without; and amongſt the reſt, there is the Character given of the Clergy of the City of *London*, that they are the worſt of all others.

Gentlemen, we ſhall proceed to the Evidence, and firſt call the living Witneſſes, and then read the Papers; and when you have heard what the one can ſay, and what the other contain, we muſt leave it to your Conſideration, and ſubmit all to the Direction of the Court.

Mr. Serj. Tremain. Pray ſwear Mrs. *Pratt*, *Jane Pratt*.

[*Who was ſworn with ſeven or eight more.*]

Mr. Serj. Tremain. Mrs. *Pratt*, pray will you tell us what you know concerning the hiring of a Veſſel, and whither it was to go, and by whom it was hired, and for what? Pray tell your whole Knowledge in this Matter.

Mrs. Pratt. Mr. *Burdet*, may it pleaſe your Lordſhip, ſent for me to his Houſe, to hire a Veſſel to go for *France*, and aſked me, if I could carry them ſecure. I told them I could let them have a Smack that would carry them; and, if it pleaſe you, my Lord, we met ſeveral Times at his Houſe, and at laſt there was Mr. *Aſhton* there, and Mr. *Aſhton* appointed to meet at the *Dog* Tavern upon *Ludgate-Hill*; I think they call it the *Wonder* Tavern.

L. C. J. Holt. Miſtreſs, pray begin again, and ſpeak out.

Mrs. Pratt. Mr. *Burdet* ſent for me to hire my Smack to go for *France*, and they aſked me if I thought it would carry them ſecure. I told them yes, I thought it would; and I came ſeveral Times about it to Mr. *Burdet*'s Houſe. The Smack was not then come to the *Tower*, as it did afterwards; and then after they ſent for Mr. *Aſhton*, and he met me at Mr. *Burdet*'s, and meeting at Mr. *Burdet*'s, he gave me a Note, to meet at the *Dog* Tavern upon *Ludgate-Hill*, and there *Aſhton* met, but Mr. *Burdet* did not come.

Mr. Serj. Tremain. Who was with *Aſhton*, when you met at the *Dog* Tavern?

Mrs. Pratt. None but a Man of his, as Mr. *Aſhton* ſaid: There we ſat about an Hour and an half and did nothing. At length we went away, and appointed to meet at Mr. *Burdet*'s Houſe the next Day at ſeven or eight o'Clock, and there we met, and the Bargain was made.

Mr. Serj. Tremain. What Bargain?

Mrs. Pratt. I aſk'd 150 *l.* and they told me that was too much. Says *Aſhton*, I will give you Fourſcore; ſays Mr. *Burdet*, pray encourage them, offer them 100 *l.* Thereupon he did offer 100 *l.* and we agreed for 100 *l.*

Mr. Serj. Tremain. What Day was that, can you remember?

Mrs. Pratt. We met on the *Monday*, and the *Tueſday* we agreed.

Mr. Serj. Thomſpon. What Money was paid?

Mrs. Pratt. Ninety-three Guineas and Sixpence.

Mr. Serj. Tremain. Who was by when the Bargain was made?

Mrs. Pratt. Mr. *Elliot* was along with them, Mrs. *Burdet*, and the Maſter of the Veſſel, at the Agreement.

Mr. Serj. Tremain. What is the Maſter's Name?

Mrs. Pratt. His Name is *Paſeley*; and there was Six-pence broken, and Mr. *Aſhton* took one of the Six-pences, and Mr. *Burdet* ordered him to give his Wife the other, and ſo he did; and when the Money was paid, Mr. *Aſhton* brought in a Paper wrapp'd up, and ſaid, we ſhould ſee it told out, and he told it out there, and it was ninety-three Guineas and the Six-pence.

Mr. Serj. Thompſon. Who did they tell you they were to carry into *France*?

Mrs. Pratt. Truly, my Lord, they ſaid three, that was all.

Mr. Serj. Tremain. What followed then? Did they give you any Note where you were to come for them?

Mrs. Pratt. Mr. *Aſhton* bid Mr. *Elliot* write a Note where they ſhould come; it was at Mr. *Rigby*'s in *Covent Garden*, at the *Seven Stars*, and there we were to meet at eleven o'Clock at Night; and when we came there, Mr. *Aſhton* was within, and went out and fetched in ſome Company. Mr. *Elliot* came, and two other Gentlemen that I never ſaw in my Life before.

Mr. Serj. Thompſon. Miſtreſs, you ſpeak of the breaking of a Six-pence: what was to be done with that?

Mrs. Pratt. My Maſter was to bring the half of the Sixpence that Mr. *Aſhton* had, to Mrs. *Burdet*, and then we were to have the 100 *l.*

Mr. Serj. Tremain. Had Mrs. *Burdet* the other Piece?

Mrs. Pratt. Yes, Mr. *Aſhton* had one Half, and ſhe had t'other.

Mr. Serj. Thompſon. Was there any Proviſion carried on board this Smack?

Mrs. Pratt. Yes, there was a Hamper and a Trunk, which were fetched from Mr. *Burdet*'s Houſe; my Man, *John Fiſher*, carried the Trunk, and a Porter carried the Hamper, and I took Care to ſee it put in the Veſſel.

Mr.

Mr. Serj. *Tremain.* When you came to *Covent-Garden* that Night, what Diſcourſe had you? and what Enquiries were there made, and by whom?

Mrs. *Pratt.* Mrs. *Aſhton* comes in, and ſhe ſaid Mr. *Aſhton* was her Huſband, and ſaid there was ſome News from Court, of having Papers in a Hat, and that they had choſen ſome Lord or other: Something it was, I remember, I can't tell what; but ſays one Gentleman that ſtood by, and ſaid, I was choſen the laſt Year, that ſignifies nothing; and another ſaid, I miſſed it; it is only a *Chriſtmas* Gambol, it ſignifies little.

Mr. Serj. *Tremain.* What further Diſcourſe had they?

Mrs. *Pratt.* Mrs. *Aſhton* ſaid ſhe was afraid they ſhould have no very good Luck, for the Cock crowed.

Mr. Serj. *Tremain.* Was there any Diſcourſe what Advantage they ſhould get by going, or you by carrying of them?

Mrs. *Pratt.* They ſaid they would help us to the earning of 1000*l.* before *Lady-day*, if they went this Time ſafe.

Mr. Serj. *Tremain.* Pray, Miſtreſs, recollect yourſelf; were they to go to *Flanders?* or where?

Mrs. *Pratt.* They were to go for *France*; they were not to go for *Flanders.*

Mr. Serj. *Tremain.* What Time of Night did you depart from Mr. *Rigby*'s?——Mrs. *Pratt.* About Eleven o'Clock.

Mr. Serj. *Thompſon.* How did they go away from Mr. *Rigby*'s?

Mrs. *Pratt.* I did not go with them: Mrs. *Aſhton* kept me, and gave me a Leg of a Gooſe, and ſome Drink.

Mr. Serj. *Tremain.* Do you know any thing further?

Mrs. *Pratt.* No; I think I have told you all.

Mr. Serj. *Tremain.* Were you hired for *France* or *Flanders*; I aſk you once again?

Mrs. *Pratt.* We were hired for *France*; any Place there where we could touch.

Mr Serj. *Tremain.* Was there any particular Port mentioned?

L. C. J. Holt. If you have done with her, will my Lord aſk her any Queſtion?

L. *Preſton.* My Lord, I deſire ſhe may be aſk'd, whether ſhe ever ſaw me before?——Mrs. *Pratt.* No, never, my Lord, but in the *Tower.*

L. C. J. Pollexfen. But ſhe ſays, when they were at *Rigby*'s, there came in two Gentlemen with Mr. *Elliot* that Night.

L. *Preſton.* I deſire to know of her whether I was one of them two?

Mr. Serj. *Thompſon.* My Lord, ſhe does not ſay your Lordſhip was one of them.

Mrs. *Pratt.* No, my Lord, you were not one of them.

Mr. Serj. *Thompſon.* Then ſet up *Paſeley. Paſeley*, what do you know about hiring of this Smack to go for *France?* I think you are Maſter of the Smack called the *Thomas* and *Elizabeth*, are you not?---Mr. *Paſeley.* Yes.

Mr. Serj. *Thompſon.* Then, pray, give an Account of the whole Matter.

Mr. *Paſeley.* The Smack was hired of the Woman, and not of me; and when I came up to *London*, ſhe told me ſhe had got a Voyage over to *France*, if I was minded to go; I ſaid, yes; and ſhe appointed me to go along with her to this Miſtreſs what do you call um's Houſe, this Mrs. *Burdet*; and when ſhe came to this Houſe, there was no body within but Mr. *Aſhton:* Preſently after came in Mr. *Elliot.* After they came in they told us the Things were not ready yet, but they would be ready preſently to carry on Board. When theſe Things were ready, *John Fiſher* carried the Trunk down, and the Porter carried the Hamper, and I went along with them to *Billingſgate*, and carried them on Board; and when I carried them on Board I went to *Billingſgate* again, and ſo we went along to this Mr. *Burdet*'s Houſe; and ſo when we came up to *Burdet*'s Houſe, *Aſhton* and *Elliot* were not there preſent; but we had been there but a little Time ere they came in; and then they came and ſaid to my Owner and me, You ſhall ſee the Money told: It was all in Gold but one Six-pence; there was Ninety-three Guineas: And after the Money was told, there was a Sixpence that was broken in half, and the Guineas he rolled up in a Paper, and gave them to Mrs. *Burdet*, and bid her lay them up; and he gave her one half of the Six-pence, and kept the other half himſelf; and when I brought that other half that he had, or my Owner, then ſhe was to give the Money to her or me.

Mr. Serj. *Tremain.* Pray what Room of the Houſe was this in at Mr. *Burdet*'s?

Paſeley. It was on the left Hand going in.

Mr. Serj. *Tremain.* Was it a Bed-chamber?---Mr. *Paſeley.* Yes, 'twas.

Mr. Serj. *Tremain.* What Time of Night was it, pray?

Paſeley. About Eight o'Clock.

Mr. Serj. *Tremain.* What Diſcourſe had you with them there, pray?

Paſeley. They aſked me, if I thought they might get well over? I told them yes, I believed they might.

Mr. Serj. *Thompſon.* Did they tell you what Part of *France* they were to go to?

Paſeley. No, they named no Place, but any Part in *France.*

Mr. Serj. *Tremain.* Well, go on, tell us what they ſaid further.

Paſeley. So, Sir, they gave us Direction to meet them at the *Seven Stars* in the little Piazza's in *Covent-Garden.* When we came there it was Eleven o'Clock at Night, and they were not in the Houſe when we came in, except 'twere Mr. *Aſhton*; but preſently after *Aſhton* and *Elliot* came in, and they ſat down; and ſo in came two Gentlemen more, but what they were, or who they were, I don't know; and they diſcourſed about Papers ſhaking in a Hat, and ſaid they ſhould have no good Luck, for the Cock crowed: And after this *Elliot* and *Aſhton* came out of the Houſe, and called me to go with them; and after we were gone out, Mr. *Aſhton* leaves *Elliot*, and went away from him, and *Elliot* bid me go along with him; ſays he, Come, Maſter, come along with me. He did not name any Place whither they were to go; but it happened to be *Surry-Stairs*, and going down, he calls in at the Corner-Houſe, which is an Alehouſe, for the Waterman, and bid me go before to the Water-ſide; and when we came thither the Waterman ſteps into his Boat, and I after him; and when I was in the Boat I went into the Stern, and by that time I was ſeated in the Stern, there came down four Men; but I never ſaw my Lord and his Man before they came into the Wherry.

L. C. J. Holt. Who came in the Wherry?

Paſeley. There were all thoſe four, Mr. *Aſhton*, Mr. *Elliot*, my Lord, and his Man.

L. C. J. Holt. Where was this, do you ſay?

Paſeley. At *Surry-Stairs*, there the Boat was.

Mr. Serj. *Tremain.* Was the Priſoner at the Bar one of them?

Paſeley. Yes, he was.

L. C. J. Holt. Well, what did you do then?

Paſeley. After we were ſeated in the Boat at *Surry-Stairs*, we put off, and went down through Bridge, and going through Bridge we came on Board, the Veſſel riding juſt againſt the *Tower* almoſt; and we went all on Board; and when we came on Board, my Men were all aſleep, and being aſleep, I call'd them out of the Cabin to hale up the Anchor; and there being very little Wind ſtirring, we could not get very far, but came juſt below the *Half-way Tree*, and then we ſtopp'd, and I order'd them to drop the Anchor for fear of the Veſſels in the River; and the next Morning about Eight o'Clock we weigh'd our Anchor again, and went on till we came near the *George* Man of War, and there they all of them hid.

Mr. Serj. *Tremain.* Who?

Paſeley. All of them, my Lord. There was *Aſhton*, and *Elliot*, and my Lord *Preſton*, and his Man.

Mr. Serj. *Thompſon.* In what Place did they hide?

Paſely. In the Quarter-Hatches, under the Hatches where we lie.

Mr. Serj. *Thompſon.* Did they deſire you to hide them?

Paſeley. Yes, they did.

Mr. Serj. *Thompſon.* What did they ſay?

Paſeley. They ſaid, that if there ſhould come any Boat on Board to preſs, I ſhould ſhew them my Protection; and ſo there came no Boat then.

Mr. Serj. *Tremain.* How big is this Place they hid in?

Paſeley. 'Tis in the Quarter under, near the Cabin-Hatches.

Mr. Serj. *Tremain.* I aſk you what kind of Place it is?

Paſeley. They cannot ſit upright, nor ſtand upright, but they are fain to lie along, or lean upon their Elbows.

Mr. Serj. *Thompſon.* Well, go on, what happen'd afterwards?

Paſeley. After that we were paſs'd the Man of War, they came up and ſat in the Cabin, where we uſed to eat our Victuals; and when we came to *Graveſend*, over-againſt the *Block-houſe*, they would go down again and hide, and did ſo till we paſſed the *Block-houſe*, and then they were for coming up again; and then I ſaw a Boat coming about *Tilbury*, which made towards us, and thereupon they duck'd down again, and the Hatches were laid down upon them, and there they remained till they were taken.

Mr. Serj. *Tremain.* Where were they taken?

Paſeley. They were taken between the North *Block-Houſe* and the *Little*---

Mr. Serj. *Tremain.* But I mean in what Part of the Ship?

Paſeley. They were taken in that little Place where they were hid.

Mr. Serj. *Tremain.* Were the Hatches ſhut down upon them?

Paſeley. They were.

Mr. Serj. *Tremain.* How long had they been hid before they were taken?

Paſeley. A quarter of an Hour, or thereabouts.

Sir *W. W.* Did they deſire to be hid there?

Paſeley. Yes, they did; and they were hid there.

Mr. Serj. *Thompſon.* Now tell us, after ſuch Time as they were taken, what they ſaid, and what you obſerved.

Paſeley. After they were taken they ſaid nothing to me; my Lord, nor none of them did ſpeak to me after the Boat had taken them.

Mr. Serj. *Thompſon.* But what happened after they were taken?

Paſeley. After they were taken, Captain *Billop* ordered them to go into the Boat, and us with them; and when we came to *Whitehall-Stairs*, one of them ſaid to me, Maſter, when you come upon your Examination, ſay you were bound for *Flanders*, and not for *France.*

Mr. Serj. *Thompſon.* Which was that that ſaid ſo?

Paſeley. 'Twas *Elliot*, and he gave me Half-a-Crown to bear my Expences that Night, and ſaid he would remember to take Care of us afterwards,

Mr. Serj. *Thompſon.* Did they give any Money to the Seamen?

Paſeley. Yes, *Aſhton* gave one of my Men Half-a-Crown, and bid him ſay he was bound for *Flanders*, and not for *France*; and my Lord's Man gave my other Man Half-a-Crown.

L. C. J. Holt. Was my Lord *Preſton* by when that Money was given?

Paſeley. My Lord was upon the Bridge, but not near me.

Mr. Serj. *Thompſon.* If my Lord have any Queſtions to aſk him, we have done with him for the preſent.

L. *Preſton.* No, my Lord, I have no Queſtions to aſk him.

L. C. J. Pollexfen. Was my Lord *Preſton* by when the Direction was given you, to ſay you were to go to *Flanders*, and not to *France?*

Paſeley. I ſay, he was upon the Bridge, but was not near me.

Mr. Serj. *Tremain.* What Diſcourſe had you on Board with any of them?

Paſeley. Very little. They aſk'd me if I thought they ſhould go clear, and I told them, Yes, I thought they might.

Mr. Serj. *Tremain.* Clear of what?

Paſeley. Clear of the Veſſel's ſearching. They examin'd me that Night I was at the *Seven Stars*, if I knew the way of the *Swing*, on the Back of the Channel, to go clear of the Town; I told them I did not know the Way by the Back of the Sands by *Margaret*'s, but the *Swing* would not keep them clear of the Town.

Mr. Serj. *Tremain.* Was there a Note written whither you were to come?

Paſeley. Yes, there was a Note written to meet them at the *Seven Stars* in the *Little Piazza*'s.

L. C. J. Pollexfen. Whereabouts in *Burdet*'s Houſe?

Paſeley. That is in *Queen-ſtreet*, in the City.

Mr. Serj. *Tremain.* You, *Paſeley*, Did the Waterman that brought them on Board leave two Coats behind him?

Paſeley. Yes, the Waterman did leave two Coats; and I put them into my Cheſt; and afterwards they broke open my Cheſt, and took them out, and brought them to my Lord Chief Juſtice's.

Mr. Serj. *Tremain.* Then we will next produce that Waterman. Set up *Charles Betſworth.*

Mr. Serj. *Thompſon.* Come, will you give us an Account who you carried on board a Smack; and what happened?

Betſworth. I was going over the Water from *Surry-Stairs* about Seven or Eight o'Clock, and a Gentleman at the Stairs called Sculler, and aſk'd me if I would carry him down the River: Said I, How far? Says he, To the *Tower*: Said I, 'Tis againſt Tide, and I can't carry you down ſo low. He ſaid, he would ſtay till the Tide turn'd: Said I, If I be out of my Bed ſo long, I deſerve to be well paid for it; if you will give me Half-a-Crown, I'll carry you down. Says he, I'll give it you. So then I came aſhore, and he aſk'd me what my Name was: I told him, *Charles Betſworth:* Says he, Will you be ſure to ſtay for us? Yes, ſaid I, if you will be ſure to come. If I be not at the Stairs, I'll be at that Alehouſe there in the Corner. So I ſtaid, and carried a Fare or two over the Water; and about Eleven o'Clock, as I was ſitting in the Houſe a Gentleman comes, and calls *Charles* —and ſo out I went to my Boat, and took them in. There was one Man, as I ſuppoſe, in the Stern, and he that called me out followed me down; and by and bye came three more into my Boat; one of them had a whitiſh Cloak on, and the other a grey looſe Coat, and a red Bag of the Quantity of a Peck; and ſo we put off, and row'd away; and juſt under the *Temple*-Wall, which was all the Words I heard from them that I can remember, ſays one Gentleman, When do you hear the King goes away? and another made Anſwer, and ſaid, On *Tueſday.* So we rowed down through Bridge; and when we were through Bridge, they aſked where the Veſſel lay; and he that was in the Stern ſaid, it was *Southwark*-Side, over-againſt the *Tower*, and bid me row over thither. And when we came juſt below *Battle-Bridge*, that Man ſaid, That is ſhe that rides a-head of us. I looked, and ſhe had a Pennant up. So they were put on board; and as ſoon as they were on board, ſhe went off; and I rowed up to the Bridge, and went through Bridge, and came up as far as and there I ſtayed, and took my Sculls and my Staff out of my Boat; and when I took them out, I miſſed my Cloaths. Says I, God bleſs me, I have loſt my Cloaths; but then I thought it was but a ſtill Tide, and therefore I would try if I could overtake them; for I thought they could not be got far, there being little or no Wind; ſo I went down to the Place where the Veſſel lay, and ſhe was gone; and I enquired of ſeveral Smacks that lay there, but could hear nothing; and I rowed as low as *Limehouſe-Reach*; and about *Black-Wall* and *Limehouſe-Reach* I came up to a Smack that I ſuppoſed was ſhe, and cried out, Ho the Smack; and they anſwered me, So. I aſked them, if I did not bring a Fare aboard that Smack awhile ago? Then they ſaid, No. I told them, I had brought a Fare aboard ſome Smack that lay about *Horſley-down* and *Pickle-Herring-Stairs*, and they had got two Coats of mine, which I had forgotten; and it had a Pennant up when they went on board, but this had none; ſo I rowed on further, till I came as far as *Barkin-Sherf*; and I thought, there being ſo little Wind, that none could be gone beyond me, and therefore waited to ſee a Smack with a Pennant coming down, but I could not meet with it; and there I lay all Night in my Waiſtcoat, and the next Day I came back to *Greenwich*; and as I came along, I went on board ſeveral Veſſels to enquire, becauſe I took her for an Attendant upon a Man of War; but I could not hear of my Cloaths, till laſt *Friday* was Seven-night two Watermen came, and brought me the Cloaths I loſt.

L. C. J. Then you have your Cloaths again?

Betſworth. Yes, I have.

Mr. Serj. *Thompſon.* Pray look upon that Gentleman there, my Lord *Preſton*, are you ſure that he was one of them that was in your Boat?

Betſworth. I can't tell that ever I ſaw him in my Life before.

Mr. Serj. *Tremain.* You, *Paſeley*, I aſk you, Was my Lord *Preſton* one of the Gentlemen the Waterman brought on board your Smack?

Paſeley. Yes, he was.

Mr. Serj. *Tremain.* Is that the Waterman?

Paſeley. Truly, my Lord, I can't tell; but the Waterman's Coat was left on board.

Mr. Serj. *Tremain.* Then let me aſk you another Queſtion, Had you a Pennant?

Paſeley. Yes, I had when I came on board.

Mr. Serj. *Tremain.* Did you take in your Pennant?

Paſeley. Yes, I did afterwards.

Mr. Serj. *Tremain.* Why did you take it in?

Paſeley. They aſked me if there was a Pennant, and I told them Yes; and they bid me take it in.

Mr. Serj. *Tremain.* Who bid you take it in?

Paſeley. *Elliot* did; ſo we took it down.

Mr. Serj. *Thompſon.* Will my Lord aſk *Betſworth* any Queſtions?

L. *Preſton.* No, I have nothing to ſay to him.

Mr. Serj. *Tremain.* What did they carry on board with them, *Paſeley?*

Paſeley. They had nothing on board but the Trunk and Hamper, that were brought down before from *Burdet*'s Houſe; and there was nothing brought in the Boat but only a Leather Bag.

Mr. Serj. *Tremain.* Then ſet up *Fiſher.* I think his Name is *John Fiſher*, You was one of the Seamen that did belong to the Smack, I think?

Fiſher. Yes, I was.

Mr. Serj *Thompſon.* Pray then tell us, who were brought thither, and what happened upon it.

Fiſher. About ſix Hours before they came on board us, our Maſter came himſelf on board, and took me along with him; but whither I was to go then I did not know. He carried me to a Houſe in the City, and there gave me a ſmall Trunk to carry, and a Hamper to a Porter; and we went away with them; and he bid us at *Billingſgate* carry them on board, which we did.

L. C. J. Holt. When was the Trunk and Hamper brought on board?

Fiſher. About Six or Seven o'Clock at Night, on *Wedneſday*, I think.

L. C. J. Holt. Well, and what followed?

Fiſher. My Lord, and Mr. *Aſhton* and Mr. *Elliot*, and my Lord's Man, and the Maſter, came on board between Eleven and Twelve: There was no more came on board that I know of; but we were aſleep when they came on board; and immediately our Maſter ordered us to hale up the Anchor. Now there was but little Wind ſtirring; and by that Time we were fallen down as low as the *Half-way-Tree*, it being ſtill Flood, we could go no farther: So there we were ordered to ſtop, and we lay by till Morning; and about Eight in the Morning we weighed Anchor again; and about Nine, when we came to the *George* Man of War, they hid; they deſired to go down into the Quarters, and we laid the Hatches upon them.

Mr. Serj. *Tremain.* What kind of Place is it that they hid in?

Fiſher. They could not ſtand upright, nor ſit upright; but they muſt lie, or lean upon their Elbows. So when we were got below the Ship, they came up again into the Cabin: And when we came at *Gravejend* near the *Block-Houſe*, then they hid again till we were below the *Block-Houſe*; and then we ſpied a Boat coming, which made them to keep below; and there they continued till Captain *Billop* took them.

Mr. Serj. *Tremain.* Were they all four there?

Fiſher. Yes, all four.

Mr. Serj. *Tremain.* After they were taken, what ſaid they?

Fiſher. After ſuch Time as they were taken, and come up to *White-hall* Stairs, Captain *Aſhton* gave me a Half-Crown Piece, and bid me ſay, they were going to *Flanders*, and not to *France.*

Mr. Serj. *Tremain.* But whither were you going?

Fiſher. Truly, I did not know where we wer to go, till ſince we came on Shore. I underſtood nothing till they hid; and then indeed I thought we were going to *France.*

Mr. Serj. *Tremain.* When did any body tell you, you were to go to *France?*

Fiſher. Since we came on Shore.

Mr. Serj. *Thompſon.* Will my Lord aſk him any Queſtions?

L. *Preſton.* No.

Mr. Serj. *Tremain.* Then the next Witneſs we call is one *Amonds.* Pray tell us what you know of this Matter.

Amonds. May it pleaſe you, my Lord, I know nothing concerning my Maſter's Buſineſs; but all that I know of this Buſineſs is, That they came on board about Twelve o'Clock at Night; and I was then aſleep in the Cabin, and hearing ſome come on board, and my Maſter call, I looked out, and there were three or four Gentlemen, and my Maſter; and he ordered us to ſet Sail immediately, and make our Way down as faſt as we could. There was little or no Wind: So that when we came down to the *Half-way-Tree*, we were forced to come to an Anchor; and there we rid at Anchor till it was broad Day, when there was a brave Gale to the Weſtward; and by that Time we got down to *Long-Reach*, about Nine o'Clock we came to the *George* Frigate, a Man of War; and they underſtanding that, deſired to hide theſe Gentlemen.

L. C. J. Holt. What Gentlemen?

Amonds. My Lord *Preſton*, Mr. *Aſhton*, and Mr. *Elliot*, and the other Gentleman that was with them.

L. C. J. Pollexfen. Look upon my Lord there, was he one?

Amonds. Yes, that Gentleman was one.

L. C. J. Holt. Well, go on.

Amonds. And ſo, Sir, after we were paſſed the Frigate, they came up again, and did not deſign to go down any more till they ſee ſome other Danger. When we came almoſt to *Graveſend*, they went down again: When we paſs'd the *Block-Houſe* I was at the Helm; and they were reſolving to go to Dinner, and bid that Man, my Fellow, to reach them ſome Victuals out of the Hamper: And while he was reaching them ſome Victuals, I ſee the Pinnace coming towards us: Said I, Here is a Pinnace coming aboard: Says my Lord, and they, We muſt go down again and hide; and ſo they did go down again. We apprehended that they were coming aboard to preſs us, and they had no Mind to be ſeen. When the Pinnace came near, they waved to us in this Manner, as much as to bid us ſtay: So we laid the Sail by, and ſtaid for them till they came up; and when the Captain came on board, ſays he, This is worth our coming on board; here are a Couple of briſk Seamen will do the King Service; I muſt have them, I think. Says I, I hope not ſo, noble Captain: Says he, Have you any thing to keep yourſelves clear? Yes, ſays our Maſter. I am ſorry for that, ſays the Captain. What is it? Says the Maſter, I have a Protection. Says the Captain, Let us ſee your Protection: So the Maſter pulls out his Protection, and ſhews it. Well, ſays the Captain, I muſt look a little further; and away he goes into the Cabin, and takes up the Hatches, where theſe Gentlemen were. Says the Captain, Hye, hye, who is here? Turn out, ſays he: But I ſuppoſe they did not make ſo much Haſte as the Captain expected; ſo he called ſome of his Men on board; and when they came on board, my Lord came out, and the reſt of the Gentlemen; and ſays my Lord to the Captain, I hope you will be ſo kind as not to take any thing from us. Says he, I'll meddle with nothing but Papers; 'tis Papers I look for; and put his hands in both his Pockets, and pulled out Papers, and put them into his own Pocket; but whether they were new or old, I can't tell: And there was a Watch likewiſe; but that he gave my Lord again, and ſaid, I'll meddle with nothing but Papers. Then he ſearched Mr. *Elliot*; and Mr. *Aſhton* was the laſt that came out; and there was one of the Captain's Watermen in the Cabin with him; and ſays he, And pleaſe you, noble Captain, that Gentleman put ſomething in his Boſom. Says the Captain, What did you put in your Boſom, Sir? Nothing, ſays he, but my Handkerchief.

L. C. J. Holt. Who ſaid ſo?

Amonds. Mr. *Aſhton*, and ſhews him his Handkerchief; and afterwards the Captain put his Hand in Mr. *Aſhton*'s Boſom, and pulled it out.

Mr. Serj. *Thompſon.* What did he pull out?

Amonds. A Roll of Papers, with a Piece of Lead to it.

Mr. Serj. *Thompſon.* Did you ſee the Lead fixed to the Papers?

Amonds. I did ſee it fixed to the Packthread that tied the Papers.

Mr. Serj. *Tremain.* What ſort of Place is it in which they were taken?

Amonds. They could not ſit, nor ſtand upright in it.

Mr. Serj. *Tremain.* Had you any Money given you?

Amonds. I had Half-a-Crown given me by my Lord's Man.

L. C. J. Holt. Who was it gave you the Money?

Amonds.

Amonds. It was my Lord's Man; he that was on Board the Ship: He gave me Half-a-Crown in *Whitehall*, and ſaid, I ſhould ſay we were bound for *Flanders*, and not for *France*; but who the Half Crown came from I cannot tell, my Lord ſaid nothing to me at all.

Mr. Serj. *Tremain.* Did you hear any Diſcourſe as they came down?

Amonds. No, I did not mind any thing of Diſcourſe; for I never came among them, unleſs it were at the Hour of Watching.

L. *Preſton.* Pray did I ſay any thing to you at *Whitehall?*

L. C. J. Holt. My Lord, your Way is to propoſe your Queſtions to the Court, and they will aſk them for you.

L. *Preſton.* My Lord, I deſire to aſk him, if I ſaid any Thing to him at *Whitehall.*

L. C. J. Holt. What ſay you, Did my Lord *Preſton* ſay any thing to you at *Whitehall?*

Amonds. No, my Lord, he never ſaid any thing to me at all; it was his Man that gave me the Half Crown, and ſpoke to me.

L. C. J. Holt. Will your Lordſhip aſk him any other Queſtions?

L. *Preſton.* No, my Lord.

L. C. J. Holt. Then call your next Witneſs.

Mr. Serj. *Tremain.* Swear Capt. *Billop.* [*Which was done.*

Mr. Serj. *Thompſon.* Come, Captain *Billop*, pray will you tell my Lord and the Jury, where you did apprehend my Lord *Preſton*, and the Circumſtances of what happened at their Taking.

Capt. *Billop.* Sir, I met with them at the upper End of the *Hope.*

Mr. Serj. *Thompſon.* Pray give us an Account, from the Beginning to the End, what paſſed; how you came with the Boat, and all that happened at that Time.

Capt. *Billop.* About two o'Clock, or between one and two, upon the laſt of *December*, my Lord *Danby* came to me at one of the Doors of the Houſe of Lords, and told me his Father would ſpeak with me; and he carried me to my Lord *Lindſey*'s Chamber, where immediately my Lord Preſident came, and told me there were ſome Perſons going for *France* about Buſineſs of dangerous Conſequence, and he deſired me to uſe ſome Means to get them apprehended: I then propoſed what I ſhould have to enable me for the Undertaking. My Lord *Danby* ſaid, there was ſuch a Boat that he would procure me, and my Lord Preſident gave me a Letter to another Perſon, who was to inſtruct me further about this Matter. My Lord *Danby* got the Boat ready, and ſome Men and Arms in it: But I thought there were not Arms enough; ſo I borrowed ſome Arms of my Lord *Lucas*, and about eleven o'Clock, as near as I remember, we put off from *Tower-Wharf.* It being very calm, I thought we ſhould be ſwifter than any Veſſel, and ſhould have the Advantage of them all; and therefore run down as far as *Graveſend*, and I brought ſeveral Veſſels by the Lee, in which Time I preſſed ſome *Barkin* Men, two or three of them; and amongſt them one that knew the Veſſels that lie in the River, having been on Board ſeveral; and we did board divers, and took out ſome Men, having a Preſs-Warrant; and he that I had taken of the *Barkin* Men, after he had paſſed by ſeveral Veſſels, ſeeing this Veſſel ſailing, told me that was the *Thomas* and *Elizabeth:* Whereupon we made up to them, and waving towards them, they ſtaid for us. When we came up, there was ſtanding by the Maſter two luſty Sailors, and I told him I would take but one of them: He ſaid he had a Protection; I bid him ſhew it me. When I was come on Board, and had looked upon his Protection, I told him I muſt look a little further, and went down into the Cabin, and took up the Hatches, and there I found them all four lying together.

Mr. Serj. *Thompſon.* What four?

Capt. *Billop.* My Lord *Preſton.* I did not know him then, nor till afterwards.

Mr. Serj. *Tremain.* Who elſe was there?

Capt. *Billop.* Mr. *Elliot* was there, and Mr. *Aſhton*, who were both my former Acquaintance; but my Lord *Preſton* I had forgotten, till one of them called him my Lord, and I aſked them what Lord it was; and they ſaid it was my Lord *Preſton*; ſo then I ſaluted my Lord: So we rowed up.

Mr. Serj. *Thompſon.* Pray, Captain, tell us what happened in the Veſſel before you went out of it, after you found them there?

Capt. *Billop.* I handed my Lord *Preſton* up firſt; and after he came out of that little Place, which he was forced to creep out of on his Knees, I turned my Lord about, and told him I muſt ſearch him. He ſaid, he hoped I would not meddle with any thing; I told him I would meddle with nothing but Papers: So I put my Hand in his Pocket, and took all the Papers I could find, and put them in my own Pocket; and taking out a Watch, I delivered it to my Lord again. The next was Mr. *Elliot*, and I ſearch'd him, and found nothing at all upon him. After that *Aſhton* came up, and one of my Men told me, that Gentleman had put ſomething in his Boſom: Whereupon I gave him a ſudden Turn, his Back being towards me, and aſk'd him, What was that he put in his Boſom? He told me nothing but his Handkerchief, and pluck'd his Handkerchief out; with that I clapp'd my Hand in, and got the Packet, and took it out, with the Lead fix'd to it. I have the Lead now in my Pocket.

Mr. Serj. *Tremain.* Pray will you produce it, Sir? [*Which he did.*

Capt. *Billop.* This is the Lead, ſeveral of my Men ſaw it when 'twas fixed to the Packet.

Mr. Serj. *Thompſon.* What did you do with the Packet?

Capt. *Billop.* I put it immediately into my Pocket, as ſoon as I had ſearch'd Mr. *Aſhton* further, and then commanded theſe Gentlemen all into my Boat, and took all the People that belonged to the Smack with me, after I had brought her to an Anchor, and left two of my Men on Board of her, and there ſhe rid till next Day, when I ſent two more of my Men to bring her up; and thoſe two Men I order'd to ſearch all the Parts of the Veſſel, and take what they could find; and whatſoever they found, they ſhould carry it to the *Tower*, to my Lord *Lucas*; which, I ſuppoſed, they did.

Mr. Serj. *Tremain.* Well, Capt. *Billop*, after ſuch time as you had taken theſe Papers, and brought theſe Gentlemen into your Boat, pray what Diſcourſe had you with them? What ſaid they to you concerning the Papers?

Capt. *Billop.* It was a pretty while before we talked of any thing: The Beginning of our Talk was, I remember, they deſired to go aſhore at *Graveſend* to refreſh themſelves, for it was cold, and they had not eaten any thing. It was my Lord that deſired it; but I begg'd his Pardon for that, and told him there was a Man of War that lay at *Long-Reach*, where, as I believed, his Lordſhip would be very well accommodated with any thing he wanted.

Mr. Serj. *Thompſon.* Well, what ſaid they afterwards?

Capt. *Billop.* My Lord *Preſton*, after I had ſaluted him, upon knowing who he was, and Mr. *Aſhton* and Mr. *Elliot* telling him I was of their Acquaintance, he ſaid he was glad he was fallen into the Hands of a civil Gentleman; and they ſaid they were glad they were fallen into the Hands of an Acquaintance. I told my Lord, I hoped he ſhould never find any thing otherwiſe than civil from me. My Lord was very civil to me in complimenting, and aſſuring me he would acknowledge my Favour and Kindneſs to him.

Mr. Serj. *Thompſon.* Aye, what did he ſay to you?

Capt. *Billop.* My Lord *Preſton* told me, if ever it lay in his Power to do me Service he would, and he did not doubt but he might; and he uſed a great many Words and Expreſſions of Kindneſs, and his Readineſs to do me Service; and amongſt the reſt, my Lord ſaid once to me, if I would diſpoſe of the Packet------

Mr. Serj. *Thompſon.* Pray ſpeak that again.

Capt. *Billop.* My Lord *Preſton*, in one of his Diſcourſes of his Kindneſs in doing me Service, had this Expreſſion, as near as I can remember, if I would diſpoſe of the Packet

Mr. Serj. *Tremain.* What he would do for you, if you would diſpoſe of the Packet?

Capt. *Billop.* He did not come to any particular Inſtance of what he would do; but he ſaid he would ſerve me in any thing that lay in his Power. Mr. *Elliot* and Mr. *Aſhton* diſcourſed me ſeveral times about it: They courted me, and deſired me to throw the Packet overboard; but I told them I would not do any thing of that kind: And Mr. *Elliot* ſaid, that I might take the Papers that I took out of my Lord *Preſton*'s Pocket, and tie the Lead to them, and ſay that was the Packet, and throw the other overboard. I told him, he took the King's Counſel to be odd People, and very indiſcreet, that could not find out ſuch a Thing as that. After this was over, we had a little Interval, and there was a Hamper in the Boat's Stern, and there was ſome Bottles of Wine taken out, and we drank ſeveral times; and by and bye we had ſome Diſcourſe a little further about the ſame thing, and they preſſed me to throw the Packet away; and one time particularly Mr. *Aſhton*, I remember, ſaid it would be a generous Thing. *Billop*, if you would go along with us, I think you may do as well there as here.

Mr. Serj. *Tremain.* Whither would he have had you gone with them?

Capt. *Billop.* He did not name any Place, as I remember.

Mr. Serj. *Tremain.* What Promiſes did they any of them make you?

Capt. *Billop.* *Mun Elliot* whiſper'd me ſeveral times, Dear *Billop*, throw the Packet overboard; what Good would it do you to injure ſo many honeſt Gentlemen? And Mr. *Aſhton* and Mr. *Elliot* ſaid, I had it now in my Power to make myſelf as great and as rich as I would be.

Mr. Serj. *Tremain.* What did any of them ſay about the Tide turning?

Capt. *Billop.* *Mun Elliot* alſo ſaid, it was impoſſible the Current, or the Tide could run long this Way, or always this Way.

Mr. Serj. *Thompſon.* When you had refuſed this that they deſired of you, notwithſtanding their Promiſes, pray tell us how they turned their Diſcourſe into Threatnings.

Capt. *Billop. Elliot* told me, when nothing would prevail, that every Dog had his Day; but I anſwered, I hoped never to ſee it your Day: But, however, ſaid I, pray deſiſt from any ſuch Language, for I can't bear it. After that they never aſk'd me any thing about it.

Mr. Serj. *Thompſon.* Now tell us what you did with theſe Gentlemen, and theſe Papers, afterwards.

Capt. *Billop.* I brought theſe Gentlemen up to my Lord *Nottingham*'s Office, and delivered the Packet with the Lead fix'd to it, and ſtood by my Lord *Nottingham* in the Room till he had opened the Papers, except while my Lord *Preſton* was examined; and when he opened the Papers I ſtood by, that I might ſee him make them up again; and I think I took ſome of them in my Hand, and he ſaid I might read them; but I was uneaſy, and not diſpoſed at that time to read many of them; ſo I did not read them all.

Mr. Serj. *Tremain.* They were all by when *Aſhton* ſaid you would do generouſly to go along with them, were they not?

Capt. *Billop.* Yes, they were all in the Boat.

Mr. Serj. *Tremain.* Did not one of them ſay to you, I know if Captain *Billop* do ſerve us, he will do it generouſly?

Capt. *Billop.* Yes.

Mr. Serj. *Tremain.* Who was it?

Capt. *Billop.* It was *Aſhton.*

L. *Preſton.* I deſire I may aſk Captain *Billop* a Queſtion.

L. C. J. Holt. Pray, my Lord, put your Queſtion to the Court, and they will aſk it him.

L. *Preſton.* I deſire to know, my Lord, where it was I ſaid this to Captain *Billop*, that he would diſpoſe of the Packet?

Capt. *Billop.* Juſt after I had firſt ſaluted your Lordſhip, you ſaid you were glad you were fallen into the Hands of a civil Gentleman.

L. *Preſton.* Was it aboard the Boat that I deſired you to diſpoſe of the Packet?

Capt. *Billop.* Yes, and before we came on board the *George* Frigate, when we drank about, upon the opening of the Hamper; it was in the Boat I am very ſure, and before we came on board the *George.*

L. C. J. Holt. My Lord *Preſton* ſaid to you, you ſay, he would do you all the Kindneſs that lay in his Power, if you would diſpoſe of the Packet; How would he have you diſpoſe of it? What did he mean by it?

Capt. *Billop.* I don't remember he uſed any other Word but that, diſpoſe of the Packet.

Mr. Serj. *Thompſon.* But *Aſhton* and *Elliot* did deſire of you a great many times to throw it overboard?

L. *Preſton.* I deſire he may be aſked this Queſtion. You ſaid you carried theſe to my Lord *Nottingham*; Did you ſee them opened?

Capt. *Billop.* Yes, I did ſee them opened, and I ſaw my Lord as he opened them, lay them one by one, and read them over, and put them up again. And I looked upon ſeveral of them, while my Lord *Nottingham* was reading others; and I ſtood by the fire, and I ſee my Lord make them

them up, and he tied them with a Piece of Twine, and he clapp'd his Seal upon them, and delivered them to me; and I went immediately and delivered them to my Lord Prefident.

L. *Preſton.* Were you all the while by, while my Lord *Nottingham* was reading the Papers?

Capt. *Billop.* Yes, I was by when he opened them, and read them, and ſtaid till he put them up again; and as they came from his Hands, I preſently carried them to my Lord Preſident.

L. *Preſton.* Are you ſure, or can you ſwear that theſe are the ſame Papers which were taken on board the Smack, that you carried from my Lord *Nottingham* to my Lord *Danby?*

Capt. *Billop.* So many of them as I looked into, I mark'd; and all that I mark'd I can ſwear to, and no more than them I cannot.

Mr. Serj. *Thompſon.* I think you ſay all thoſe Papers that you delivered to my Lord *Nottingham*, you ſaw my Lord *Nottingham* ſeal up, and all them you carried to my Lord Preſident?

Capt. *Billop.* Yes, I did ſo; all that my Lord opened at that Time were put together again, and his Seal put to them.

L. C. J. Holt. But my Lord aſks you, whether you can ſwear to the particular Papers?

Capt. *Billop.* What I read I mark'd, and them I can ſwear to.

L. C. J. Holt. You ſay you carried all thoſe Papers to my Lord *Nottingham* ſealed; after he had opened them, to my Lord Preſident?

Capt. *Billop.* Yes, my Lord, I did ſee my Lord *Nottingham* open them; I ſee him make them up again, and when they were made up, he put his Seal to them, and I carried them to my Lord Preſident.

Juryman. My Lord, I deſire Capt. *Billop* may be asked one Queſtion.

L. C. J. Holt. Ay, what is it you would ask him?

Juryman. I deſire to know whether the Papers were ſealed when he took them and brought them to my Lord *Nottingham?*

Capt. *Billop.* No, they were all tied up together with a Tape, or a Twine, I think with both, very faſt together.

Juryman. There was no Seal on them when he took them?

Capt. *Billop.* No; but there were ſeveral Letters within the Packet that were ſealed.

L. C. J. Holt. Was not the Outſide of the Packet ſealed?

Capt. *Billop.* I don't remember the Outſide was ſealed: There was a Cover, but as near as I remember, they were Folds of Paper faſt tied together.

Mr. Serj. *Thompſon.* You delivered them as you took them, to my Lord *Nottingham?*

Capt. *Billop.* Yes, I never took them out of my Pocket, after I had taken them from Mr. *Aſhton*, till I came to my Lord *Nottingham*'s Office, where I delivered them to him.

Mr. Serj. *Thompſon.* Had you ever opened them, or ſeen them opened, before they came to the Hands of my Lord *Nottingham?*

Capt. *Billop.* No, indeed.

Mr. Serj. *Tremain.* Then ſet up *Johnſon.* [*Which was done.*] Pray tell us what you know of this Matter?

Johnſon. I was in my Lord *Dunblain*'s Barge, and I went down with this Captain *Billop*, and we were on board ſeveral Veſſels; and we light upon a Ketch, where we preſſed ſome Men. We thought it had been only ſome Seamen that were to be preſſed; we did not know of any thing elſe. When we had rowed down as far as you have heard, we rowed up again, and ſearched ſeveral little Veſſels and Smacks that were in the River, when a Fiſherman that we had preſs'd ſaid, that that was the Veſſel the Captain enquired after: And then the Captain bid us take ſome ſmall Arms, and I took a Piſtol and went on Board. The Captain read the Protection, and then ſaid, he muſt look further. When the Captain look'd into one of the Cabins, and took up the Hatches, I ſaw a great Piece of Roaſt-Beef, and my Lord *Preſton* by it, and a Mince-Pie, and a Fowl, and we took the Beef out; but my Lord's Man ſaid, he miſſed his Knife, it lay upon the Bench: And then came my Lord up, and his Man, and Mr. *Elliot*; and when Mr. *Aſhton* (the Man with the Pock-holes) came up, he went down again, and pretended to look for his Hat; but when he was down I ſee him cram ſomething into his Boſom, and I told the Captain, I had ſeen him put ſomething into his Boſom; and the Captain took him hold by the Buttons of his Coat, and turned him about, and aſked him what he put into his Boſom? He ſaid, Nothing but his Handkerchief; and pulling it out of his Boſom, he ſhewed it to the Captain; but the Captain put his Hand into Mr. *Aſhton*'s Boſom, and pulled out the Packet.

Mr. Serj. *Thompſon.* You ſay you ſee him put ſomething in his Boſom when he went down. Did you obſerve whence he took it?

Johnſon. It was upon the Gravel, and there were a Couple of Seals, which he afterwards took up, lying by; and I believe he took up the Packet and forgot the Seals.

Mr. Serj. *Tremain.* Pray let us ſee the Seals.

Mr. Sol. Gen. Your Lordſhip obſerves, the Packet was not at firſt in Mr. *Aſhton*'s Boſom.

L. C. J. Holt. No, it was not.

Mr. Sol. Gen. But he took it up from the Place where the Seals lay, and put it into his Boſom. Pray in what Place did this Packet and theſe Seals lie?

Johnſon. Upon the Ballaſt, for they had ſhov'd away the Board.

Mr. Sol. Gen. Was my Lord *Preſton* upon the Ballaſt?

Johnſon. Yes, my Lord lay almoſt upon his Back; he was the firſt that we ſaw, and he came out firſt. They were all four lying together there.

Mr. Sol. Gen. Who lay next my Lord *Preſton?*

Johnſon. My Lord's Footman; Mr. *Aſhton* lay next, and Mr. *Elliot* lay next.

Mr. Sol. Gen. Where were the Seals then?

Johnſon. My Lord was the firſt that I ſee come up.

Mr. Sol. Gen. But I ask you where the Seals were?

Johnſon. The Seals were down upon the Ballaſt; whether they were my Lord's or no, I cannot tell, or whoſe they were.

Mr. Serj. *Tremain.* Now that we will ask Captain *Billop.* Are theſe the Seals?

Capt. *Billop.* Yes, theſe are the Seals this Man gave me.

Johnſon. I took them from off the Ballaſt.

Mr. Serj. *Thompſon.* Did my Lord own theſe to be his Seals?

Capt. *Billop.* I did not ask him, that I know of.

Mr. Serj. *Thompſon.* Well, *Johnſon*, go on, tell what you know further.

Johnſon. After we came to *Long-Reach*, a Gentleman that had a long Perriwig, a black Gentleman, Mr. *Elliot* I think they call him, had a pair of Whiskers on when he was taken, and he took a Pair of Sciſſars and cut them both off; and he ſaid, if ever he lived, he ſhould remember me, having a Tooth out, becauſe I was ſo ſharp upon him to make him come out: And when we came on board the *George* Frigate, in *Long-Reach*, my Lord's Man came to me, and ſaid, he would give me ſomething to drink, if I would deliver him the Seals.

L. C. J. Holt. Had you any Diſcourſe with my Lord *Preſton* himſelf about them?

Johnſon. No, it was his Footman that came to me, and ſaid There was no body there but myſelf and him: I had them, and he would give me ſomething to drink, if I would deliver them; but I delivered them to Captain *Billop.*

L. *Preſton.* My Lord, may I ask a Queſtion or two of this Witneſs?

L. C. J. Holt. Yes, my Lord, if they have done with him. What ſay you, Brother *Thompſon?*

Mr. Serj. *Thompſon.* We ſhall have done with him preſently, my Lord. Pray had you any Money given you?

Johnſon. No, but my Lord gave the Ship's Company ten Shillings to drink, and one Piece was a Braſs Half-Crown.

Mr. Serj. *Thompſon.* What did they ſay as they went along, as you remember?

Johnſon. They had a great deal of Diſcourſe while we rowed, I was at the next Oar to them, but I cannot tell what 'twas.

Mr. Serj. *Thompſon.* Who did diſcourſe?

Johnſon. Aſhton, Elliot, and the Captain.

Mr. Serj. *Thompſon.* Cannot you remember what they ſaid, any of them?

Johnſon. They did talk together ſeveral times; *Elliot* ſaid he was a-cold, and came and rowed at the Oar a while; and *Elliot* ſwore an Oath; ſays he, They row all as if they were rowing to Priſon; but truly I did not much mind their Diſcourſe, I minded my rowing. There were ſome Victuals handed to us, which we did eat.

Mr. Serj. *Tremain.* Did *Elliot* ſeem to be angry? What did they ſay?

Johnſon. Elliot wiſhed that a Thunderbolt might drop into the Boat ſeveral times, and ſink it; and when we went through Bridge againſt Tide, he wiſhed that *London-Bridge* might have fallen upon our Heads.

L. *Preſton.* Now I would ask him, if your Lordſhip pleaſe, Did you ſee *Aſhton* take up the Packet?

Johnſon. Yes, I did, as it lay by the Seals.

L. *Preſton.* I perceive there ſeems to be ſome Streſs laid upon my lying next to Mr. *Aſhton*, and Seals lying by the Packet.

L. C. J. Holt. My Lord, there has been no Inference made from that yet by the King's Counſel.

L. *Preſton.* My Lord, it is in vain to deny we were all together there.

Johnſon. You were the firſt that I ſee, my Lord.

L. *Preſton.* We were all together; but there is no ſuch Thing to be gathered from thence as they would inſinuate; but I ſuppoſe 'twould be deduced from hence, as if this Packet, becauſe it lay near theſe Seals, ſhould be my Packet.

L. C. J. We have not yet heard, my Lord, what Uſe they will make of it.

L. *Preſton.* But I deſire to take Notice of it, my Lord, and I think it is a very hard Preſumption, becauſe we were in one Place, and the Seals at a little Diſtance from the Packet, therefore the Packet muſt be preſumed to be mine; I hope it ſhall not be preſumed againſt me.

L. C. J. Holt. Since your Lordſhip mentions it, I will take Notice a little of it too. It is only a circumſtantial Evidence that is made uſe of againſt you; how far it will weigh, is to be left to the Jury, when all the Evidence is heard. The Packet is found in the Place where your Lordſhip lay, and by it Seals that belong to you; one is the Seal of your Office, as Secretary of State, the other is your own proper Coat of Arms.

Juryman. With Submiſſion, my Lord, I deſire this Witneſs may be asked this Queſtion, Whether he ſaw Captain *Billop* take the Packet out of *Aſhton*'s Boſom?------*Johnſon.* Yes, I did.

Juryman. And whether he ſaw *Billop* deliver the ſame Packet to my Lord *Nottingham?*-----*Johnſon.* No, I did not.

L. C. J. Holt. You Gentlemen of the Jury, conſider this; he was not then by. Captain *Billop* tells you, that very Packet which he took out of *Aſhton*'s Boſom he carried to my Lord *Nottingham*; and he tells you, my Lord opened it in his Preſence, and he is ſure he put all the Papers together again, and ſet his own Seal upon them, and then he took them from my Lord *Nottingham*, and carried them to my Lord Preſident.

Johnſon. As ſoon as I came to *Whitehall*, I was ſet Centinel over thoſe three Men that came out of the Smack, and was not admitted into the Room.

Mr. Sol. Gen. Then we muſt deſire, my Lord *Nottingham* may be ſworn.

[*The Earl of* Nottingham *ſworn.*]

Mr. Serj. *Tremain.* Where are the Papers?

Earl of *Nottingham.* Mr. *Bridgman*, I think you have the Papers.

Mr. Sol. Gen. Pray, my Lord, does your Lordſhip remember Captain *Billop* brought a Bundle of Papers to you, and what became of them? Will your Lordſhip be pleaſed to give the Court and the Jury an Account of it?

Earl of *Nottingham.* My Lord, all that I have to ſay in this Matter is, Captain *Billop* brought to me a Bundle of Papers tied about with a Packthread, to which was fixed a Piece of Lead, I believe the ſame Piece that was now produced; at leaſt it was one very like it: He brought alſo a Signet, which I preſume I can know again when I ſee it.

Mr. Serj. *Thompſon.* Pray ſhew my Lord the Seals. [*Which was done.*

Earl of *Nottingham.* This is the Signet I preſume which he brought to me; I am ſure he brought juſt ſuch a one, if not the ſame. Thoſe Papers, when he delivered them to me, I opened in his Preſence, and when I had ſo done, I read them, and put them up together again, and ſealed them with my own Seal, and delivered them to him back again.

What

What the Papers are, and what he did with them, I ſuppoſe he will give you an Account.

L. C. J. Holt. But your Lordſhip ſays, the Bundle of Papers he delivered to you you ſealed up, and delivered to him again.

Earl of *Nottingham.* All thoſe Papers that he brought to me I did ſeal up, and deliver back to him again.

Mr Serj. *Thompſon:* Pray, my Lord, were they ever out of Captain *Billop*'s Sight while your Lordſhip had them?

Earl of *Nottingham.* Not after they were opened. There was a little Paper that was tied to the Bundle, which fell looſe upon the taking away the Lead, and I opened that while he was by, and the Bundle lay upon the Table while I examined my Lord *Preſton*; and after my Lord *Preſton* was gone out, I called in Captain *Billop* (who went out while I examined my Lord), and I opened that great Packet in his Sight, and read the Papers, and he read ſome of them; and all the Papers in the great Packet, and the little Paper that was ſtuck in, I delivered, ſealed up, to Captain *Billop.*

Mr. Serj. *Thompſon.* Pray, my Lord, were the Letters in the Packet ſealed?—Earl of *Nottingham.* Yes, there were ſome of them ſealed; and all that I received from him I delivered to him, and no more.

L. C. J. Holt. The Gentlemen of the Jury hear what my Lord ſays.

Earl of *Nottingham.* The very ſame, all, and no more, I ſay.

Mr. Serj. *Thompſon.* Captain *Billop*, when you had them back from my Lord of *Nottingham*, pray to whom did you deliver them?

Capt. *Billop.* To my Lord Preſident.

Mr. Serj. *Tremain.* Then we muſt deſire my Lord Preſident would be pleaſed to be ſworn.

[*The Marquiſs of* Carmarthen, *Lord Preſident of the Council, was ſworn.*]

Mr. Sol. Gen. We muſt deſire the Favour of your Lordſhip to acquaint the Court, when Captain *Billop* came to your Lordſhip, what he ſaid, and what he brought with him.

L. Preſident. Captain *Billop* did bring me a Bundle of Papers, and he told me he brought them from my Lord of *Nottingham*, and they were ſeal'd, wrapp'd up with a Packthread, and ſeal'd with a Seal, which I knew to be my Lord's Seal. He delivered them to me myſelf; and theſe Papers I kept till I ſhew'd them the King the next Morning. And after I had ſhewed them the King, the King delivered them up back to me, having read ſome of them, and commanded they ſhould be delivered to the Cabinet-Council. A Cabinet-Council was called, and accordingly there I did deliver them, Paper by Paper, and they were all marked by my Lord *Sidney*, and ſome I think by my Lord *Marlborough*; and ſo I delivered them all together to my Lord *Sidney.*

Mr. Sol. Gen. Then we deſire my Lord *Sidney* would pleaſe to be ſworn.

[*The Lord* Sidney *ſworn.*]

Mr. Serj. *Thompſon.* Will your Lordſhip pleaſe to acquaint the Court and the Jury, what Papers were delivered to you, and by whom, and where thoſe Papers are?

L. *Sidney.* The Papers that were delivered by my Lord Preſident, I have kept them, my Lord, ever ſince. As ſoon as I had them, I read them, and mark'd them with a Letter of my own Name, the Letter *H.* I have kept them ever ſince? only one Morning I gave them to Mr. *Bridgman* to be copied out as ſoon as he could, and he delivered them me back again, and they have not been out of my Cuſtody ſince; only the Night before laſt Night they were ſent to Mr. *Sollicitor* to read, and brought immediately to me again.

Mr. Sol. Gen. To whom did your Lordſhip deliver them to be copied?

L. *Sidney.* To Mr. *Bridgman*, I tell you.

Mr. Sol. Gen. So that they were never out of your Lordſhip's Hands till now, but only in Mr. *Bridgman*'s Hands?

L. *Sidney.* No, I kept them in my Pocket ever ſince, only the Night before laſt, when they were ſent to you.

Mr. Sol. Gen. Did your Lordſhip mark them before they were delivered to Mr. *Bridgman* to copy?

L. *Sidney.* Yes, I marked them when I received them.

L. *Preſton.* My Lord Chief Juſtice; your Lordſhip does obſerve that Captain *Billop* ſwears that they were never out of his Poſſeſſion till he delivered them to my Lord *Nottingham*; my Lord *Nottingham* ſays he never opened them, but left the Packet upon the Table while I was examining.

L. C. J. Holt. Pray, my Lord, will you ſpeak a little louder, that I may hear you?

L. *Preſton.* My Lord, I am ſaying, my Lord *Nottingham* ſays, that while he was examining me, the Packet lay upon the Table unopened, and were never out of his Eye till he ſent them ſealed by Captain *Billop*, and ſo they come to my Lord Preſident, and they were kept by my Lord Preſident; my Lord Preſident ſays, my Lord *Churchill* ſaw the Papers, and they were in his Poſſeſſion.

L. C. J. Holt. My Lord *Preſton*, your Lordſhip does miſtake my Lord Preſident: He does not ſay that they were in my Lord *Marlborough*'s Hands; but he did communicate them at the Cabinet-Council, where my Lord *Marlborough* was. He ſaid, indeed, they were in the King's Hands, but he was by all the while.

L. *Preſton.* From that Time they came out of my Lord Preſident's Hands, I know not what may be put in, nor what taken out. Theſe Papers were not ſealed, as I hear of, afterwards; and paſſing through ſo many Hands, no body knows what may be done to them. Truly, I think it very hard to ſwear, after all this, that theſe are the Papers that were on Board the Smack.

L. C. J. Pollexfen. Will you pleaſe to aſk any Queſtions to ſatisfy yourſelf of any of theſe noble Lords?

L. C. J. Holt. My Lord, I'll put your Lordſhip right.

L. *Preſton.* With all my Heart, my Lord.

L. C. J. Holt. Your Lordſhip hears what Captain *Billop* ſays. He ſays, he brought them as he took them out of *Aſhton*'s Boſom, to my Lord *Nottingham*: My Lord *Nottingham* opened them before him, and did deliver them to him again, having made them up: My Lord *Nottingham* ſays, the ſame Papers Captain *Billop* delivered him, he delivered back again, all, and no more; and *Billop* ſays, he carried them to my Lord Preſident; my Lord Preſident ſhewed them to the King, and afterwards carried them to the Cabinet-Council; there the ſame Papers were opened, and there they were marked; ſome by my Lord *Marlborough*, and all by my Lord *Sidney.*

L. *Preſton.* Your Lordſhip will pleaſe to obſerve this: My Lord *Nottingham* was pleaſed to ſay, he opened no Papers till I was called in and examined, and then Captain *Billop* withdrew. Now, my Lord, I don't know whether the Captain can ſay that theſe were the very ſame Papers that he took in the Smack?

L. C. J. Holt. Captain *Billop* ſays, that he ſaw the Papers opened by my Lord *Nottingham.*

Capt. *Billop.* My Lord *Preſton* obſerves a Thing that is very right, my Lord, that after I had delivered the Packet to my Lord *Nottingham*, while my Lord was examined, I withdrew; but my Lord *Nottingham* has given your Lordſhip an Account, that he had not opened the Packet then, but only the ſmall Letter or Note that lay apart from the reſt: But, my Lord, the Packet was in the ſame Condition when I came in again, upon the Table, as when I left it: My Lord *Nottingham*, as I believe, had not opened that Packet; for I found it juſt as I left it, upon the Table.

L. C. J. Pollexfen. My Lord *Nottingham* ſays, he delivered back to Captain *Billop* all the Papers that he received from him: They were never out of my Lord *Nottingham*'s Preſence; nor were they opened, as my Lord ſays, but in *Billop*'s Preſence, nor opened till after my Lord's Examination, except the little Paper that was ſtuck in, and was looſe upon taking away the Lead.

Mr. Sol. Gen. Pray ſwear Mr. *Bridgman.* [*Which was done.*

Mr. Serj. *Thompſon.* Pray, when you received the Bundle of Papers from my Lord *Sidney*, to whom were they carried, and to whom were they delivered?

Mr. *Bridgman.* My Lord *Sidney* gave me theſe Papers to have them copied, and I copied ſome of them with my own Hand, the others I delivered to Mr. *Poultney*, and were copied in my Preſence in the Office: They were never out of my Sight; and as ſoon as ever they were copied, I carried them back to my Lord *Sidney*, and delivered them to him myſelf.

L. *Preſton.* Were any of them taken from you, Sir?

Mr. *Bridgman.* My Lord, I ſay I copied ſome of them myſelf, the others were copied in my Sight and Preſence, in the Office.

Mr. Serj. *Thompſon.* Pray, Sir, let me aſk you one Queſtion? Were the ſame Papers that were delivered to you by my Lord *Sidney*, re-delivered back again and unaltered?

Mr. *Bridgman.* I am very ſure I gave them all, the ſame back again, becauſe I read them every one before they were copied.

Mr. Serj. *Thompſon:* Did you obſerve my Lord *Sidney* had mark'd them before you had them?

Mr. *Bridgman.* Yes, they were all marked before I had them.

L. *Preſton.* My Lord, I deſire to aſk Mr. *Bridgman* this Queſtion: Pray, Sir, were they ſealed up when you ſent them to my Lord *Sidney?*

Mr. *Bridgman.* No, they were not ſealed, they were tied up; but about the Seals I remember when I was in my Lord *Sidney*'s Office——

L. C. J. Holt. The Queſtion is aſk'd you, whether you carried them back ſealed or no?

Mr. *Bridgman.* No, they were not ſealed when they were delivered to me; but I can ſafely ſwear they were never out of my Cuſtody till I delivered them back again; for what I did not copy myſelf, were copied in my Sight.

Mr. Serj. *Thompſon.* But your Lordſhip is pleaſed to obſerve they were all mark'd by my Lord *Sidney* before they were delivered unto him.

Mr. Sol. Gen. Then, my Lord, we have done with our living Witneſſes for the preſent, and will read the Papers.

Mr. *Bridgman.* One thing, my Lord, I do remember; as ſoon as my Lord *Sidney* received the Papers back again, he looked over every one of them, and read them, and looked upon the Marks.

L. *Preſton.* If your Lordſhip pleaſe, I would beg the Favour to aſk one Queſtion of my Lord *Sidney:* Pray, my Lord, did your Lordſhip number the Papers?

L. *Sidney.* No, my Lord, I did not number them.

L. *Preſton.* But your Lordſhip ſays upon your Oath and Honour, that thoſe are the very Marks upon them that your Lordſhip ſet there?

Mr. Sol. Gen. We are indeed to produce them, and then we ſhall aſk that particular Queſtion.

L. C. J. Holt. My Lord *Sidney* will ſee them, and then he will anſwer your Lordſhip's Queſtion.

L. C. J. Pollexfen. My Lord *Preſton*, my Lord *Nottingham* is here a Witneſs, and his Occaſions call him away, have you a Mind to aſk him any more Queſtions?——L. *Preſton.* No, my Lord.

L. C. J. Pollexfen. What ſay you, Gentlemen, have you any farther Occaſion for my Lord *Nottingham?*

Mr. Sol. Gen. My Lord, we muſt beg his Lordſhip's Patience, we do not know what Occaſion there may be: I deſire this Paper may be ſhewn to my Lord *Sidney.* [*Which was done.*

L. *Sidney.* That is my Mark; that Paper I know is one of the Papers.

Mr. Serj. *Tremain.* Here are two of them; one of theſe is the Copy of the other: Both were taken in the ſame Packet; the one is fairer written than the other.

Mr. Sol. Gen. Gentlemen, the Paper we are now offering to you is that which I mentioned before; it is the Reſult of a Conference: There were two of them taken in this Bundle; the one of them ſeems to be the firſt Draught, the other is a Copy more fairly written; but I think they are both in Effect the ſame: However, they were both taken in the ſame Packet, and you ſhall hear them read.

L. *Preſton.* My Lord, I deſire that before it be read it may be ſhewn to Captain *Billop*, to know whether it be the very Paper that he took.

L. C. J. Holt. Ay, let Captain *Billop* look upon it.

Capt. *Billop.* My Lord, I do not remember that Paper.

L. *Preſton.* Your Lordſhip obſerves that Captain *Billop* cannot ſwear that this was one of the Papers that he took.

Capt. *Billop.* All the Papers that I looked into I marked, and all the Papers that I mark'd I can ſwear to, and no others.

L. C. J. Pollexfen. Did you look into all the Papers.

Capt. *Billop*. No, I did not.

L. C. J. Holt. But he ſwears, all that he brought to my Lord *Nottingham* were ſealed up by my Lord *Nottingham*, and carried by him from my Lord *Nottingham* to my Lord Preſident; and my Lord Preſident ſwears, he delivered them all to my Lord *Sidney*; and my Lord *Sidney* ſwears, this is one of theſe Papers.

L. *Preſton*. Certainly, my Lord's ſwearing to a Paper in this Manner cannot be a good Proof. My Circumſtances, my Lord, are very hard; and your Lordſhip, I have heard, ought to be of Counſel for me in any Point of Law; and, my Lord, I humbly deſire to know, whether this can be a Proof of a Paper, that he ſays was taken in a Packet, and yet he can't ſwear it?

L. C. J. Holt. My Lord, he does not ſwear that this was one of the Papers; but the Queſtion is, Whether all theſe Witneſſes together do not prove it? You ſee how the Evidence runs: All the Papers taken were delivered to my Lord *Nottingham*; all that were delivered to him were ſent back by him ſealed, and delivered to my Lord Preſident; my Lord Preſident brought them all to the Cabinet-Council, and delivered them to my Lord *Sidney*; and this my Lord *Sidney* ſays is one of thoſe Papers.

L. *Preſton*. My Lord, I have a very great Honour for that noble Lord; and I am ſure, if he had not been upon his Oath, he would have ſaid that which was Truth; but in this Condition that I am in, I muſt crave Leave to obſerve every thing that I can for my ſelf; and I cannot but ſay, theſe Papers are very oddly managed, and delivered up and down from one Hand to another; I deſire your Lordſhip would pleaſe to obſerve, that theſe Papers are here brought after a very odd Manner.

Mr. Serj. *Thompſon*. My Lord *Preſton*, you are not to ſum up the Evidence to the Jury till we have done, nor to make your Obſervations.

L. C. J. Holt. Brother, my Lord oppoſes the reading of the Paper, as not well proved.

L. *Preſton*. I do ſo, my Lord; and I hope your Lordſhip will adviſe me, whether you do think it a ſufficient Evidence and Proof of theſe Papers. They are Papers that have been copied out, and ſent unſealed from Hand to Hand by ſome Meſſengers from one to another; and which now appear to be unſealed, and ſome of which he that took them cannot ſwear to.

Juryman. My Lord, we cannot hear one Word that is ſaid.

L. *Preſton*. That is my Misfortune; but I am urging to my Lords the Judges, whether this Paper ought to be read; and I deſire your Lordſhip to adviſe me, whether it can be admitted as Evidence, being thus oddly proved.

L. C. J. Holt. It is Evidence, ſurely, my Lord; but the Queſtion is, what Credit the Jury will give to this Evidence? The Jury are Judges of that: But certainly it is Evidence to have the Paper read.

L. *Preſton*. I doubt not but your Lordſhip will do me Juſtice, and I readily acquieſce in what your Lordſhips do appoint.

L. C. J. Pollexfen. Pray, my Lord, ſee how the Evidence ſtands about this Matter. Firſt, it is ſworn by *Billop*, that he took a Bundle of Papers; though 'tis true, the Particulars he does not undertake to ſwear to. Well, what is next? Why, ſays he, All that was in that Bundle I carried to my Lord *Nottingham*, and I received from my Lord *Nottingham* all that I carried to him. What ſays my Lord *Nottingham*? He ſwears I delivered back again to Captain *Billop* the ſame Papers he delivered to me, and all, and no more, ſealed up with my Seal. When he has it ſealed up, what does he do with it? Why, he carries it to my Lord Preſident. Is there any Poſſibility of creeping out of this Evidence? Well, he delivers them to my Lord *Sidney*, and my Lord *Sidney* ſays, This is one of thoſe Papers. Can there be a plainer Evidence than this? when he ſays, All he had he carried to my Lord *Nottingham*; and my Lord *Nottingham* ſwears, All he did receive he ſent back, ſealed by him, to my Lord Preſident; and my Lord Preſident ſwears, All he received, ſo ſealed, he gave to my Lord *Sidney*; and my Lord *Sidney* ſwears, This is one of thoſe Papers.

L. *Preſton*. But your Lordſhip will pleaſe to obſerve, they were carried to the King, and they were in the Hands of my Lord *Marlborough*.

L. C. J. Holt. No, my Lord, not out of the Sight of my Lord Preſident. My Lord Preſident ſays, my Lord *Marlborough* marked ſome of them, but they were delivered to my Lord *Sidney*; and my Lord *Sidney* does ſay, They are the ſame Papers that he had from my Lord Preſident; and my Lord Preſident ſays, They are the ſame that were brought him by Captain *Billop* from my Lord *Nottingham*; and my Lord *Nottingham* ſwears, he ſealed them, the ſame Papers, all, and no more than he received from Captain *Billop*.

L. C. Baron. Your Lordſhip ſhould obſerve where the Defect of the Proof is, and then it may be ſupplied; for truly, put it all together, I cannot ſee how there could be a plainer Proof given.

L. *Preſton*. My Lord, I deſire to be heard as to this: My Lord Preſident was pleaſed to ſay, that ſome of them were delivered to the King.

L. C. J. Holt. No, they were ſhewn to the King; but my Lord Preſident was by all the while that the King did read them.

L. *Preſton*. My Lord, where a Man's Life lies at Stake, and all that is dear to him, your Lordſhip will certainly allow him to make what Obſervations he can for himſelf.

L. C. J. Holt. Ay, in God's Name, by all Means: You ſhall have all the Liberty you can deſire.

Mr. Sol. Gen. My Lord, we deſire my Lord Preſident will be pleaſed to look upon thoſe Papers. [*Which was done.*]

L. Preſident. This is one of the Papers that I received from Captain *Billop*, and which I ſhewed to the King, and which I brought to the Cabinet-Council; and this is another of the Papers.

L. Preſton. Pray, my Lord, was your Lordſhip by when his Majeſty read thoſe Letters?

L. Preſident. Yes, my Lord, I was.

L. *Preſton*. My Lord, I aſk it for this End, to know whether they were out of your Lordſhip's Sight.

L. Preſident. No, never; I was in the King's Cabinet; his Majeſty read ſome of them, and then put them up again, and gave them me; and I delivered them at the Cabinet-Council to my Lord *Sidney*.

Mr. Sol. Gen. My Lord, we deſire this Paper may be read.

L. C. J. Holt. Read it.

Clerk of the Peace reads.

The Reſult of a Conference between ſome Lords and Gentlemen, both Tories and Whigs, in which it was undertaken to prove the Poſſibility and Method of reſtoring by a Fr. Power, without endangering the Proteſtant Religion, and Civil Adminiſtration, according to the Laws of this Kingdom.

"1. *F.* Muſt either oblige or conquer us: If the laſt, he will find few "Helps here; but a bloodier Reſiſtance than ever the *Romans*, "*Saxons*, or *Normans* found: It being incredible, how unanimous and "obſtinate that very Thought renders the People; ſo that it may make us "a Heap of Ruin, but no Nation that can ever help or import any Thing "to *F.*

"2. If K. *L.* deſires to oblige us, and make the Work eaſy, that he "may be at Leiſure to ply the Empire or *Italy*, or to have an advanta-"geous Peace, he muſt take off the frightful Character we have of him, "and ſhew us he has no ſuch Deſign as returning our offended K. a Con-"queror upon us, but that he can, and will be our Friend and Mediator; "upon which Terms he will find, that many Lords and Gentlemen will "ſpeedily ſhew themſelves to his Satisfaction; eſpecially if he makes "haſte, and loſes no approaching Opportunity.

"3. If he incline to this Sort of Senſe, he muſt over-rule the Bigotry "of St. *G.* and diſpoſe their Minds to think of thoſe Methods that are "more likely to gain the Nation; for there is one ſilly Thing or other "daily done there, that comes to our Notice here, which prolongs what "they ſo paſſionately deſire. The Methods thought upon are theſe:

"*Firſt*, To prevent dangerous and fooliſh Intelligence, by forbidding "all in that Court to write any News hither, and that K. *J.* only have his "Correſpondence by whom to hear from, and ſpeak to People here; ſince "Letters ſo often miſcarry, and are filled with nothing but what we ſhould "not hear; and what we have are Arguments for the moſt part againſt "the K's Reſtoration.

"*Secondly*, Since there is a great Body of Proteſtants that never defect-"ed, and that many Thouſands are returning, and that they are the natu-"ral Weight and Power of theſe Kingdoms, by having the Heads, Hands "and Wealth of their Side, to the Odds and Advantage of at leaſt two "hundred Proteſtants to one Catholick; the K. may think of nothing "ſhort of a Proteſtant Adminiſtration, nor of nothing more for the Ca-"tholicks than a legal Liberty of Conſcience; for much e mutt is againſt "all other Notions, to which all private Paſſions, and artificial Frames "in Government, muſt yield or break. He may reign a Catholick in "Devotion, but he muſt reign a Proteſtant in Government. *Cromwel* "could not, yet on a broader Bottom, with a victorious Army, ſubſiſt or "keep what he had got.

"*Thirdly*, He muſt give us a Model of this at St. *G.* by preferring the "Proteſtants that are with him above the Catholicks; one being Loyal "upon leſs Ties of Intereſt; and to tell the Nation here what they are "to hope for when he comes.

"*Fourthly*, He muſt give Encouragement to Lords and Gentlemen here "to come to him, at leaſt Seven or Nine for a ſtanding Council; which "will make us here think he is in ſome Degree ours again, and that we "have a Relation to him, and ſome Intereſt and Share in him, by the "Men of Quality of our own Religion that are with him. This will "incomparably facilitate the Matter here; nor will they, when they "come, come empty, and in their own Names, which is ſtill better, and "will be more ſatisfactory there.

"*Fifthly*, To induce this, *Engliſh* Proteſtants ſhould be encouraged by "an Edict of Liberty from the K. of *F.* to have Chapels at their own "Coſts, in which to worſhip God after their reſpective Ways; by which "that K. will make us reflect upon his Conduct towards his *Hugonots*, "rather to flow from the Hazard he thought himſelf in by their Antimon-"and reſiſting Principles, than a Deſire of Perſecution.

"*Laſtly*, All other requiſite Meaſures depending upon the Acceptance "this finds, an Anſwer hereunto is impatiently deſired by thoſe that "have diſcourſed the King's Buſineſs to this Maturity. So ended with "an unanimous Conſent, both *Tories* and *Whigs* upon this Occaſion, that "are in a Way of cloſing in his Intereſt."

L. *Preſton*. I can very ſafely ſwear, my Lord, that I never ſaw that Paper in my Life.

L. C. J. Holt. Come, go on with your Evidence.

Mr. Sol. Gen. This is another Paper of the ſame; but the Words that are written ſhort in that, are written at Length in this.

[*The Paper was read accordingly, and in the firſt Blank there was written* K J. *in the firſt Paragraph* (France) *twice, in the third Paragraph* (St. Germains), *in the fifth* (Mathemat. *for* Much e mutt), *the reſt are obvious, and need not be ſupplied.*]

Mr. Sol. Gen. Pray ſhew my Lord *Sidney* that Paper. What ſays your Lordſhip to it?

L. *Sidney*. This is one of the Papers that I marked, and that I received from my Lord Preſident.

Mr. Sol. Gen. Pray, will my Lord Preſident be pleaſed to give himſelf the Trouble to caſt his Eye upon that, and ſee if that be one of the Papers.

L. Preſident. My Lord, I remember it well, it is one of the Papers I received from Capt. *Billop*.

Mr. Serj. *Tremain*. This Paper is what *Mr. Sollicitor* mentioned as Heads of a Declaration.

L. *Preſton*. My Lord, I think it neceſſary to offer one Thing to your Lordſhips before it be read. I deſire Captain *Billop* ſhould ſwear it to be one of his Papers.

Mr. Sol. Gen. If your Lordſhip pleaſes, you obſerve what has been done already. My Lord Preſident ſays, 'tis one of thoſe Papers that was ſent him by my Lord *Nottingham*; and my Lord *Sidney* has ſworn, it is one of the Papers he had from my Lord Preſident.

L. *Preſton*. I ſhall not give your Lordſhip any more Trouble than needs; I only offer it to your Lordſhip; I wave it.

L. C. J. Holt. There is Evidence enough to have the Paper read.

Clerk of the Peace reads.

"That the King will return with a Deſign of making an entire Con-"queſt of his People, is ſo ridiculous, as well as difficult, that it needs not to be ſpoken to.

"That

" That the King's Declaration be worded in general Terms, That he " will govern by the Laws; that they ſhall be the Rule of his Actions; " that he will endeavour to ſettle Liberty of Conſcience by Law; that " whatſoever things were formerly done by him, which occaſioned Jea- " louſies in the Minds of his People, ſhall be left to the Determination of " a Parliament, to be formally and regularly called as ſoon as is poſſible.

" That he has given ſufficient Evidence of his Unwillingneſs to bring " an Army of Strangers into this Kingdom, by refuſing the Succours of " the King of *France* offered him, and which were even ready to be em- " barked upon the firſt Notice of the P. of *Orange*'s intended Invaſion.

" That he brings with him ſuch an Army only as is neceſſary for his " own Defence, and for the Security of ſuch of his loyal Subjects as ſhall " reſort to him; that he will diſmiſs them as ſoon as he ſhall have rid the " Nation of thoſe Foreigners who have invaded it, and trampled upon the " Laws and Liberties of his People.

" The King's large exerciſing his Diſpenſing Power gave the great " Alarm to the People, and contributed moſt of all toward the general " Defection. Yet when that Power came to be debated in the laſt Con- " vention, there appeared ſo many Difficulties in the limiting of it (every " body, **even the preſent** Judges believing it neceſſary, that a diſpenſing " Power ſhould be in the K.) that it was let fall, and that Point remains " as it was. And without mentioning that, or any other Particular, the " K. can be in no Danger by leaving all things which have been the Oc- " caſion of Jealouſies, to the Determination of Parliament, where, be- " ſides the King's profeſſed Friends and Servants, there will not want " others who will be glad of Opportunity to ingratiate themſelves."

L. C. J. Pollexfen. Gentlemen of the Jury, if you deſire any thing to be read again, or any thing doubtful in it ſhould be explained, tell us, and it ſhall be done.

Juryman. No, my Lord, there is no Occaſion for that. I believe we apprehend theſe three Papers that have been read.

L. *Preſton.* My Lord, it is neceſſary the Gentlemen of the Jury ſhould be ſatisfied in this Point.

L. C. J. Pollexfen. Ay, in any Point; and if they deſire any Scruple ſhould be cleared, the Court will do it for them.

Juryman. My Lord, I deſire to know whether Captain *Billop* ſigned that Paper or no?

L. C. J. Holt. No, he did not ſign half of them; but unleſs it be proved, you ought to take it for granted that it is not ſigned by him.

L. *Preſton.* My Lord, I think it fit the Jury ſhould be ſatisfied in any Scruple they raiſe.

L. C. J. Holt. They aſked this Queſtion, Whether Captain *Billop* did ſign the Paper? And I told them Captain *Billop* did not ſay ſo; and therefore they are to take it for granted, that he did not.

Juryman. My Lord, we take this laſt Paper that was read, to be a Paper that was delivered in the Bundle taken from Mr. *Aſhton* to my Lord *Nottingham*, but not ſigned by Captain *Billop*.

L. C. J. Pollexfen. Then you take it right.

Mr. Sol. Gen. Then the next Paper that we produce is a Liſt of the *Engliſh* Fleet that theſe Gentlemen were carrying over into *France*.

L. *Preſton.* That is printed, and to be found in every Coffee-houſe.

Mr. Serj. *Tremain.* Shew that Paper to Captain *Billop*. [*Which was done.*] Can you take it upon your Oath, Captain, that that Paper was in the Packet that was taken in Mr. *Aſhton*'s Boſom?

Capt. *Billop.* That Paper I have marked, and that Paper I ſwear was in the Packet I took away from Mr. *Aſhton* on board the Smack.

L. C. J. Holt. You are ſure of it.

Capt. *Billop.* Yes, my Lord.

L. C. J. Holt. Then read it.

Clerk of the Peace reads.

S H I P S.

Rates,	Ships,	In Repair.	Not.	Building.
1	8	5	3	—
2	12	11	1	—
3	35	34	1	—
4	38	34	4	4
5	14	14	—	1
6	9	9	—	—
Fireſhips	25	25	—	8
Bomb-Veſſels	1	1	—	8
Ketches	1	1	—	—
	143	134	9	21

Brought in by Admiral Ruſſel *to the Houſe of Commons*, December *the* 24*th*, 90. *the Fleet whereof* 60 Dutch.

Memorandum, *The new Ships building, are expected will be ready to be launched by the End of* March.

Mr. Serj. *Tremain.* Pray ſhew this Paper to Captain *Billop*. [*Which was done.*] Pray, Was that Paper there among the others that were taken with theſe Gentlemen?—Capt. *Billop.* Yes, it was.

Mr. Sol. Gen. Can you take it upon your Oath, that that Paper was in the Packet that was in Mr. *Aſhton*'s Boſom?

Capt. *Billop.* Yes, my Lord, I can.

Mr. Serj. *Tremain.* Pray ſhew him that Paper too. [*Which was done.*

Mr. Sol. Gen. And can you take upon you to ſay, that that was one of the Papers in the Packet?---Capt. *Billop.* Yes, it was.

Mr. Sol. Gen. My Lord, we deſire theſe may be read.

Clerk of the Peace reads, New-Year's Eve, and it is directed for Mr. *Redding*.

SIR,

" THOUGH the Bearer of this will do us the Juſtice to aſſure you, " we are as full of Duty, as unfeignedly and unconcernedly yours, " as yourſelf could wiſh; yet this Gentleman has undertaken.---You " will forgive the Preſumption, if I do myſelf the Honour to give you this " freſh Aſſurance in a few Words, which I hope we do by our Accounts. " I ſhall omit no Occaſions, not neglecting the leaſt, and making zea- " lous Wiſhes for the greateſt, to ſhew ourſelves ſuch as we ought to be. " *Sir*, I ſpeak in the Plural, becauſe I write my elder Brother's Senti- " ments as well as my own, and the reſt of the Family, though leſſened " in Number; yet if we are not mightily out in our Accounts, we are " growing in our intereſt, that is in yours. He that delivers this, will, " I hope, entirely to your Satisfaction, repreſent us, and me in particu- " lar, as with all the Devotion imaginable, and unchangeable Affection. *Yours, God grant the happieſt New-Year.*

Mr. Serj. *Tremain*, Read the other Paper.

Clerk of the Peace. This is dated *Decemb.* 31, 1690. " I muſt not let this " Bearer depart, Madam, without aſſuring you ——

Mr. Sol. Gen. Hold, Sir, don't read that yet. Here, ſhew this Paper to Captain *Billop*. [*Which was done.*] What ſay you, Captain *Billop*? Is that one of the Papers taken from Mr. *Aſhton*?

Capt. *Billop.* Yes, this is one that I read, and marked.

Mr. Sol. Gen. Then read it.

Clerk of the Peace reads. This is directed for Mrs. *Redding*.

" AS 'tis impoſſible for me to expreſs that extraordinary great Satisfac- " tion it gave me this Time Twelve-month, when I had the Ho- " nour to receive that Mark of your Favour and Goodneſs under your own " Hand; ſo I have lived in ſome Pain for an Opportunity to write you " my humbleſt Acknowledgements and trueſt Duty, from which, by the " Grace of God, I am no more capable of ſwerving, than of renouncing " my Hopes of Heaven; I ſay this in Behalf of my elder Brother, and " the reſt of my neareſt Relations, as well as for myſelf: You may en- " tirely depend upon us, not only for a conſtant Adherence to ſo well " choſen a Principle, but for our utmoſt Activity to promote your In- " tereſt, which are inſeparable from our own. I need come to no parti- " culars by this Bearer, who can, and will tell, our whole Heart; and I " wiſh you could ſee them, how ſincerely they are devoted to your Service. " God grant you a moſt happy New-Year, and many, very many, and " very happy. Our young Maſter hath all our beſt Wiſhes; he daily " gains more Friends, and we get Ground of his Adverſaries.

New-Year's Eve.

Mr. Sol. Gen. Now read your other Paper of the 31ſt of *December*, 1690.

Clerk of the Peace reads, December 31. 1690.

" I Muſt not let this Bearer depart, Madam, without aſſuring you of " my beſt Reſpects. I have written by him to a Friend of yours, but " depend upon you to give my Note Credit.

" Though my Creditors were no Friends to the Match which has been " ſo long in Treaty; for your Relations have been very hard upon me this " laſt Summer; yet as ſoon as I could go ſafely Abroad, I purſued the " Buſineſs, and do beg you to believe, that no Endeavours of mine ſhall " be wanting to perfect the Settlement. You once put me in Hopes of " ſeeing you before this *Chriſtmas*; Your Friends are ſorry for the Diſap- " pointment, pray loſe no more Time than is of abſolute Neceſſity. The " Bearer will tell you all Things may be now eaſily ſettled, if the right " Way be taken. I long to hear how your young Daughter does; ſhe " will find many Friends, and I hope her Portion will be well ſecured: " God ſend you a happy New-Year, and that I may be merry with you " before it be far ſpent; and I beſeech you keep me in the good Opinion " of your Friend. I will always make good what I promiſed to you." [*It is directed for Mrs.* Charlton.]

Juryman. My Lord, I deſire to know who that is directed to.

Clerk of the Peace. 'Tis directed to Mrs. *Charlton*.

Mr. Serj. *Tremain.* Shew Captain *Billop* thoſe two Papers. [*Which was done.*] What ſay you to them, Captain?

Capt. *Billop.* My Mark is on the Outſide, but there is nothing written in that; I believe it is taken off from the inner Paper.

L. *Preſton.* Pray, my Lord, is this any Proof? I beſeech you for God's Sake to have Regard for a Man's Life.

Mr. Sol. Gen. Pray ſhew the Paper to my Lord *Sidney*. [*Which was done.*]

L. *Sidney.* This was one of the Papers I received from my Lord Preſident.

Mr. Sol. Gen. Then we muſt beg my Lord Preſident would be pleaſed to look on it. [*Which was done.*]

L. Preſident. This was one of the Papers brought me by Captain *Billop* from my Lord *Nottingham*, in that Bundle.

L. *Preſton.* Captain *Billop* does not know the Paper, though his Mark be to it.

L. C. J. Pollexfen. It is not indeed very material whether he does or no, becauſe he did not read all; but I would obſerve, that 'tis ſworn by Lord *Sidney*, that this was delivered to him by my Lord Preſident, and ſworn by my Lord Preſident, that he had it in that Bundle from Captain *Billop*.

L. *Preſton.* But, my Lord, it does ſhew that there may be ſome Alteration in the Papers; becauſe he having marked it, and marking none but what he read, he does not now own that to be the Paper.

Mr. Sol. Gen. Pray, will your Lordſhip be pleaſed to take it as it is. Theſe are two Papers; the one is only the Cover, the other is the Writing: Captain *Billop* has only marked the Cover, and not the Writing; but my Lord *Sidney* he has marked the Paper itſelf, as delivered him by my Lord Preſident, and my Lord Preſident has given you an Account, that it is one of the Papers he received in that Bundle from Captain *Billop*.

L. *Preſton.* I only mark, that there may be Alterations made in theſe Papers ſince they were taken.

Mr. Serj. *Tremain.* Pray read it.

Clerk of the Peace reads, December 31. 1690. It is directed to Mr. *Jackſon*.

" THE Bearer can give you ſo full an Account of all things relating to " your eſtate here, that I need not have troubled you at this Time, " but that I am deſirous to lay hold of any Opportunity I think ſafe to " aſſure you of my Service, and that I will never quit your Intereſt, " whatever the reſt of the Freeholders do. Your Adverſary has been ſo " hard to his Neighbours, that he has extremely diſobliged all the old " Tenants, and a little Matter would redeem the whole Eſtate, if you " would appear in *Weſtminſter-Hall* yourſelf; the beſt Counſel have a good

" Opinion of your Title, and will zealously pursue your Instructions: I " only beg you would hasten them to us, and that you will appear your- " self as soon as is possible: No Time should be lost, and the Cause may " be brought to a final Hearing before the End of *Easter* Term, if it be " well solicited. I heartily wish you a happy New Year, and beg you " to tell Mr. *Charlton*, that I long to know wherein I may serve him; and " that I will follow his Directions to the utmost, while I live. God keep " you and yours."

L. *Preston*. Pray, Sir, to whom is that Letter directed?

Clerk of the Peace. To Mr. *Jackson*, my Lord.

Mr. Serj. *Tremain*. Pray shew that Paper to my Lord *Sidney*.

[*Which was done.*]

L. *Sidney*. This is one of the Papers I received from my Lord President.

[*Then it was shewn to my Lord President.*]

L. President. This is one of the same Papers that I received in the Bundle from Captain *Billop*.

L. C. J. Holt. Read it.

Clerk of the Peace reads. December the 31st.

" THE Interruption of the former Correspondency had a very ill " Effect many ways; but for that Reason, no Opportunity ought " now to be lost, and I hope this will prove a happy one.

" In Trade, as well as in Government, Schemes must be laid; for " there is no living from Hand to Mouth any more in Commerce than in " Politicks: Lay therefore your Designs probably, and pursue them di- " ligently, and with Vigour; though it be a hazardous Time, yet by " venturing boldly, where venturing is advisable, it often returns great " Profit.

" There is nothing more to be said, but to give the Bearer fit and full " Seasons to tell what he knows, both as to Goods fit for our Market, and " when and where to be sent. The Sea will quickly grow so trouble- " some, that unless you dispatch what you intend for us, you will loose " a great Opportunity of Advantage. I hope the Account he has to give of " our Negociations here with the Merchants that deal with us, especially " those that have lately brought us their Custom, will both encourage a " a larger Trade, and excite the utmost Diligence. I will say nothing of " myself, it shall be enough that I can live in the good Opinion of one I " bear so great a Reverence and Affection for; but for this honest Factor " I must own, I can hardly say enough. Truth and Boldness are excel- " lent Qualities in a Servant; and he has shewn both, as Occasion has re- " quired him to shew them.

" I have but one Word to add, and pray take it as the truest Mark of " unalterable Respect: Choose well, but have to do but with a few; for " a Multitude may give, but can never keep Counsel.

" I shall, with more Impatience than becomes me, wait the Result of " this, and it will be a great Mark of Goodness to let us have it in the " best and safest way.

" Once more; let not the Season spend unprofitably, for a more likely " one can hardly come than between this and the 1st of *March*. Inter- " pret this, I pray, as no private Interest of my own, or partial Motion " of any other Person. It is my Sense, my Duty, and my Friendship, " which will not let me prevaricate, nor suffer those I love and honour to " loose so happy and pressing an Occasion of Advantage. With the best " Wishes I close up this, and am, *&c.*"

L. *Preston*. Pray, my Lord, who is that Paper directed to?

L. C. J. Pollexfen. This is directed to no Body at all.

Mr. Sol. Gen. Shew that Paper to my Lord *Sidney*. [*Which was done.*]

L. *Sidney*. This was one of the Papers I had from my Lord President.

[*Then it was shewn to my Lord President.*]

L. President. This is one of the Papers I had from Captain *Billop*.

L. C. J. Holt. Read it.

Clerk of the Peace reads. This is dated *December* 31, but is not directed to any Body at all.

" IT is a Presumption incident to those that are any where upon the " Spot, to think that they know better than those that are not, what " is fittest to be done in any Occurrence. This makes me say, that now " is the Time to make large Advantages by Trading, the Sea being freer " than two Months past, or we can hope it will be two Months hence. " This Gentleman is well instructed in our Markets, and what the Goods " are we want, and when and where they should be sent. It is most " earnestly desired that this happy Opportunity may not be lost, espe- " cially by the late Undertakers, and I would not for much, they should " receive the least Disgust. They are somewhat positive in their Terms; " but they also say, they will be good and constant Customers; and I have " more than once seen the Mischief of over-rating, and over-staying the " Market. Opportunities are to be used, they cannot be given by Men.

" The Bearer needs nothing from me to recommend him, but he is de- " serving in our Opinion here, and many will take their Measures by " the Usage he finds there; and indeed the pressing Posture of our " Trading Affairs will not permit more Experiments. If the several " Parcels arrive not, that have been promised, before the 10th of *March* " at farthest (especially the *Copper* and *Linnen*, of which the Bearer will " be more particular), I am satisfied we shall loose this Summer's Profit. " I am the more pressing, because I am well assured of what I write; and " if ever I judged right, it is upon this Occasion.

" I have said nothing of another Gentleman that takes this Opportu- " nity to see those Parts; but he has shewn a Zeal and a Sincerity in " this Affair equal to most. *Jo.* is not yet gone, by a Misfortune, but " he will follow with a good Postscript in this Affair. Of myself I will " say nothing; I hope I need not, for no body without Vanity can be " more sincerely and affectionately a Friend and Servant to the Com- " pany than myself. I writ at large Yesterday, and cannot write what " the Hand that gives this can say; and therefore will write no more, " but that with the greatest Respect, I am, *&c.*"

Mr. Serj. *Tremain*. Pray shew this Paper to my Lord *Sidney*.

[*Which was done*]

L. *Sidney*. This is one of those Papers I received from my Lord President. [*Then it was shewn to the Lord President.*]

L. *President*. This was one of the Papers in the Bundle I received from Captain *Billop*.

L. C. J. Holt. Then read it.

Clerk of the Peace reads.

" SIR,

" I Vow to you, I do not repine at having lost all for your Sake, which " I got by your Favour; but it grieves me extremely that there is not " that left which can secure me from being troublesome to you; for that " the thing in the World I would not be. I have told my Lord my " Condition. What I desire of you he thinks very moderate, I hope you " will. Pray, Sir, be not backward in settling my little Affair, for I " have deserved your Care. Your Daughter and I must starve, if this " Government can make us. I hope our Interests are not divided, that " is, you have an equal Tenderness at least for both. If you think fit to " speak what I would have you to this Bearer, he will give me a just Ac- " count of it. You know he is obliged to be my Friend, and I believe " him grateful, since he ventures so boldly for you. He brings with him " some merry Papers. Adieu, for I dare write no more; but pray send " a Messenger on purpose to me, that I may know exactly what you will " do, and would have me do. If you send upon no other Business, there " will be no Danger. Pray, Sir, ask my Lord, and he will tell you " how I have been used, and upon what Account. I believe you know " it not.

December 29.

" Your Daughter is very well, very tall, and very pretty, as I am " told."

L. C. J. Pollexfen. That is not directed to any body neither.

Mr. Serj. *Tremain*. Pray then shew these Papers to my Lord *Sidney*, and my Lord President. [*Which was done.*] *They were two.*

L. C. J. Pollexfen. These Papers my Lord *Sidney* swears he received from my Lord President, and my Lord President swears he received them in the Bundle from *Billop*.

Mr. Serj. *Thompson*. We pray they may be read.

Clerk of the Peace. December 31. 90.

" WAS my Condition more desperate and uneasy than it is, I de- " sire no greater Satisfaction than to have done my Duty to so " good a Master: I wish it was of more use to him; that is not my Fault, " nor of those I have acted with. Let it be look'd into what has been " foretold both as to *Eng. Scot.* and *Irel.* and see if most of it is not " come to pass already, and the rest will follow, if not prevented. I wish " it may also be considered what Usage we have met with from Men em- " ploy'd, and how they have left your Business and Friends; how they " managed it you will know from all Hands: Things they could not do, " nor durst not undertake, were better undone than not done by them. " Men in this Place, and in these Times, must have some Courage as well " as Sense to do any thing with People here. It is not my own ill Usage " makes me say this, but my Concern for one I wish the best to in the " World, and will give my Proofs of this upon all Occasions. I need " not enlarge, since all our Grievances are known to him that brings " this. For my own part, I will stay here, so long as I can be safe, if " with ne'er so great Trouble; but it would be some Comfort to know " Men (when driven from hence) may be so; therefore the Reports of " People's Usage are terrible as well as of the Indiscretions of St. *Germ.* " Family: We feel the Smart of it by ridiculous Letters falling daily " into the Hands of the Government. Their Master and Mistress are " little oblig'd by it no more than we: If there is any thing, Sir, you do " particularly command me, or depend upon me for, let me know it. I " cannot undertake much, nor furnish more. I have still help'd every " body, and paid to every thing I could; and if a Twelvemonth ago " my Condition was what I then represented, you best know if it has " been mended. Use, and considering that of others, makes me grow " more contented; and if the Prospect of Misery to us all was any Satis- " faction, that it is now plainly seen.

" Pray God bless us all, by restoring every Man his own, and you " with long Life.

" He that gives you this, hath furnish'd for your Use to me, *&c.* two " hundred Pounds, which I desire may be repaid."

Mr. Sol. Gen. Read t'other; it is in the same Hand, and was enclosed in the former.

Clerk of the Peace reads. " I only beg, Madam, no ill malicious Report " may take any Place in your Thoughts, in regard to me. I value your " good Opinion, and will endeavour to deserve it. I can do little towards, " but wish most heartily for your Happiness. I know no Interest, Ma- " dam, but my Master's and yours, nor do I think they are to be made " two: If you command me any thing, I will faithfully obey you, as I " have ever done him.

" We all depend upon this Bearer's Accounts of us, and our Condi- " tion. His Faith and Courage hath been enough experienced.

Mr. Serj. *Tremain*. Here is another Paper, shew that to Captain *Billop*.

[*Which was done.*]

Capt. *Billop*. This Paper I did mark, and this was one that was in the Bundle.

L. C. J. Pollexfen. What is it Brother? pray open it.

Mr. Serj. *Tremain*. 'Tis a Draught of a Cypher, with an Alphabet of Names, for carrying on the Correspondence.

Mr. Serj. *Thompson*. Your Lordship observes these Matters were design- ed to be carried under several Sorts of Cants.

L. C. J. Holt. What says Captain *Billop* to that Paper?

Capt. *Billop*. That was one of the Papers that I read at my Lord *Not- tingham's*, and mark'd it there.

L. C. J. Holt. Then read it.

Clerk of the Peace reads. For Mrs. *Anne Russell*, to be left with Mrs. *Richeson*, at the *Blue Boar*, in *Ryder-street*, near St. *James's*.

A --- *the King*,
B --- *the Queen*,
C --- *the Prince of* Wales,
D --- *the Prince of* Orange,
E --- Canon *and the* Scotch *Officer*,
F --- *the Duke of* Berwick,
G --- *Duke* Tyrconnel,
H --- *Major General* Sarsfield,
I --- *Lieutenant General* Shelden,
L --- *King of* France,
M --- *Marshal* Luxemburgh,
N --- *Marshal* Belford,
O --- *Duke* Powis,
P --- *Dutchess* Powis.

Amsterdam

Amſterdam ---- *Breaſt*,
Rotterdam ---- *Deipe*,
Hague ---- *Havre de Grace*,
Briil ---- *Dunkirk*,
Harlam ---- *Callis*,
Italy ---- *England*,
Germany ---- *Scotland*,
Spain ---- *Ireland*.

Mr. Serj. *Tremain*. Then the next Papers we produce are the Bills of Exchange; Pray ſhew them to Capt. *Billop*. What ſay you, Capt. *Billop*, were thoſe among the other Papers?

Capt. *Billop*. Yes they were, I remember very well.

Mr. Serj *Tremain*. My Lord, they are in *French*, and therefore we muſt ſwear a Gentleman that we have here, to interpret: Call Mr. *Humphry Levermere*.

Mr. *Levermere*. Here I am. (*He was ſworn.*)

A Londres, le 29 Decembre,

Monſieur,

LE preſante vous ſera rendus par Monſieur Orbinet, *qui eſt un de mes bons amis, & qui ſe fera cognoiſtre par quelque Perſonnes de voſtre Cognoiſſance. Vous m'obligerez treſenſiblement en de luy rendre ſervice en tout ce que vous pourriez. Il pourra vous communiquer quelque Affaire en Commiſſion; vous pouvez avoir Confiance en luy de toutes les manieres, je vous prie doncque l'obliger en tout ce que vous pourriez. Je ſuis, Monſieur,*

Voſtre tres humble & tres obeiſſant Serviteur,

A Mon. Mon. *Jo. du Livier. Paris.* *P. du Livier.*

A Londres le 29 Decembre 8 Janvier, 1690.

Monſieur,

A UN jour de veue il vous plaira payer par cette premiere d'Eſchange, a l'Ordre de Mr. Michel Orbinet, *Trois mille trois cents trente trois Livres valeur, du dit Sieur ſuivant l'advis de*

Voſtre tres humble & tres obeiſſant Serviteur,

A Mon. Mon. *Jo. du Livier, Paris.* *P. du Livier.*

Londres le 29 Decembre 8 Janvier, 1690. Pour Liv. 3333.

Monſieur,

A UN jour de veue plaira payer par cette premiere d'Eſchange, a l'Ordre de Mr. Michel Orbinet, *Trois mille trois cents trente trois Livres Tournois, valeur du dit Sieur, & ſuis*

Voſtre tres humble Serviteur,

A Mon. Mon. *Anthoine Pelletzer*, Merchand, *a* Paris. *J. Berionde.*

London, the 29th *December*.

SIR,

THIS Preſent will be delivered you by Mr. *Orbinet*, who is one of my good Friends, and who will make himſelf known by ſome Perſon of your Acquaintance. You will very ſenſibly oblige me in doing him Service in all that you can. He will be able to communicate ſome Affair in Commiſſion; you may have Confidence in him about all Points: I pray you then to oblige him in all that you can. I am, *Sir*,

To Mr. *Joſeph Du Livier, Paris.* *Your moſt humble, moſt obedient Servant,* P. du Livier.

London, the 29 *December*, 8 *January*, 1690

SIR,

AT one Day's Sight be pleaſed to pay by this Firſt of Exchange to the Order of Mr. *Michael Orbinet*, Three thouſand Three hundred Thirty-three *Livres*, Value of the ſaid Gent. according to the Advice of

To Mr. *Joſeph Du Livier, Paris.* *Your moſt humble, and moſt obedient Servant,* *P. du Livier,*

London, 29 *December*, 8 *January* 1690. For 3333 *Livres*.

SIR,

AT one Day's Sight be pleaſed to pay by this my Firſt Exchange, to the Order of Mr. *Michael Orbinet*, Three thouſand Three hundred Thirty-three *Livres Tournois*, Value of the ſaid Gent. And I am

To Mr. *Anthony Pelletier*, Merchant at *Paris.* *Your moſt humble Servant,* J. Berionde.

Mr. Serj. *Tremain*. Pray how much do they all come to?

Mr. *Levermere*. They come to 500*l*. wanting but Twelve-pence.

Mr. Serj. *Tremain*. My Lord, we have ſhewn your Lordſhip part of the Papers that were taken in this Pacquet, but we have reſerved three of the Papers till the laſt Place; and theſe three Papers, if we had no other, were ſufficient to maintain this Indictment, for they are written all with my Lord *Preſton*'s own Hand, wherein he gives an Account how the *French* ſhould invade us, how the Forts may be taken, how *London* ſhould be plagued, and what a ſort of Raſcals the Clergy of *London* are; theſe are the Contents of the Papers, among other Things. Pray ſhew them to Captain *Billop*. (*Which was done.*)

Capt. *Billop*. Theſe were two Papers that were in the Pacquet, and the other little one with them.

L. *Preſton*. My Lord, I would deſire your Lordſhip to obſerve one Thing, to the beſt of my Remembrance, Captain *Billop* ſaid, he only mark'd ſix of the Papers.

L. C. J. Holt. How many has he ſworn to?

L. Preſton. I believe he has proved more.

Capt. *Billop*. I never ſaid ſo; I mark'd a great many, though not all, but I did not ſay how many.

Mr. Serj. *Tremain*. Were theſe Papers taken in the Pacquet?

Capt. *Billop*. Yes, all three.

L. Preſton. Juſt now he ſaid but two.

Mr. Sol. Gen. Have you look'd upon them all, Sir?

Capt. *Billop*. Yes, I marked but two of them, but the other little Paper was with them; I read them myſelf, I remember it very well.

Mr. Serj. *Thompſon*. Then we pray the Clerk may read them.

(*Cl. of Peace reads.*) Lady *D*. 2000*l*. And 200*l*. for Shop Debts.

Mr. Serj. *Thompſon*. My Lord, we would open this Piece of Evidence before we read it, that it may be underſtood, and we ſhall prove it to be my Lord's Hand afterwards. It conſiſts of many Heads and Particulars, without Order or Method, and ſeems to be no more than *Memorandums* made by my Lord *Preſton*, to put him in Mind what he was to enlarge upon when he came thither.

(*Cl. of the Peace reads.*) Lady *D*. 2000*l*. And 200*l*. for Shop Debts.

Penſion upon the
14—3 Deckt Ships.---*Britania*, Ad.
Sovereign out and R---*James*.
33 3d Rates, make the 14 and 30 67.

Sundry Hoſpitals and Fire-Ships, ſome built on purpoſe proportionable.

Of Third Rates moſt mann'd: 14 not mann'd, great ones.

Reſt in ſome proportion mann'd, not well mann'd, nor will be.

——*Britania* not out till *March*, the reſt, perhaps, in *April*.

——The *French* muſt be out in *April*, and in the *Downs*: Look in at *Spithead* to ſecure them.

The *Dutch* Fleet cannot then join them.

Carter and others at *Portſmouth*, the likelieſt Men to come to him —— *Dutch* Fleet 36 Sail, 9 from 70, to 60 Guns;——12 from 50 to 60- -the reſt betwixt 60 and 70---Get to it before the Conjunction, otherways nothing. To fight in the Chops of the Channel; not to come ſo high as *Beachy*----*Portſmouth* not mann'd above 500--One *Gibſon* a *Scotch* Pedlar—Lands behind *South-Sea* Caſtle.——Nothing but Palliſado's about *Goſport*----*Jennings* or *Strickland*, or *Trevannion* comes from St. *Maloes* in one Night---moſt of the Gentlemen have done him moſt Miſchief, the Tarpaulins his beſt Friends, which diſpirited----*Danby* deſires to be in the *Monk*, keeps and fortifies *Hull*---King not to be on Board the Fleet---Fooliſh Letters from St. *G*'s, taken every Day in the *D*. Poſt, and read in Council---about *June*---*England* 67 great Ships. *Dutch* 60---commanded 36 to us, 24 to act by themſelves---*Ruſſel* in the *Britania* Admiral---*Killigrew* the Blue---the Duke--*Aſhby* the *Royal James*---*Dalaval* the Sovereign, Vice-Admiral Blue----*Carter* the Vanguard----Thoſe who ſhall not oppoſe or reſiſt him to be pardoned--Not 21 Days coming in, or ſhall not help the P. of *O*. 600000*l*. to the States of *Holland*---No Taxes in his Time---and the K. of *Fr*. will require nothing----Chimney-Money to be taken away---not excepting Outlaws----*Scotland*----let know whether the King will come or not ſoon, and acquaint him with the Weakneſs of the Pr. Council--- 3 Daſhes---or the like F. of- --That ſome kind Anſwer----Mr. *Eaſt* Merchant of *Briſtol* to be kept till called for *William* St.----from *Amſterdam*----*Alexander*----*England*----*George*----*Scotland*--*Dorſet*, *Cornwallis*, *Montague*, *Stamford*, *Shrewſbury*, *Macclesfield*, *Monmouth*, *Devonſhire*----In *Feb*. the K. come to *Scotland*---endeavour to unite the Epiſc. and Preſbyt. Parties.--A leſs Sum not interfere with the Fr. K. from Highlanders---Campaigns—land at *Leith*---the *Scotch* Army not a *French* one, 5000 good *Suediſh* Foot, the Reputation of a Proteſtant Ally, two Months to ſettle *Scotland*--a Commiſſion given to me from Mr. *P*.——for *Fl*. hinder *Eng*. and *D*. from joining---two Veſſels of 150*l*. Price for *Penſilvania*, for 13 or 14 Months——*Ormond* and *Brandon* diſobliged about the Guards.

To have 1200 Seamen from *Denmark* and *Holland*--To ſave *Cambell*.--To be left at the *Ship* in Sheets *Weſtminſter*--*Flanders*--*R*--*Scotch* Ships in *Newcaſtle* Harbour to plague *London*——The *Modeſt Inquiry*, the Biſhops Anſwer——Not the Chilling of them.--But ſatisfying of Friends.——To tell him that to protect Friends, and as ſoon as Foreigners are gone, he will diſmiſs his——The Woman that was with the K. in *Ireland*, and ſent Commiſſion to *Stafford*, and failing, not to be ſent again; her Friends live in *Covent-Garden*--Private Letters not——Proteſting Lords againſt the Uſurper, Three of Five againſt the Vacancy of the Crown, *Beauford*, *Newcaſtle*, *Thanet*, *Sawyer*, *Lutwich*, *Pemberton*, *Levints*, *Winnington*, *Montague*, *Shore*--*London* Clergy the worſt, we have their Wiſhes and they their Oaths——K. betrayed by *J. Porter*, *Seymour* ſaid it--Lord *Nottingham* ſays there will be a Peace with *Fr*. and the K. left out——Bring Foreigners to drive out Foreigners, then diſmiſs them, leave all to Free Parliament.——No Juſtices of Peace, *&c*. actually in Commiſſion to be criminal.

L. C. J. Holt. Well, Gentlemen, have you any more Evidence?

M. Serj. *Tremain*. My Lord, We ſhall now prove theſe Papers to be my Lord *Preſton*'s own Hand. Pray call Mr. *Warr*, Mr. *Townſend*, Sir *Henry Johnſon*, and Mr. *Bland*.

Mr. *Townſend* ſworn.

Mr. Serj. *Thompſon*. Pray ſhew Mr. *Townſend* that Paper. (*Which was done*) Pray, Sir, whoſe Hand-writing is that?

Mr. *Townſend*. I believe this to be my Lord *Preſton*'s Hand: I did not ſee him write it.

L. C. J. Pollexfen. Are you well acquainted with my Lord *Preſton*'s Hand?

Mr. *Townſend*. I have ſeen his Lordſhip's Hand ſometimes.

L. C. J. Pollexfen. How often?

Mr. *Townſend*. Not very often, but I have ſeen it ſometimes.

Mr. Serj. *Thompſon*. Pray were you Clerk in any Office?

Mr. *Townſend*. Yes, I am in the Office of the Great Wardrobe, where I have had occaſion to ſee his Lordſhip's Hand ſometimes, and I believe this to be his Hand.

Mr. Serj. *Thompſon*. Look upon the t'other two.

Mr. *Townſend*. I do believe theſe three Papers are my Lord *Preſton*'s Hand.

Mr. Serj. *Tremain*. Thoſe are the three Papers that have been read laſt, which he ſays are my Lord's Hand.

Mr. *Townſend*. I do believe it, Sir.

Mr. Serj. *Tremain*. Pray look upon that Paper, with the little one within it; do you know whoſe Hand that is?

Mr. *Townſend*. I did not ſee it written, Sir.

Mr. Serj. *Tremain*. Do you believe you know who writ it by the Hand?

Mr. *Townſend*. The latter Part looks like my Lord *Preſton*'s Hand; but I cannot well ſay any thing to the other, it is written ſo ſmall.

Mr. Serj. *Tremain*. Then ſwear Mr. *Bland*. (*Which was done.*)

Mr. Serj. *Thompſon*. Give him the Papers. We aſk you, Mr. *Bland*, Whether you were well acquainted with my Lord *Preſton*'s Hand?

Mr. *Bland.* I have ſeen my Lord's Hand ſometimes.

Mr. Serj. *Thompſon.* Have you looked upon thoſe Papers, Sir?

Mr. *Bland.* Yes, I have.

Mr. Serj. *Thompſon.* Pray whoſe Hand are they?

Mr. *Bland.* I do believe theſe three Papers are my Lord *Preſton*'s Hand-writing?

Mr. Serj. *Tremain.* Then we pray Mr. *Warr* may be ſworn.

[*Which was done.*]

Mr. Serj. *Thompſon.* Do you know my Lord *Preſton*'s Hand?

Mr. *Warr.* I have ſeen my Lord *Preſton* write, but not very often; moſt commonly it was only his Name: But I have ſeen him write ſome Letters too.

Mr. Serj. *Tremain.* Pray, Sir, look upon thoſe Papers; whoſe Hand are they do you believe?

Mr. *Warr.* This Paper ſeems to be like my Lord *Preſton*'s Hand; the other I cannot ſay much of, becauſe that which I commonly ſaw him write was a large fair Hand, and this is a little Hand.

Mr. Serj. *Tremain.* Pray, Mr. *Warr*, look upon theſe Seals; whoſe Seals were they?—Mr. *Warr.* I believe the Seals to be my Lord *Preſton*'s; one of them was his Seal when Secretary of State.

Mr. Serj. *Thompſon.* You were under him in that Office, were you not?

Mr. *Warr.* Yes, my Lord, I was.

Mr. Serj. *Tremain.* Now, my Lord, we have done with our Evidence, and ſhall reſt here till we hear what my Lord *Preſton* ſays to it.

L. C. J. Holt. My Lord *Preſton*, you have heard what has been ſaid concerning the Matter you have been indicted for: What has your Lordſhip to ſay for yourſelf?

L. C. J. Pollexfen. If the Gentlemen of the Jury deſire to ſee the Seals, they may have them. [*The Seals were ſhewn to the Jury.*

Mr. Sol. Gen. My Lord, we have done for the preſent.

L. C. J. Holt. Then if your Lordſhip pleaſe, you may make your Defence.

L. *Preſton.* My Lord, In the firſt Place I muſt refer myſelf again to my Indictment, for I find, my Lord, that the Treaſons of which I am accuſed, were none of them done in the County of *Middleſex*, and they are laid to be done within this County; I find nothing of that kind proved upon me to be done here; for any Memorandums that they ſay may be in that Hand, I hope the Gentlemen of the Jury will conſider, that there was nothing followed upon any of theſe Things, that may be found in thoſe Papers: And in the next Place, I deſire to know, whether they are ſufficiently proved to be mine; that is, whether Similitude of Hands is Proof or not againſt me in ſuch a Caſe? I humbly offer theſe Things to your Lordſhip, and hope your Lordſhip and the Jury will conſider of it.

L. C. J. Holt. Is this your Lordſhip's Defence, my Lord?

L. *Preſton.* My Lord, I leave theſe Things to the Conſideration of the Court and the Jury.

L. C. J. Holt. Your Lordſhip inſiſts upon it firſt, that there is no Act of Treaſon proved in the County of *Middleſex*; and then, whether Similitude of Hands be a good Proof to prove theſe three Papers, or any of them, to be your Hand?

L. *Preſton.* Nobody ſaying they ſee me write them, if I did write them.

L. C. J. Pollexfen. My Lord, have you no Witneſſes, nor nothing that you would uſe of Evidence for yourſelf?

L. C. J. Holt. Would your Lordſhip diſprove any Thing of the Matter that has been proved againſt you?

L. *Preſton.* I muſt deny the whole Fact; but I have no Witneſſes or Evidence to offer you.

L. C. J. Holt. Then your Lordſhip has no more to ſay?

L. *Preſton.* I have not, I muſt leave it ſo with your Lordſhip and the Gentlemen of the Jury.

Mr. Sol. Gen. We ſhall offer nothing farther, but leave it wholly to your Lordſhip.

L. C. J. Holt. Your Lordſhip has done then?

L. *Preſton.* Your Lordſhip obſerves none of the Witneſſes have declared that I was going into *France*, nor knew any thing of it. I did not hire the Ship, nor any thing of that kind; though I ſuppoſe if they had, it is not Treaſon; but your Lordſhip obſerves there is no ſuch Thing has been ſworn.

L. C. J. Holt. My Lord, as to the firſt Matter that your Lordſhip makes a Queſtion upon, Whether there be any Act of Treaſon proved in *Middleſex*, that does depend upon the Proof of your Lordſhip's being concerned in the Papers; for if your Lordſhip had an Intention in carrying theſe Papers into *France*, which ſpeaks a Deſign to invade this Realm, your Lordſhip took Boat in *Middleſex* at *Surrey-Stairs*, in Proſecution of that Intention, there is an Overt-act in this County of *Middleſex*.

L. *Preſton.* Your Lordſhip, and the Gentlemen of the Jury obſerve, theſe Papers were not found upon me.

L. C. J. Holt. No, my Lord; but if it be proved that your Lordſhip had an Intention to carry theſe Papers into *France*, and took Boat in order to go with them into *France*, in the County of *Middleſex*, wherever your Lordſhip acted in order to that Deſign, that is Treaſon, and there you are guilty. It is a Treaſon complicated of ſeveral Facts, done in ſeveral Places.

L. *Preſton.* My Lord, I humbly deſire to know, whether they have been proved to be my Papers?

L. C. J. Holt. That is a Queſtion that muſt be left to the Jury upon the Evidence.

L. *Preſton.* Nobody ſwears they are mine, nor were they found upon me.

L. C. J. Holt. But what I am ſpeaking to your Lordſhip, is in Anſwer to your Queſtion about the Place; for you ſay, that there is nothing proved done in the County of *Middleſex:* Now the Queſtion is, Whether your Lordſhip had a Deſign to go to *France* with theſe Papers? If you had, and if your Lordſhip did go on Ship-board in order to it, your taking Boat in *Middleſex* in order to go on Ship-board, is a Fact done in the County of *Middleſex*.

L. *Preſton.* It is not proved by any Witneſſes that I deſigned to go into *France*.

L. C. J. Holt. That is before the Jury upon the Evidence.

L. *Preſton.* I hope your Lordſhip, and the Jury will obſerve 'tis not proved, and in the next Place, there are no Papers taken upon me; with humble Submiſſion, there is no Proof of any ſuch Thing.

L. C. J. Holt. Well, how far your Lordſhip was concerned in theſe Papers, and whether you were going with them into *France*, is to be left, upon the Evidence that hath been heard, to the Conſideration of the Jury.

L. *Preſton.* But I humbly ſubmit that.

L. C. J. Holt. Have you any more to ſay?

L. *Preſton.* As to what I offer, that nothing has been proved in *Middleſex*, I hope your Lordſhip will take it to be a Point of Law, and then it ought to be argued; and I deſire I may have Counſel.

L. C. J. Holt. No, 'tis a Matter of Fact only; but if you pleaſe, the reſt of my Lords the Judges may give you their Opinion; for this is a Queſtion upon a Suppoſition that your Lordſhip was guilty of a Deſign of going into *France*, and this with a Purpoſe to depoſe the King, and alter the Government; then the Queſtion is upon ſuch a Suppoſition that you were guilty of that Deſign, whether you were guilty in *Middleſex* or no?

L. *Preſton.* My Lord, they have not proved that Deſign.

L. C. J. Holt. We do not ſay, it is taken for granted now, but 'tis a Queſtion upon a Suppoſition. Now, my Lord, I'll tell your Lordſhip in ſhort my Opinion, the reſt of the Judges will tell you theirs: I am of Opinion, If your Lordſhip had ſuch a Deſign to go with theſe Papers into *France*, and theſe Papers were formed by you, or you were privy to the Contents of them, then it is plainly proved, that you went into a Boat in the County of *Middleſex*, in order to carry on this Deſign, and that will make it a good Indictment, and here is a plain Overt-act of High-Treaſon in *Middleſex*.

L. C. J. Pollexfen. I am of the ſame Opinion; for your Fact as to this particular Point in Law ſtands thus: You are indicted of High-Treaſon in two Points; one is, For conſpiring to depoſe the King and Queen, and alter the Government: And the other is, for aiding and aſſiſting the *French* King, and his Subjects, declared Enemies, and in open War againſt the King and Queen, and to invite the Enemies of the Kingdom to invade the Kingdom. Now this Deſign, and this Help and Aſſiſtance, are written in theſe Papers; for they are Inſtructions for the carrying on of this Deſign. You, my Lord, are the Perſon that is charged to go with theſe Papers to help on this Deſign; you began your Journey in the County of *Middleſex*, for according to the Evidence, you took Water at *Surrey-Stairs*, which is in the County of *Middleſex*, and every Step you made in purſuance of this Journey, is Treaſon, where-ever it was: So then here is a ſufficient Proof of a Fact in *Middleſex*.

L. *Preſton.* That, my Lord, is a Point of Law, and I humbly deſire your Lordſhip, that I may have Counſel in this Caſe. It is not proved by any Body, that I ſaid I would go into *France*; and in the next Place, it is not proved that I had theſe Papers about me; there has been no Evidence given that I did take Water with an Intention to go with theſe Papers into *France*.

L. C. J. Holt. The Jury are to be Judges of that.

L. *Preſton.* Then, my Lord, what have I done? I have not done any Thing within the Danger of any Statute upon which I am indicted; beſides, my Lord, what I have to offer further is this, I think I ought to have two credible Witneſſes to prove every Fact, and I hope the Gentlemen of the Jury will conſider, there is nothing but Suppoſition as to me; and I hope I and my Family ſhall not be ruin'd upon a Suppoſition.

L. C. J. Holt. Has your Lordſhip any more to ſay?

L. *Preſton.* All the Judges have not given their Opinion.

L. C. J. Holt. The reſt will give their Opinions, if you deſire it.

My Lord Chief Baron, what ſay you?

L. C. Baron. My Lord *Preſton*, I am called upon, it ſeems, to give my Opinion in this Caſe, but this I take it muſt be left to the Jury, what Credit they will give to the Proof. Your Lordſhip makes a Queſtion, as the Proof ſtands, whether here be any thing done in this County? Here are Inſtructions given to the *French* King how to invade *England*, and carry on the War againſt us. Theſe Inſtructions are contained in ſeveral Papers, and theſe Papers in a Pacquet are carried to the Smack, which Smack was hired to go to *France*. You are found taking Water at *Surrey-Stairs*, which is in the County of *Middleſex*, in order to go to the Smack: You did go to the Smack; the Papers were taken in your Company, and were ſeen lying by your Seals; and the Witneſſes ſwear, they believe ſome of them to be your Hand; you took care to deſire to have them diſpoſed of. Now how far the Jury will believe this Matter of Fact, that is thus teſtified, is left to them; this ſeems to be the Proof, and if the Jury do believe it, here is a plain Evidence of an Overt-act in the County of *Middleſex*.

L. *Preſton.* I do inſiſt upon it, with humble Submiſſion, it is not proved that theſe Papers were taken upon me, or that I did take Water at *Surrey-Stairs* to go to *France*.

L. C. Baron. That muſt be collected out of all the Circumſtances; the Credit of which is left to the Jury.

L. C. J. Holt. All the reſt of my Lords the Judges are of the ſame Opinion, as they tell me. Have you any more, my Lord?

L. *Preſton.* I muſt ſubmit.

L. C. J. Holt. Gentlemen of the Jury, My Lord *Preſton* ſtands indicted for High-Treaſon, in imagining and compaſſing the Depoſition, Death, and Deſtruction of the King and Queen; and for that Purpoſe, did write, or cauſe to be writ, ſeveral treaſonable Papers and Letters, deſigned to go into *France*, and there to correſpond with the *French* King and his Subjects, who are Enemies to the King and Queen; and to carry with him thoſe treaſonable Papers and Letters, containing a Project, and a formed Deſign how this Kingdom ſhould be invaded by Foreigners.

There is another Treaſon in the Indictment mention'd, and that is for adhering to, and abetting the King's Enemies, there being open War declared between the King and Queen, and the *French* King.

You have heard, Gentlemen, a very long Evidence, Witneſſes have been produced *viva voce*, and ſeveral Papers have been read to you; ſome of the Papers that have been produced, though they may ſeem myſterious and canting, yet they are not ſo very obſcure and unintelligible, but if you conſider them well, the Meaning of them will appear. Others of them are more expreſs, and do plainly demonſtrate a Deſign, that this King

King and Queen ſhould be depoſed, and that there ſhould be another Prince ſet upon the Throne, and reſtored to the Government of this Kingdom.

Gentlemen, There are two other Perſons mentioned in the Indictment with my Lord; and tho' my Lord is only now upon his Trial, yet the Evidence which doth affect them, doth alſo concern my Lord.

You have heard how there was an Intention of ſome Perſons to go to *France*, and how Mr. *Aſhton*, one of the two others, that ſtands indicted with my Lord, did treat with one Mrs. *Pratt*, one of the Witneſſes, to hire a Veſſel for that Purpoſe, and it was by the Means of one Mr. *Burdett*, that lives in the City; they had a Meeting at *Burdett*'s Houſe, where they treated about the Price that ſhould be given for the Hire of this Ship to go to *France*, but at that Time they did not agree. It was concluded, that the Woman and *Aſhton* and *Burdett* ſhould meet at the *Wonder Tavern*; but Mr. *Burdett* not being there, nothing was concluded upon then.

And after that the Woman, Mr. *Burdett*, and *Aſhton*, and *Elliot*, met at Mrs. *Burdett*'s; the Woman inſiſted at firſt upon 150 *l.* After they had been treating for ſome time, the Bargain was made to go to *France* for 100*l.*

Then the next Thing conſidered was, how this Money ſhould be paid; by Agreement 93 Guineas, and 6*d.* which made up the 100*l.* was depoſited in Mrs. *Burdett*'s Hand; a *Six-pence* broken, one part Mrs. *Burdett* had, and the other Part of the *Six-pence* Mr. *Aſhton* had: And when either Mrs. *Pratt* or the Maſter of the Veſſel did bring back that Part of the *Six-pence* that *Aſhton* had, to Mrs. *Burdett*, the Money was to be paid.

After this Agreement, they were appointed to go to the *Seven-Stars* in *Covent-Garden*, to the Houſe of one Mr. *Rigby*; and there the Woman, Mrs. *Pratt*, and the Maſter of the Veſſel, *Aſhton* and *Elliot* met, and they were that Night to go away, and to take Water at ſome Place near to go on Ship-board; and having ſtayed there till it was about ten a-Clock at Night, then they went away into the *Strand*, and ſo into *Surrey-Street*, and took Water at *Surrey-Stairs*.

But before that they came from Mr. *Rigby*'s, ſome Perſons went to *Surrey-Stairs* to ſee for a Boat, and met with that Fellow that was here produced, who was a Sculler, and did hire him to go through the Bridge when the Tide ſerved, and to carry ſome Gentlemen on Ship-board; they agreed with him for Half-a-Crown, and he was to ſtay in an Houſe near the Stairs until they came.

And at the Time appointed, Mr. *Aſhton* and Mr. *Elliot*, and the Maſter of the Veſſel, came to that Place, and my Lord *Preſton* and his Man with them, to take Water. My Lord *Preſton* was not at *Burdett*'s Houſe at the Hiring of the Ship, nor at Mr. *Rigby*'s; but it is proved by the Maſter of the Veſſel, that he took Water with the reſt of them at *Surrey-Stairs*; that he went with them on Ship-board, and was to go along with them.

Being on Board the Ship, they did appear to have ſome Apprehenſions of Danger, and paſſing by a Man of War, my Lord *Preſton*, his Man and the other two went under the Quarter-Hatches, where they lay down to prevent themſelves from being taken or diſcovered; and they hid another time when they came near *Graveſend*, and coming up they ſeeing a Boat coming towards them, they hid themſelves again. Captain *Billop*, who it ſeems, was ſent to apprehend them, pretended he was to preſs Seamen, and when he came on Board the Smack, he ſaid he would preſs the Mariners, who anſwered they had a Protection: But he being upon his Search, pulled up the Boards of the Quarter-Hatches, and there was my Lord *Preſton* and the other Perſons lying down: It was not a Place that was very proper for Gentlemen, or, indeed, for any Paſſengers, to repoſe themſelves in; it was an uneaſy Place, nobody could ſtand or ſit upright in it; nay, there was no convenient Place for lying down, but they muſt lean upon their Elbows, which Poſture thoſe Gentlemen were in; ſo that their Purpoſe was plainly to conceal themſelves, and their concealing themſelves muſt be becauſe of ſome Deſign they were about, which they would not have diſcovered.

They being taken out from under the Hatches, one of the Witneſſes tells you, he ſaw a Packet lying there, and *Aſhton*, pretending to fetch his Hat, went down, took it up, and put the Pacquet into his Boſom; and the Witneſs informing Captain *Billop* thereof, he cauſed *Aſhton*'s Coat to be ſearched, and from thence took the Pacquet, and a Piece of Lead tied to it, which was produced here in Court.

When they were bringing away in Cuſtody, they ſeemed all of them to be very much concerned about this Pacquet; ſome of them, that is, *Aſhton* and *Elliot*, would have had it thrown with the Lead over-board. My Lord *Preſton* did not ſay ſo much, but complimented Captain *Billop* in this manner, He was glad he was fallen into the Hands of a civil Gentleman, a Perſon of Worth, and he ſhould always acknowledge his Kindneſs, and would do him all the Service he could, if he would diſpoſe of the Pacquet.

My Lord *Preſton* was ſearched at that time, and Letters of no great Moment taken about him. *Aſhton* and *Elliot* would have had Captain *Billop* to take thoſe Letters which were taken in my Lord *Preſton*'s Pocket, and tie the Lead to them, and have thrown the Pacquet over-board, and to report to the King and Council, That thoſe Letters were the Pacquet that was taken with the Lead; and ſo have perſuaded him to be falſe to the Truſt that was repoſed in him.

And *Aſhton* and *Elliot* uſed many Expreſſions to induce him to that Compliance; they told him the Government was unſtable, and every Dog had his Day, and the Tide would turn; and that he would deſerve very well if he would change Sides, and go with them where they were going; and that he had Opportunity to get any Preferment he would have.

L. *Preſton*. My Lord, I hope your Lordſhip obſerves that I ſaid none of all this.

L. C. J. Holt. No, my Lord, I do not ſay you did; my Lord *Preſton* did not ſay any thing of all this, but only about diſpoſing of the Pacquet; that his Lordſhip ſpoke of to Captain *Billop*, and complimented him, and promiſed him Kindneſs if he would diſpoſe of the Pacquet.

But, Gentlemen, as there was a Pacquet taken, ſo there were two Seals taken at the ſame Time, and in the ſame Place, which have been produced and ſhewn to you; they lay both of them upon the Ballaſt under the Quarter-Hatches, near the Packet: The one of them is the Seal of my Lord *Preſton*'s own Coat of Arms, the other Seal belongs to the Secretaries Office, which Office my Lord once held in the late Reign.

L. *Preſton*. I beg your Lordſhip would be pleaſed to obſerve that the Papers were not taken upon me, and it can be no Treaſon to have Seals, I ſuppoſe.

L. C. J. Holt. Good my Lord, I will not do your Lordſhip any Wrong; I do not ſay that the Papers were taken about you, no nor the Seals; but only, that they lay upon the Ballaſt from whence the Pacquet was taken: And I ſay further, That theſe Seals are not denied by your Lordſhip to be your Seals; the one is your own Seal of your Coat of Arms, which was taken at that Time, and ſo I do not your Lordſhip any Wrong, and by the Grace of God will not.

L. *Preſton*. It is no Crime, I hope, to have Seals.

L. C. J. Holt. I do ſay, my Lord, the Papers were taken about *Aſhton*, and not about your Lordſhip; but they lay upon the Ballaſt where the Seals were, and where your Lordſhip lay: But how far my Lord *Preſton* is concerned in this Matter, is to be conſidered by you of the Jury by-and-bye.

Now, Gentlemen, you have heard how earneſt Mr. *Aſhton* and Mr. *Elliot* were; one of them, to wit, *Elliot*, wiſh'd a Thunder-Bolt might ſtrike the Boat under Water as they were coming back; and when they came through Bridge, he wiſh'd that *London-Bridge* had fallen upon them and knock'd them upon the Head.

L. *Preſton*. But I hope that is not to lie upon me neither, for I ſaid no ſuch Thing.

L. C. J. Holt. No: But *Aſhton* and *Elliot* did ſay theſe Things, and how the Caſe ſtands as to that in relation to your Lordſhip, is to be conſidered. It is proved, they afterwards gave Money to the Seamen, Half-a-Crown a-piece, to two of them, to ſay they were going to *Flanders*, and not to *France*.

Now, Gentleman, that my Lord was on Board this Veſſel, that my Lord was under the Hatches, and that the Papers were taken in this manner, is beyond all Contradiction: So likewiſe that the Ship was hired for *France*; that my Lord took Water at *Surrey-Stairs*, and was taken in this Veſſel in that manner that you have heard.

The next Thing, Gentlemen, is about the Papers: I muſt tell you, though there are ſeveral of them that do ſeem myſterious, yet they are Papers that do ſhew a very great Deſign of Depoſing the King and Queen, and a Purpoſe of altering the preſent Government.

But, Gentlemen, I will mention to you thoſe Papers that are very plain, and leave you to conſider what Conſtruction to put upon thoſe that are obſcure. There is one Paper that ſeems to be Inſtructions and Heads for a Declaration, that is to ſay, That the King of *France* muſt not come with a Deſign to make an intire Conqueſt.

L. *Preſton*. My Lord, with Submiſſion to your Lordſhip, I hope you will pleaſe to remember and obſerve to the Jury, that Paper is not proved to be mine.

L. C. J. Holt. No, my Lord, I'll do your Lordſhip no Wrong, but I cannot ſpeak all my Words at once.

L. *Preſton*. I am ſure you will not, my Lord; but I beg leave to put your Lordſhip in Mind.

L. C. J. Holt. Well, then, Gentlemen, the Paper begins, *That the King's Declaration is to be formed in general Terms; that he will govern by the Laws; that they ſhall be the Rule of his Actions; that he will endeavour to ſettle Liberty of Conſcience by a Law, and that whatſoever was done by him that gave any Occaſion of Jealouſy, ſhall be ſettled by Parliament. That the King hath given ſufficient Proofs and Evidence of his not being willing to bring an Army of Strangers into the Kingdom, by refuſing the Succours the King of* France *offered him, and that were even ready to be embarqued upon the firſt Notice of the Prince of* Orange's *coming. That he brings ſuch an Army only as is neceſſary for his own Defence, and ſecuring ſuch of his Loyal Subjects as ſhould come to him; and that he will diſmiſs them as ſoon as he ſhall have rid the Nation of thoſe Foreigners that had invaded us, and trampled upon the Laws.*

So that, Gentlemen, here is a Paper in this Pacquet, that has plainly laid open and proved the Deſign, and ſhews the Meaning of it was to ſeduce their Majeſties Subjects from their Allegiance; it was to be in ſuch general Terms, making general Promiſes, hoping thereby that People would be the more eaſily impoſed upon to renounce their Allegiance to their preſent Majeſties.

But, Gentlemen, the Declaration imports farther, that the Realm was to be invaded by Foreigners; and to palliate it, it is pretended, that Foreigners were only brought in to rid the Nation of Foreigners, and you know who are meant by that: So that this Project was only to colour a foreign Invaſion; and this Declaration was to direct them how, and upon what Pretences they ſhould invade this Kingdom.

Gentlemen, there is no manner of doubt but this is a treaſonable Declaration, and if any Perſon had this in his Poſſeſſion, and was going into *France* to carry, with an Intention there to make Uſe of it, that is Treaſon, though it be couch'd under ſpecious Pretences of reſtoring People to their Liberty: It was plainly a Deſign to invade *England* by a *French* Army.

L. *Preſton*. My Lord, that Paper was not found about me.

L. C. J. Holt. No, no, my Lord, it was not; but, good my Lord, give me your Favour, I will certainly obſerve every Thing that is fitting; but I tell you I cannot do it all at once.

Then, Gentlemen, there is another Paper found in the Pacquet, that is ſaid to be the Reſult of a Conference that was had between divers Lords and Gentlemen, as well *Tories* as *Whigs*, as they call them, to prove it poſſible to reſtore the late King by *French* Arms; and how this may be effected, were Propoſals made: Yet ſtill it was pretended to preſerve the Proteſtant Religion, and the Civil Adminiſtration according to Law.

And that it might be brought to paſs, the Credulous were to be impoſed upon, and made to believe that the *French* King would not conquer *England* for himſelf; no, but he would conquer it for the late King; he would be at that vaſt Charge, that great Expence of Men and Arms to reſtore King *James*, and make no Profit of it himſelf.

And it was propoſed how to ſeduce the People of *England* into a Belief of the *French* King's Kindneſs; he was to indulge the *Engliſh* Proteſtants in *France*, and let them have the Exerciſe of their own Religion there at their own Charges; and this to ſatisfy the *Engliſh* Proteſtants, that

that his Perſecution of the *Hugenots* in *France*, was not out of Averſion to the Proteſtant Religion, but only becauſe of their Antimonarchical and reſiſting Principles. So that they were propoſing among themſelves what they were to do to make the People believe the *French* King had no dangerous Deſign againſt our Religion and Liberties; and if they could meet with Perſons to believe this, that was a probable Way thought upon in this Conference to get a great many Adherents to the *French* King, thereby this Invaſion was to be facilitated, and the whole Project rendered more ſucceſsful.

There is another thing, Gentlemen, in this Paper, and that is this: They complained of the Miſmanagement of their Affairs at St. *Germains*; that though they did earneſtly deſire the Reſtitution of the late King, yet there was always ſome fooliſh thing or other that came from St. *Germains* that obſtructed their Deſign.

What that fooliſh Thing is, I can't ſay, it does not appear; but whether it were not too great a Diſcovery of their Zeal for Popery, and the Advancement of the Popiſh Religion, is worth your Conſideration.

And ſomething is to be done for Satisfaction of the People as to that; and it is adviſed that there ſhould be Seven or Nine, or ſuch a Number of *Engliſh* Men, that ſhould go over, and be received into Favour at St. *Germains*, and they ſhould be of the Council there, and theſe were to be Proteſtants; and that was to be a Colour and Pretence that the late King was reconciled to the Proteſtant Intereſt, becauſe he choſe Proteſtant Counſellors, and had received them at St. *Germains*, and was adviſed by them.

This, ſays the Paper, will make the World believe, he is ours, and that we have gained him; which was to delude a great many of the People of *England*, that they ſhould not be affrighted in caſe there ſhould be ſuch an Invaſion of *England*, but invited rather, and encouraged to join with the *French* when they came.

But, Gentlemen, the three laſt Papers that have been produced to you, are Papers that do ſomewhat more nearly concern my Lord *Preſton*.

The firſt Paper contains ſeveral Memorandums: It begins with Lady *D.* 2000 *l.* who that Lady *D.* is, I muſt leave it to you to imagine, tho' perhaps it may not be hard to gueſs.

It takes notice that the *Engliſh* and *Dutch* were like to join; and theſe Memorandums do alſo ſhew a Deſign and Purpoſe of ſomething to be done for the Prevention of that Conjunction. They ſeem alſo to be Inſtructions to be made uſe of upon going into *France* to negotiate or tranſport ſome Matters of dangerous Conſequence.

L. *Preſton.* My Lord, I hope that your Lordſhip will obſerve, that theſe Memorandums are broken kind of Notes, incongruous and incoherent.

L. C. J. Holt. Ay, my Lord, they are ſo, they are but broken things; but I ſay ſtill, they are Memorandums that were to be uſed for ſome Purpoſe: Now I leave it to the Jury to conſider of the Matter of them: What can be plainer than what is there expreſſed? The *French* are to come in time, before the *Dutch* and the *Engliſh* join; they are to watch their Opportunity and come betimes, and they are to fight at the Chops of the Channel, and not to come ſo far as *Beachy*.

L. *Preſton.* This is all but preſumptive Evidence, my Lord.

L. C. J. Holt. I appeal to your Lordſhip if it was not in the Paper, and I appeal to the Memory of the Jury, whether I miſ-repeat it or not.

The Paper mentions *Jennings*, and *Strickland*, and *Trevannion*, that they were to come from St. *Malo*'s in one Night: the King (meaning the late King) was not to be on board: and there were Ships to lie at *Newcaſtle* to plague *London:* It is eaſy to underſtand what they meant. Among theſe Memorandums, it is made as a Remark, that the *London* Clergy are the worſt. It gives an Account how *Portſmouth* was fortified, and *Goſport*, and what Number of Men were in them; and of the State and Condition of our Navy; what rates our Ships were, and how many, and who were to be the Commanders.

L. *Preſton.* I beg your Lordſhip to obſerve this is not Treaſon.

L. C. J. Holt. I ſhall tell you that my Lord, by-and-bye: I am now ſtating the Evidence.

Gentlemen, my Lord *Preſton* inſiſts upon it, that theſe Papers were not found about him: It is true they were not, but it does not therefore follow, that they were none of his Papers: But you have three Witneſſes, Mr. *Townſend*, Mr. *Bland*, and Mr. *Warr*, produced to prove theſe Papers to be my Lord's Hand; Mr. *Townſend* ſays, he was acquainted pretty well with my Lord *Preſton*'s Hand; he was one of his Clerks in the Office of the Wardrobe; he ſays, he has ſeen my Lord write ſeveral times, and does believe the Writing to be his Hand; and to the ſame Purpoſe ſays *Bland*; and Mr. *Warr* ſwears to one of the Papers, that he believes it to be my Lord *Preſton*'s Hand.

L. *Preſton.* I hope your Lorpſhip will pleaſe to obſerve to the Jury, that this is only a Proof of Similitude of Hands: Nobody ſee me write them.

L. C. J. Holt. They only ſay they do believe it to be your Hand: Nobody ſays they ſaw you write them; if I omit any thing, pray tell me when I have done.

Gentlemen, there are other Papers which have been produced and read, that are writ in Canting Terms, which yet plainly ſhew the general Deſign; they tell the Party, that Counſel are of Opinion, he has a very good Title; they hope he will appear himſelf, and if the Cauſe be well ſollicited, it may come to a Hearing before the End of *Eaſter Term*.

There is another Matter mentioned in another Letter which is under the Diſguiſe of Trade, That the Goods muſt come before the firſt of *March*. And another of them ſays, that unleſs the Copper and the Linnen come before the Tenth of *March*, they ſhould loſe this Summer's Profit.

Gentlemen, what can be the Meaning of all this?

L. *Preſton.* I know not indeed, my Lord.

L. C. J. Holt. In another of the Papers it is ſaid, 'Tis thought our Fleet will be ready by *March* or *April*, but they believe not till *June*.

Truly, Gentlemen, I have not been able to take Particulars of every Letter, but I muſt leave it to your Obſervation; only there is one of them that makes Mention of acquainting my Lord with the Condition of the Writer, and Direction is therein given to ſpeak to the Bearer; and what other Lord was there, but he, in the Company?

L. *Preſton.* I deſire to obſerve, my Lord, that I was not the Bearer.

L. C. J. Holt. Truly, my Lord, I can't tell who was meant; I muſt leave it to the Jury to judge of that; but there was no other Lord in that Company.

L. *Preſton.* I give your Lordſhip Thanks for obſerving that it was not proved that they were taken upon me before; but I beg your Pardon for interrupting of your Lordſhip.

L. C. J. Holt. Interrupt me as much you pleaſe, if I do not obſerve right; I will aſſure you I will do you no Wrong willingly.

Now, Gentlemen, the Queſtion is, in the firſt place, Whether this be Treaſon? and I told you before, whithout Queſtion, if any Perſons do go into *France* to negociate ſuch a Deſign as this, or do purpoſe to go into *France*, and do any Act in order thereunto, that is High-Treaſon; and theſe Letters do import High-Treaſon as great as can be committed; a Treaſon againſt the King and Queen, a Deſign to invade the Realm, to ſubvert the Government, to reſtore another Prince to the Throne by the Aſſiſtance of Foreign Force.

There was a Deſign to delude and impoſe upon a great many People; and thoſe that would not be deluded into a Belief by theſe fair Pretenſions of Friendſhip, they were to be ſubdued by an Army of Foreigners.

Then, Gentlemen, the next Queſtion will be, how my Lord *Preſton* is affected by this Evidence, and whether you have ſufficient Proof from what has been offered, to ſatisfy you, that he is guilty of this Treaſon or no?

Firſt, my Lord tells you, there has not been a clear Proof that theſe are the Papers that were taken; for, (ſaith he) they have been conveyed from Hand to Hand, and therefore poſſibly there might be ſome Alteration made in them. You, Gentlemen, are to conſider, notwithſtanding this Objection, whether the Identity of the Papers be not proved.

Captain *Billop* tells you, he took them, and in what Manner; and afterwards carried them to my Lord *Nottingham*, who laid them by for a little while upon his Table, and Captain *Billop* withdrew (that is part of my Lord's Objection) while my Lord *Nottingham* examined my Lord *Preſton:* after that, my Lord *Nottingham* called in *Billop* again, and *Billop* ſwears the Pacquet was not opened, but remained intire in ſuch manner as they were delivered to my Lord *Nottingham*; and ſo ſays my Lord *Nottingham*. Then Captain *Billop* ſaw my Lord *Nottingham* open it at that time, and he ſaw all theſe Papers every one put up again by my Lord *Nottingham*; ſo that he could not be deceived; and my Lord *Nottingham* delivered them to him, and he carried them to my Lord Preſident, all ſealed up with my Lord *Nottingham*'s Seal: and my Lord Preſident tells you he opened them, and brought them to the King, and had them back from the King; but they were never out of his Sight while the King read ſome of them, but he took them all, and brought them into the Cabinet Council, where my Lord *Sidney* received all theſe Papers that have been read, and marked them. You have my Lord *Sidney*'s Oath that theſe are the Papers he had from my Lord Preſident; you have my Lord Preſident's Oath that he had them from *Billop*, ſealed with my Lord *Nottingham*'s Seal; you have my Lord *Nottingham*'s Oath that he had them from *Billop*; and *Billop* ſwears that they were taken in the Smack.

So that it is plain, if you believe this Evidence, that they are the ſame Papers. Beſides, as to ſeveral of them, *Billop* marked them, and ſwears directly to them. If you believe theſe Witneſſes, as you have no Reaſon, I think, to the contrary; it is plainly proved theſe are the very Papers which were taken from the Boſom of *Aſhton*, and taken up by him from under the Quarter Hatches in the Smack.

L. *Preſton.* I beg your Lordſhip's Pardon for one thing.

L. C. J. Holt. My Lord, what ſay you, pray? Say what you will.

L. *Preſton.* With humble Submiſſion, there is one thing that I think the Jury ought to take Notice of, That when the Papers were ſent from Mr. *Bridgman* to my Lord *Sidney*, they were ſent by a Meſſenger.

L. C. J. Holt. My Lord, you are miſtaken as to that Objection, for my Lord *Sidney* did not ſend them to Mr. *Bridgman* by a Meſſenger, but he delivered them with his own Hand, and after he had ſet his own Mark upon them; and Mr. *Bridgman* ſays they were never out of his Sight, he copied them all but two or three, the other Mr. *Poultney* copied in his Preſence, and ſo he ſwears he re-delivered them to my Lord *Sidney*.

L. *Preſton.* With humble Submiſſion, my Lord, if I remember right, they were in a third Hand.

L. C. J. Holt. Never, never.

L. *Preſton.* Did not my Lord *Sidney* ſay ſo, or Mr. *Bridgman*.

L. C. J. Holt. No, neither my Lord *Sidney*, nor Mr. *Bridgman* ſaid ſo; I ſuppoſe the Jury are apprehenſive of the Matter; I would not miſlead them, I'll aſſure you, nor do your Lordſhip any Manner of Injury in the World.

L. *Preſton.* No, my Lord, I ſee it well enough that your Lordſhip would not; I am for my Life, and beg your Lordſhip's Pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next thing is to conſider, whether my Lord *Preſton* be anſwerable for theſe Papers, or a Party in this Treaſon.

Firſt, Gentlemen, I would have you to conſider, that there was the hiring of a Veſſel for *France:* It is true, my Lord *Preſton* was not preſent at the Bargain; but you obſerve, that my Lord *Preſton*, his Servant, *Aſhton*, and *Elliot* took Water at *Surrey-Stairs*, on purpoſe to go on board that Smack.

Now, Gentlemen, whether or no you can intend any other Ways than that my Lord *Preſton* was privy in the Hiring of this Veſſel, though he was not preſent at the hiring of it; for how ſhould my Lord *Preſton* be ready to take Water with them at *Surrey-Stairs?* Can you imagine my Lord came there by chance, and took a ſudden Reſolution? If you can imagine that he came only to go on Ship-board, without knowing the previous Deſign, truly you imagine a very great thing for my Lord's Advantage.

It is plain he went volantarily, without Compulſion; truly, I think the Evidence is very ſtrong to induce you to believe he was privy to this Deſign, and that he did know of hiring the Veſſel.

L. *Preſton.* I hope your Lordſhip will obſerve, at the ſame Time, that I was never ſeen before we took Boat.

L. C. J.

L. C. J. Holt. My Lord, I have obſerved it, and I lay that Weight upon the Evidence that I think it will naturally bear, and no more; and leave it to the Jury to conſider, whether your Lordſhip was privy to the Deſign or no, when they weigh the Circumſtances of the Evidence together.

L. *Preſton.* I hope I ſhall not be condemned upon Preſumption and Argument.

L. C. J. Holt. What Weight the Evidence has they will conſider.

And then, Gentlemen, there is another thing that I would obſerve; Why ſhould my Lord *Preſton*, a Noble Man, a Perſon of his Honour and Quality, put himſelf in ſuch a Place as he was found in, and that twice? It muſt ſure be out of an Apprehenſion of ſome Danger. As for the Seamen, they were ſecure enough; they were not frightened, becauſe they thought they were protected, and my Lord *Preſton* knew he was not liable to be preſt; the Maſter of the Veſſel tells you they were fearful, and therefore hid themſelves in a Place they could not ſtand in, nor ſit in, there was the Gravel and Ballaſt, it was uneaſy to them, dangerous to their Health to be there.

Gentlemen, why do Men avoid the Light and put themſelves under Covert, unleſs they have ſome Evil Deſign? Perſons that are innocent ſeek not Obſcurity.

The Seals were found there, and my Lord does not deny they were his Seals.

L. *Preſton.* I do not deny that: I hope it is no Crime to have ſuch Seals.

L. C. J. Holt. Ay but, ſays my Lord, that does not affect——becauſe the Papers were not found about me, but were found about *Aſhton*. Gentlemen, if you can imagine my Lord *Preſton* had a different Deſign from the reſt of the Company that were with him, then you may acquit my Lord, and find him not Guilty. But it is left to you to conſider, whether he had not the ſame Deſign with them. Beſides there's mention made in one of the Letters, *my Lord*, and there was no other Lord but he; and here are Papers prov'd to be my Lord's own Hand, containing ſeveral of the Matters of which he ſtands indicted, and he would have had the Captain to have diſpoſed of the Papers.

Now, Gentlemen, what Account does my Lord give you where he was going? It ſeems they did pretend at the Time they were taken, and they would have had the Maſter of the Veſſel ſaid, that their Deſign was for *Flanders*; but the Witneſſes tell you poſitively, That the Veſſel was hired for *France*.

Truly, Gentlemen, I muſt leave the Matter to your Conſideration, whether my Lord be guilty of this Deſign or Not Guilty.

There is another thing that my Lord has urged (for I would not willingly omit any thing material on the one Side or the other) he ſays his Indictment is laid in the County of *Middleſex*, but the Papers were not taken there, the Ship they went on Board lay at Anchor in *Surrey*; and when they were taken, it was in the County of *Kent*, and ſo there is no Proof of Treaſon in *Middleſex*.

Ay, but Gentlemen, give me leave to tell you, if you are ſatisfied upon this Evidence, that my Lord was privy to this Deſign, contained in theſe Papers, and was going with them into *France*, there to excite an Invaſion of the Kingdom, to depoſe the King and Queen, and make uſe of the Papers to that End, then every Step he took, in order to it, is High-Treaſon, wherever he went; his taking Water at *Surrey-Stairs* in the County of *Middleſex*, will be as much High-Treaſon, as the going a Ship-board in *Surrey*, or being found on Ship-board in *Kent*, where the Papers were taken.

Gentlemen, I have failed of recollecting ſeveral of the Particulars of the Evidence, becauſe they are many; and you will not depend upon my Recollection of Things ſo very incoherent as ſome Parts of the Evidence in the Papers are, but upon your own Notes and Obſervations.

If you do think, having heard this Evidence, That my Lord was not concerned in this Matter, that my Lord had no Deſign to go into *France* with theſe Papers, but that he was an utter Stranger to all theſe Things, then you are to acquit my Lord. But if you believe my Lord was privy to, and knew of the Hiring of this Veſſel, and that he went to carry on the Deſign contained in theſe Papers; and that he wrote ſome of theſe Letters, and with the others he was acquainted, then you are to find him Guilty.

L. C. J. Pollexfen. My Lord, if you pleaſe, I would obſerve one thing to the Jury.

L. C. J. Holt. Ay, by all means, my Lord.

L. C. J. Pollexfen. Gentlemen of the Jury, I ſhall ſay but a few Words to you, becauſe indeed my Lord has ſumm'd up the Evidence very fully, for Matter of Law: I am fully of Opinion there never was a more black nor horrible Treaſon than is in this Plot that is now diſcovered; for I think *Engliſhmen* have no greater Enemies than the *French* and the *Papiſts*, and you ſee this is a Plot to bring in both; and therefore I think there was never any thing of greater Conſequence to the Government and the Nation, than to have this Plot detected and puniſhed; tho' perhaps never any thing was more improbable than this ſame Plot, that it ſhould ever take Effect, whatſoever they promiſed to themſelves, and their Deſire of having it effected might perſuade them to the contrary.

But, Gentlemen, the thing that I would mention about the Matter before you now, is this; Here are three Papers, that by three ſeveral Witneſſes, acquainted with my Lord's Hand-writing, are teſtified, as they believe, to be his Hand-writing; if ſo, then there is an End of all, for therein is a horrid deal of Treaſon contained. If theſe Inſtructions, theſe Memorandums, theſe Heads that were written down, were my Lord's, and he did intend to go with theſe in a Voyage towards *France*, that will be ſufficient of itſelf, if there were nothing elſe in the Caſe to maintain this Indictment.

But, Gentlemen, you have in the reſt of the Papers that were taken, A great Character of the Bearer; that the Bearer had done great Things; that the Bearer could inform them fully of every thing; and there ſhould be full and intire Confidence put in the Bearer, and a great many ſuch Phraſes.

But, ſays my Lord, I was not the Bearer, it was Mr. *Aſhton* that the Papers were found about; it does not appear directly who the Bearer was; and they were not found about me.

Now, Gentlemen, pray let us look a little how this Evidence ſtands: Pray where was this Bundle found? Even upon the Gravel, where my Lord *Preſton* and Mr. *Aſhton* lay; there was it found, and my Lord's own Seal with it.

How, in the Name of God, came my Lord's Seals to be found with other People's Papers, if they did belong to any body elſe? How came they together in that Place? It may be, he had a mind to leave his Seals behind him, becauſe they would diſcover his Quality. But why ſhould my Lord *Preſton* have all this Fear upon him? Why ſhould two Men go and take a Ship for themſelves and two others; and when they came to take Boat, take in my Lord and his Man, if they were not the two others that were deſigned? and this to be done at Night in the Dark? Why ſhould my Lord be under ſuch terrible Apprehenſions, as to creep into a Hole ſo unfit for one of his Quality?

Why do you not hear from my Lord ſome good Account from what Occaſion my Lord and his Man were going to *France*? Or whither elſe my Lord was really going? for ſome where or other it was plain he was going.

Gentlemen, no Man goes into an Enemy's Country without ſome Licence, unleſs he go upon ſome ill Deſign: Fear ſeldom is without ſome Guilt; and there appears throughout the whole Management of the Story, that there was a great deal of Fear upon theſe Gentlemen.

Beſides, afterwards, when he is taken, and the Letters taken with him in the ſame Company, you hear what Endeavours there were to ſuppreſs the Truth, even by my Lord's deſiring to have the Pacquet diſpoſed of; and my Lord's Man gave one of the Seamen Half-a-Crown to ſay they were going to *Flanders*, not to *France*. I ſuppoſe the Man knew how unfit it was to be known that they were going to *France*: And my Lord's two Companions ſpared for no Pains to get the Pacquet thrown overboard; tho' all that my Lord ſaid was what great Kindneſs he would do him when it lay in his Power, if he would diſpoſe of the Pacquet; I ſuppoſe that is very eaſily intelligible.

Gentlemen, there is one thing which is mentioned in one of the particular Letters, that I deſire particularly to obſerve to you, and that is all I ſhall ſay to you: Here is a Letter in my Hand that in divers Places has ſomewhat remarkable; it ſays, *Your Daughter and I muſt ſtarve, if this Government can make us: That the Party did not repine at all for having loſt all for your Sake, which your Favour had beſtowed.* And in another Place this Letter doth ſay, *Your Daughter grows very tall, and very pretty, as I am told.* But that which I chiefly mention it for, is, it's twice mentioned, *My Lord will tell you all my Condition, how I have been uſed; and I have told my Lord my Condition: what I deſire of you, he thinks very moderate.*

And pray conſider and remember, that the firſt Article of my Lord's Paper, that is taken to be under my Lord's own Hand, there is Two thouſand Pounds to the Lady *D.*

Now if any Body ſhould put theſe together, do they lack any great Interpreter for? for my part I leave them to you.

Then, in another Place, towards the End of the Letter, it is ſaid, *Pray, Sir, aſk my Lord how I have been uſed.*

Now this Letter being thus taken, and there is never a one of the reſt that was a Lord, do you think any of the reſt was meant? I muſt leave it to you.

If my Lord *Preſton* had produced any Teſtimony to prove his own good Carriage and Behaviour towards the preſent Government, it had been very much for his Advantage, and might have had great Weight with you; but when Things appear only in this manner as they do now, I muſt leave it to you.

Gentlemen, 'tis a great Matter, and of great Moment; if thoſe that conſpire againſt the Kingdom, againſt the Proteſtant Religion, and againſt the preſent Government, may do it with Impunity, it will be worth the conſidering what the Conſequence of that may be. Your own Conſciences require you to do Right and Juſtice on both Sides; and if you are ſatisfied he is Not Guilty, you will find him ſo; if you are ſatisfied that he is Guilty, you will find him ſo.

L. *Preſton.* My Lord, may I have the Liberty to ſay any thing before the Jury go out?

L. C. J. Holt. Your Lordſhip ſhould have ſaid what you had to ſay before: It is contrary to the Courſe of all Proceedings in ſuch Caſes to have any thing ſaid to the Jury after the Court has ſummed up the Evidence; but we will diſpenſe with it. What has your Lordſhip to ſay?

L. *Preſton.* My Lord, I humbly thank your Lordſhip; I am not acquainted with ſuch Proceedings.

L. C. J. Holt. My Lord, you know I permitted your Lordſhip to interrupt me as much as you wou'd, which was never done before in any ſuch Caſe.

L. C. J. Pollexfen. It is contrary to the Courſe of the Court: But yet if you have any thing to ſay to the Court or the Jury, for this once we permit it.

L. *Preſton.* Gentlemen of the Jury——

L. C. J. Holt. My Lord, what you have to ſay, pray direct yourſelf to the Court, that we may hear what it is.

L. *Preſton.* My Lord, I only deſire the Jury may be informed, that I am a Proteſtant, that I was baptized in the Religion of the Church of *England*, and have always lived in it, and hope to die in it. My Lord, 'tis true, things have been urged with Severity againſt me that are a little hard, in making that, which I hope will amount to but a Preſumption, to be a Proof; as in the Caſe of the Letters that are written in a Cant, and my Intention to go to *France*, and thoſe Words in the Letter, where *my Lord* the Bearer is named. But your Lordſhip obſerves, That that Letter is not directed to any body, and that is full of Cant as well as all the reſt; Why ſhould I be ſuppoſed to be the Bearer any more than either of the others, and they were found about one of them? But, my Lord, for the Reaſon of my going beyond Sea, it was this; I deſigned to go to *Flanders*, or any Place I could be driven to, and that ought not to be wondered at; for really I who had lived quietly after the Loſs of my Places, upon this Revolution, and ſuffered great Inconveniences in my Eſtate, and was retired to my own Houſe, with a Deſign to live a retired Life, was impriſoned twice in the *Tower*, and proclaimed a Traitor in every Market Town, without any Indictment; and my Impriſonment tended greatly to the impairing my Health and my Fortune; all this made me very uneaſy here: and, my Lord, I went

under a fixed Reſolution to go to *Flanders*, or any Place where I thought I could be quiet.

L. C. J. Holt. My Lord, your Lordſhip ſhould have ſaid all theſe Things before, for it is not the Courſe to reply upon the Court; if you had had any Thing to ſay, you know we heard you out of Courſe, and I let you interrupt me as much as you did think fit, though that has not been allowed at any Time before. But, my Lord, pray let me ſay one Thing more: Suppoſe your Lordſhip did think yourſelf hardly uſed, tho' I know not any Reaſon you had to think ſo; yet your Lordſhip muſt remember, it was in a Time of Danger that your Lordſhip was taken up before; and you had ſhewed your Diſſatisfaction with the preſent Government, and therefore they were not to be blamed if they ſecured themſelves againſt you: But if you had a Mind to retire into the Country, or to go Abroad, was *France* the only Country you could chooſe? A known declared Enemy's Country, at open War with the Government?

L. *Preſton.* My Lord, I beg your Lordſhip's Pardon, if I give any Offence.

L. C. J. Holt. No, my Lord, you give me no Offence at all; but your Lordſhip is not right in the Courſe of Proceedings; I acquaint you with it, not by Way of Reproof, but by Way of Information.

L. *Preſton.* Then I hope the Gentlemen of the Jury will conſider, that all that is alledged againſt me is but Preſumption; my Life and Fortune, my Poſterity and Reputation, are all at Stake; I leave all to the Jury's Conſideration, and the God of Heaven direct them!

L. C. J. Holt. If you go on thus to reflect on the Court, you will make the Court reflect upon you. The Jury hear how the Evidence has been ſtated; I think it has been done very impartially, and without any Severity to you: Why ſhould you think we would preſs the Evidence further than it ought to go againſt you? You are a Stranger to moſt of us, and I am ſure we do not deſire your Life; but ſtill we muſt take care that Juſtice be done to the Government and the Kingdom, as well as to any particular Perſon; and Evidence that is given muſt have its due Weight and Conſideration: If any one can deſign innocently to go into *France*, at this Time of Day, with ſuch Papers, and in ſuch a Manner, That I leave to the Jury's Conſideration.

Then the Jury withdrew, to conſider of the Evidence, and the Court adjourned for a little while, and returned in half an Hour; and the Jury came in, and were called over, and appeared.

Cl. of Ar. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Ar. Sir *Richard Grahme*, hold up your Hand (*which he did.*) Look upon the Priſoner. How ſay you? Is he Guilty of the Felony and High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Ar. What Goods and Chattels had he?

Foreman. None at all that we know of.

Then the Verdict was recorded.

L. C. J. Pollexfen. I think, truly, Gentlemen, you have done according to your Evidence; and though it be a hard Caſe upon particular Men that have brought themſelves into theſe Inconveniences; yet it is neceſſary Juſtice ſhould have its due Courſe, or elſe there is no longer Living for any Man in any Society or Government.

Then the Priſoner was carried back to Newgate, *and the Court Adjourned till* Monday *Morning following at Seven o'Clock.*

Die Lunæ, XIX Januarii, 1690.

The Court being ſate, the Jury was called over, and the Appearance of thoſe who anſwered Recorded. Then Mr. Aſhton *and Mr.* Elliot *were brought to the Bar; but Mr.* Elliot *was ordered to be carried back to* Newgate, *the King's Counſel reſolving to try Mr.* Aſhton *by himſelf.*

JOHN ASHTON, hold up thy Hand (*Which he did*). Thoſe Men that you ſhall hear called, and Perſonally appear, are to paſs between our Sovereign Lord and Lady our King and Queen, and You, upon your Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to ſpeak as they come to the Book to be ſworn, and before they be ſworn.

Mr. *Aſhton.* Pray ſtay a little.

L. C. J. Holt. What ſay you, Mr. *Aſhton?*

Mr. *Aſhton.* My Lord, I humbly deſire your Lordſhip will allow me the Benefit of Pen, Ink, and Paper.

L. C. J. Holt. Pray let him have Pen, Ink, and Paper.

Mr. *Aſhton.* And likewiſe that you would give my Sollicitor Leave to be as near me as poſſibly he can, only to refreſh my Memory, if I ſhould forget any Thing.

L. C. J. Holt. That is a Thing you cannot of Right demand; the other, of Pen, Ink, and Paper, you may.

Mr. *Aſhton.* My Lord, I ſhall acknowledge it as a very great Favour.

L. C. J. Holt. That is an Innovation that ought not to be; the Court cannot allow it.

Mr. *Aſhton.* I acknowledge it a Favour; but if the Court thinks it not fit to allow it, whatſoever your Lordſhip ſhall order, I readily ſubmit to.

L. C. J. Holt. You ſhall have Pen, Ink, and Paper; and what is fit for the Court to do, they will do it.

L. C. Baron. If the Witneſſes ſay any Thing that you do not hear, you muſt ſpeak to the Court, and you ſhall have them ſay it over again.

Pen, Ink, and Paper was given to the Priſoner.

Cl. of Ar. Sir *William Hedges*, Knight.

(*He appeared.*)

Mr. *Aſhton.* My Lord, I would not trouble your Lordſhip and myſelf with unneceſſary Challenges; I intend to put myſelf with an intire Dependance upon the firſt Twelve Men that appear, be they who they will.

L. C. J. Holt. What you pleaſe for that Matter, you have your own Choice.

Mr. *Aſhton.* Whoever they are, I ſubmit to them; I know them not.

Cl. of Ar. Swear Sir *William Hedges.*

(*Which was done.*)

And ſo were the Eleven next ſucceeding in the Pannel; and the Names of the Twelve ſworn follow.

Sir *William Hedges*, Knt.	*Thomas Guthbert*, Eſq.
John Wolſtenholm, Eſq.	*John Herbert*, Eſq.
James Boddington, Eſq.	*John Tully*, Eſq.
Thomas Johnſon, Eſq.	*Thomas Smith*, Eſq.
Ralph Bucknall, Eſq.	*William Withers*, Eſq. and
Lucy Knightly, Eſq.	*Daniel Thomas*, Eſq.

Then the Jury were numbered, and Proclamation made for Information and Evidence in the uſual Manner.

Mr. *Aſhton.* Gentlemen of the Jury, if you deſire Pen, Ink, and Paper, I hope the Court will take care to provide them for you.

L. C. J. Holt. Ay, ay, let the Gentlemen of the Jury have Pen, Ink, and Paper.

(*Which was done.*)

Cl. of Ar. John Aſhton, Hold up thy Hand.

(*Which he did.*)

Gentlemen, You that are ſworn, look upon the Priſoner, and hearken to his Cauſe: He ſtands indicted by the Name of *John Aſhton*, late of the Pariſh of St. *Paul's Covent-Garden*, in the County of *Middleſex*, Gent. For that he, together with Sir *Richard Grahme*, late of the Pariſh of St. *Ann*, in the Liberty of *Weſtminſter*, Baronet, who ſtands convicted of High-Treaſon, and *Edmund Elliot*, late of the Pariſh of St. *James*, in the ſaid Liberty, Gent. For that they, as falſe Traytors, *&c.* (*Prout* in the Indictment, *mutatis mutandis*) and againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he has been Arraigned, and thereunto hath pleaded *Not Guilty*, and for his Trial hath put himſelf upon God and the Country, which Country you are: Your Charge is, to enquire whether he be Guilty of the Felony and High-Treaſon whereof he ſtands indicted, or Not Guilty: If you find him Guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the Time of the Felony and High-Treaſon committed, or at any Time ſince: If you find him Not Guilty, you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him Guilty: If you find him Not Guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Knapp.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: This is an Indictment of High-Treaſon againſt *John Aſhton*, the Priſoner at the Bar; and the Indictment, Gentlemen, charges him, That he, as a falſe Traytor againſt their preſent Majeſties King *William* and Queen *Mary*, his Supreme and Natural Lord and Lady, not weighing the Duty of his Allegiance, did, upon the Twenty-ninth of *December* laſt paſt, together with Sir *Richard Grahme*, who ſtands convicted, and one *Edmund Elliot*, and divers other ill-diſpoſed Perſons, unknown to the Jury, did conſpire, imagine, and intend to depoſe and deprive the King and Queen, and to bring them to Death and Deſtruction, and to ſubvert and alter the Government; and to cauſe War and Rebellion within this Kingdom againſt their Majeſties; and to bring theſe Intentions and Purpoſes to paſs, the Priſoner, with the reſt of them, did prepare divers Notes, Papers, Letters, and Memorandums in Writing, which were to inſtruct the *French* King, and other Enemies of the King and Queen, of the Number of their Majeſties Men of War, how they were mann'd, and the Names of the Commanders of ſeveral of them, and to inform them how the Caſtles and Forts of *Portſmouth*, *Southſea*, and *Goſport* were fortified, and how they might be ſurpriſed by the King's Enemies; and of the Times, Ways and Means how they might invade the Kingdom, in order to depoſe the King and Queen; and to procure and incite ſuch an Invaſion: And further to bring theſe Purpoſes to paſs, the Priſoner and the other Traytors did ſecretly conceal, and detain in their Cuſtody, ſeveral Bills of Exchange, for the Payment of Money to the King's Enemies, and the ſeveral Letters, Notes and Memorandums before mentioned, which were for the Purpoſes I before opened to you: And further, to bring theſe Purpoſes and treaſonable Intentions to paſs, they did for One Hundred Pounds hire and prepare a Ship, which was to carry them ſecretly out of this Kingdom into *France*, with an Intent there to deliver theſe Inſtructions, and Memorandums, and Bills of Exchange into the Hands of their Majeſties Enemies; and did hire a Boat to carry them to the Ship, and did enter into it at St. *Clement Danes*, within your County, and rowed to the Ship, and went on board the Ship, and there with the Bills of Exchange, Notes and Memorandums, they ſet ſail to go to *France*, in order to deliver them to the *French* King, and other Enemies of the King and Queen: And the Indictment doth further ſet forth, That there hath, and ſtill is, a War between the *French* King and our King and Queen; and that he and his Subjects are Enemies to the King and Queen and their Subjects; and that during this War, the Priſoner, together with the reſt that were before named, were adhering to the King and Queen's Enemies in this War; and in Purſuance thereof, did prepare ſuch Letters and Inſtructions before opened, and had, and concealed in their Cuſtody, and hired a Ship and a Boat, and went into the Ship, and ſet ſail in order to go for *France*, to aid and aſſiſt the King's Enemies there with Money, Intelligence, and Counſel: And this is laid to be againſt the Duty of his Allegiance, againſt the Peace of the King and Queen, their Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. To this he hath pleaded *Not Guilty:* If we prove him Guilty, you are to find him Guilty.

Mr. Serj. *Thompſon.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: The Priſoner at the Bar ſtands indicted of a very heinous Offence, no leſs than High-Treaſon, the greateſt Offence that can be committed againſt any human Law. You have heard the Particulars in the Indictment read. I will not trouble you with any Repetition, but go to open the Evidence according to the Steps that are obvious in the Caſe.

You

You have heard in general, the Deſign was to depoſe this King and Queen, which the Law expounds to be to bring them to Death and Deſtruction: You have heard it was to alter the Government, and cauſe a Rebellion in the Kingdom, and to bring in a foreign Power; and theſe are laid to be the Heads of the Offences that the Priſoner ſtands charged with.

Gentlemen, the firſt Step that was made in this Matter was by the Priſoner at the Bar; for there was one Mr. *Burdett*, which it ſeems had been one of his Acquaintance, and had undertaken to bring him acquainted with a Perſon that could furniſh him with a Ship; and in order to that, one Mrs. *Pratt*, had the Management of the Smack which belonged to her Huſband; ſhe, by *Burdett*'s Means, was brought to *Burdett*'s Houſe, where ſhe met Mr. *Aſhton*, the Priſoner at the Bar, and they had ſome Treaties about the Hiring of a Ship; the Purpoſe declared by the Priſoner then, was to hire a Ship to go to any Part of *France*, and he would give a conſiderable Reward for it; he ſaid it was for himſelf and Three more. They did not come to any Concluſion about the Ship, but there was an Appointment made, to have the Maſter of the Ship to meet with them at the *Wonder* Tavern, in *Ludgate-ſtreet*; and in order to that, *Paſcley*, that is the Maſter, and the Woman came there and met with Mr. *Aſhton*; but becauſe Mr. *Burdett* was not there, they came only to this Propoſal, One Hundred and Fifty Pounds was demanded for the Hire of this Veſſel; but there being no Concluſion then made, they thought it better to do it at *Burdett*'s Houſe; and about a Day after they came to Mr. *Burdett*'s, and then it happen'd that *Elliot*, one of the Perſons that is indicted, but not one before you, came thither too; and at that time it was agreed to give One Hundred Pounds for the Hire of the Ship. Ninety-three Guineas were depoſited in Mrs. *Burdett*'s Hands; and there was a Token paſt betwixt them by the breaking of a Six-pence, one Part whereof was to lie with Mr. *Aſhton*, and the other with Mrs. *Burdett*; and whenever the Maſter of the Veſſel brought back the broken Piece of Six-pence that Mr. *Aſhton* had, then ſhe was to pay the Money, that being the Sign that they had attained their Ends, and were ſafely landed in *France*.

The next Step they take is this, they appoint to meet at the *Seven-Stars* in *Covent-Garden*; thither the Maſter of the Veſſel and the Woman were to come, and that was near the Time that very Day that they deſigned to go down; and there was Mr. *Aſhton* and Mr. *Elliot*, but the other Perſon did not appear as yet; there the Seamen were ordered to go along with them, and thence they went down to the Water-Side, to *Surrey-Stairs*, and the Waterman was called, and in the mean time came my Lord *Preſton* and his Man to them, and they four did go in that Boat, by the Direction of the Maſter, and were carried on Board his Smack.

After they came on Board (for I would note the particular Circumſtances) they were very apprehenſive of Danger, for they knew what they went about, their own Guilt gave them Reaſon of Fear, and when they came near a Man of War, which lay at Anchor in *Long-Reach*, in the River, they deſired the Maſter to hide them, that they might be ſafe from any Search, and they were hid and put cloſe under the Hatches for ſome time; afterwards, when they came to another Place of Danger, it was by the *Block-Houſes* at *Graveſend* (as they apprehended), there they deſired to be hid again; and ſo they were put in that Place, where they were in very difficult Circumſtances under the Hatches, and there they remained till a Pinnace, that had been ſent to enquire after them, came and boarded this ſame Veſſel.

Upon it's boarding of them, the Captain made a Search, and found theſe Gentlemen, my Lord *Preſton*, Mr. *Aſhton*, and Mr. *Elliot*, and I ſuppoſe his Man alſo, all hid under the Hatches.

Then the next Thing which is obſervable, Gentlemen, and the great Matter that will ſhew where the Treaſon was, is this, There was a Bundle of Papers that was on Board, ready prepared, if they had not been ſurprized, but could have had an Opportunity for it, to have been caſt overboard, and there was Lead fixed to it, to have ſunk it; and Mr. *Aſhton*, the Priſoner at the Bar, was the Perſon that concealed this Bundle of Papers betwixt his Body and his Coat, and from thence it was taken by the Captain that took them.

When they were ſo taken, the Captain, according to his Duty, was bringing the Priſoners to *Whitehall*, they deſired to go on Shore at *Graveſend*, but the Captain did not think that ſo fit, but carried them on Board the *George Frigate*, and then you will hear theſe Gentlemen did fall into a Treaty with the Captain to ſuppreſs theſe Papers; and one Inſtance I remember they did tell him, that ſince there were a Parcel of Papers that he had taken out of my Lord *Preſton*'s Pocket, he might take off the Lead and fix it to thoſe Papers, and ſink the others; and what ſhould he have for it? They promiſed him great Rewards, they told him he might be a great Man, he had an Opportunity of making his Fortune; and when that would not do, they uſed many Threatnings to him, all which will appear in the ſeveral Circumſtances that the Witneſſes will tell you of.

I come, Gentlemen, in the laſt Place to ſhew you, That all the whole Conſpiracy, all this Treaſon, did lie hid under this Bundle of Papers that were taken from Mr. *Aſhton*, and ſo he might well be afraid of having them opened, for there you will find a formed Deſign to alter this Government by a *French* Power and Aſſiſtance; and they contain ſo many Particulars, that in regard I would not do the King's Evidence Injury on the one hand, nor the Priſoner on the other, I will forbear repeating the particular Inſtances.

Gentlemen, you will have all the Letters and Papers read; but in the general, I muſt needs ſay, you will find it manifeſt, that there is a black and wicked Conſpiracy to introduce a foreign Power to eſtabliſh the Proteſtant Religion, and that by a Popiſh Intereſt, and to ſettle our Laws, Liberties, and Properties by a *French* Army. And let them pretend what they will for the Proteſtant Religion, when you hear theſe Papers read, no-body will imagine it was to any other Purpoſe (if the Plot had taken Effect) but to have what Religion, what Laws the *French* King had pleaſed to impoſe upon us.

If the Priſoner be Guilty, Gentlemen, of theſe Matters, I know you will do your Duty; but if he be not Guilty, God forbid that you ſhould find him Guilty.

L. C. J. Holt. Call your Witneſſes, Brother.

Mr. Serj. *Thompſon.* We b gin with Mrs. *Pratt.* [*She was ſworn.*]

Sir *W. Wil.* Look you, Mrs. *Pratt*, here is another Gentleman at the Bar to be tried, againſt whom you are called as a Witneſs.

Mrs. *Pratt.* Yes, my Lord.

Sir *W. Wil.* Pray hear what we aſk you. Pray do you give the Court and the Jury an Account, what Treaty you had with that Gentleman about a Veſſel to go to *France*, and what was done in it?

Mrs. *Pratt.* If it pleaſe you, my Lord, I was ſent for to Mr. *Burdett*'s Houſe in *Queen-Street* by *Cheapſide*, to know whether he could have a Smack to go for *France*; I told him Yes, I could help him to one; he told me, there were two or three Gentlemen bound for *France*, as Merchants to fetch Silk, and I was at Mr. *Burdett*'s two or three Times, and at laſt Mr. *Aſhton* met me there.

L. C. J. Holt. Look upon the Gentleman, Is that he?

Mrs. *Pratt.* Yes, that is the Gentleman, and he met me there, and meeting with Mr. *Aſhton*, he hired the Veſſel; but, firſt of all, he deſired us to meet at the *Dog* Tavern upon *Ludgate-Hill*, to make the Bargain, and we did meet there, and were there about an Hour, or an Hour and a half, and Mr. *Burdett* did not come; and the next Morning Mr. *Aſhton* deſired me to meet him at Mr. *Burdett*'s again; and the next Morning I met at Mr. *Burdett*'s, and there we made the Bargain for 100*l.* and there was a Six-pence broke in two Pieces.

Mr. Serj. *Tremain.* Was the Hundred Pound paid?

Mrs. *Pratt.* Yes; but we agreed on the *Tueſday* Morning, and there was a Six-pence broken in two, and Mr. *Aſhton* had both the Six-pences in his Hand, and the *Tueſday* Night the hundred Pound was paid at Mrs. *Burdett*'s.

Mr. Sol. Gen. Who was by?

Mrs. *Pratt.* There was one Mr. *Elliot*; and the Maſter of the Smack, and Mrs. *Burdett.*

Mr. Serj. *Tremain.* Did they pay the Money in Gold or Silver?

Mrs. *Pratt.* This Gentleman, Mr. *Aſhton*, told the Money, there was 93 Guineas and a Six-pence, and Mr. *Aſhton* gave one half of the broken Six-pence with the 93 Guineas, to Mrs. *Burdett*; and when the Maſter of the Veſſel brought the other Half of the Six-pence, or I, either of us, we were to have the 100 *l.*

Sir *W. Wil.* Pray to what Place did they hire the Ship to go?

Mrs. *Pratt.* To *France.*

Sir *W. Wil.* Who hired the Ship?----Mrs. *Pratt.* That Gentleman.

Sir *W. Wil.* Who paid the Money?

Mrs. *Pratt.* That Gentleman, Mr. *Aſhton.*

Sir *W. Wil.* To what Hand was the Money paid?

Mrs. *Pratt.* It was paid in Mrs. *Burdett*'s Bed-Chamber into her Hand.

Sir *W. Wil.* Who broke the Six-pence?

Mrs. *Pratt.* Mr. *Aſhton*, that Day the Bargain was made.

Sir *W. Wil.* Who carried it away?

Mrs. *Pratt.* When the Money was paid, Mr. *Aſhton* had one, Mrs. *Burdett* had the other Part.

Mr. Serj. *Tremain.* To which Part of *France* were you hired to go?

Mrs. *Pratt.* To any Part where they could touch.

Mr. Serj. *Tremain.* Pray did they give you any Note about any Thing?

Mrs. *Pratt.* Yes, they gave me one Note to meet at the *Dog*-Tavern, and another to meet at the *Seven-Stars* in *Covent-Garden.*

Mr. Serj. *Tremain.* Who gave you the Notes?

Mrs. *Pratt.* Mr. *Aſhton*, and Mr. *Elliot.*

Mr. Serj. *Tremain.* Look upon that Note. [*Which ſhe did.*

Mrs. *Pratt.* This to my beſt Remembrance Mr. *Aſton* wrote, I cannot well remember the Hand.

Mr. Serj. *Tremain.* Did Mr. *Aſhton* deſire to meet at the *Dog*-Tavern?

Mrs. *Pratt.* Yes, and he did meet at the *Dog*-Tavern; but *Burdett* did not come.

L. C. J. Holt. When did you meet at the *Dog-Tavern?*

Mrs. *Pratt.* On the *Monday* Night before *New-Year*'s *Day.*

L. C. J. Holt. When was the Money paid?

Mrs. *Pratt.* On *Tueſday* Night, at Mrs. *Burdett*'s.

Mr. Serj. *Tremain.* After the Money was paid, what did you do the next Day?

Mrs. *Pratt.* Mr. *Aſhton* ordered a Note to be written, to meet at the *Seven-Stars* in *Covent-Garden*, at one Mr. *Rigby*'s.

L. C. J. Holt. At what Time were you to go to *Rigby*'s?

Mrs. *Pratt.* A *Wedneſday* Night.

L. C. J. Holt. But at what Time?

Mrs. *Pratt.* Some Time about Ten o' Clock, and we came there accordingly.

Mr. Sol. Gen. Who was with you at *Rigby*'s?

Mrs. *Pratt.* There was the Maſter of the Veſſel, Mr. *Aſhton* and Mr. *Elliot*, and two Gentlemen more that I never ſaw before nor ſince.

Sir *W. Wil.* I aſk you again, who firſt treated with you about hiring this Veſſel?

Mrs. *Pratt.* Mr. *Burdett* firſt treated with me about it.

Sir *W. Wil.* Who next?----Mrs. *Pratt.* Mr. *Aſhton.*

Sir *W. Wil.* Who made the Bargain with you?---Mrs. *Pratt.* Mr. *Aſhton.*

Sir *W. Wil.* Who paid the Money?----Mrs. *Pratt.* Mr. *Aſhton.*

Sir *W. Wil.* What can you ſay more?

Mr. Serj. *Tremain.* Pray let me aſk you, when you came to Mr. *Rigby*'s, in what Manner did you go away from his Houſe, and what was ſaid at parting?

Mrs. *Pratt.* Mr. *Aſhton* was not there himſelf, at firſt; but he and Mr. *Elliot*, and two other Gentlemen were there afterwards, and Mr. *Aſhton*'s Wife ſaid ſomething about Papers hove in a Hat at Court, and about ſomebody's being choſen; and one of the Gentlemen ſaid, there was nothing in that, I was one that was choſen laſt Year.

Mr. Serj. *Tremain.* Did *Aſhton* and *Elliot* go out together from Mr. *Rigby*'s?——Mrs. *Pratt.* I did not ſee them go.

Mr. *Trevor.* Had you any Directions from Mr. *Aſhton* to ſend for a Hamper or a Trunk?

Mrs. *Pratt.* Yes, that was at Mr. *Burdett*'s Houſe.

Mr. *Trevor.* When was that Hamper and Trunk to be ſent for?

Mrs. *Pratt.* On the *Wedneſday* Night before we went to *Rigby*'s Houſe.

Sir *W. Wil.* Do you know one *Wm. Paſcley?*----Mrs. *Pratt.* Yes.

Sir *W. Wil.* Was he with them?

Mrs. *Pratt.* Yes, he was with them.

Sir *W. Wil.*

Sir *W. Wil.* What Occaſion brought him thither?

Mrs. *Pratt.* I carried him to Mrs. *Burdett*'s Houſe.

Mr. *Trevor.* Pray did the Priſoner deſire to ſee the Maſter of the Veſſel, or ſpeak with him?

Mrs. *Pratt.* Yes, and when I brought him, he ſaid he liked him very well.

Mr. *Trevor.* What is the Maſter's Name?

Mrs. *Pratt.* *William Paſeley.*

Mr. Serj. *Tremain.* Had you any Diſcourſe with Mr. *Aſhton*'s Wife after they went away?

Mrs. *Pratt.* We had little Diſcourſe, only ſhe gave me ſome Victuals and Drink; and ſhe ſaid ſhe hoped I would not tell of her Huſband.

Mr. Serj. *Tremain* What elſe did ſhe ſay?

Mrs. *Pratt.* She hoped God would deliver them out of the Lyon's Mouth.

Mr. Serj. *Tremain.* Did ſhe ſay any Thing about Cock-crowing?

Mrs. *Pratt.* Yes, ſhe ſaid ſhe thought ſhe ſhould have no good Luck, for the Cock crowed.

Mr. Serj. *Tremain.* Who was by in the Chamber when the Money was paid?

Mrs. *Pratt.* There was the Maſter of the Veſſel by, and Mrs. *Burdett.*

Juryman. My Lord, I heard her ſay ſomething of ſome Papers, which I do not very well underſtand. Does ſhe know of any Papers that the Priſoner had?

Mr. Serj. *Tremain.* That was only about the Two Notes.

L. C. J. Holt. She talks of Papers being ſhaken in a Hat, but nothing can be made of it.

L. C. J. Pollexfen. If you would ask her any Queſtions before ſhe goes, now is your time to do it.

Mr. *Aſhton.* My Lord, I deſire ſhe may ſtand up again. Mrs. I aſk a Queſtion, not ſo much in Kindneſs to myſelf, as Juſtice to another Gentleman. You ſay Mr. *Elliot* writ one of the Notes?

Mrs. *Pratt.* Yes, as I remember, it was that to meet at Mr. *Rigby*'s.

Mr. *Aſhton.* I do it to juſtify that Gentleman, I take that Note upon myſelf; and you ſay I hired the Ship, and Mr. *Elliot* was by.

L. C. J. Holt. Look you, Mr. *Aſhton*, Mr. *Elliot* is not now upon his Trial, it concerns you only to aſk ſuch Queſtions as relate to yourſelf. What is ſaid now concerning Mr. *Elliot*, goes for nothing againſt him.

Mr *Aſhton.* My Lord, I do it only to do him Juſtice.

L. C. J. Holt. But you are to ask Queſtions only for yourſelf.

Mr. *Aſhton.* Remember, good Woman, you are upon your Oath; and have a Care of forſwearing yourſelf; my Blood is at Stake.

Mrs. *Pratt.* I am ſure I ſay nothing but the Truth.

Mr. *Aſhton.* Did I ever ſpeak to you of going to *France?*

Mrs. *Pratt.* Yes, you did.

Mr. *Aſhton.* As I hope for Salvation I did not.

Mrs. *Pratt.* And another Thing you told me more, if I helped this well away, you would help me to the Earning of 1000*l.* before *Lady-Day.*

Mr. *Aſhton.* Gentlemen, as to what was ſaid of that kind, of helping her to 100*l.* is no great Matter to the Thing in Hand; for if I was minded to go out of the Kingdom, it was neceſſary to uſe all Arguments I could, to perſuade her to help me to go away.

L. C. J. Holt. Mr. *Aſhton*, you muſt ſtay your time before you ſpeak to the Jury; make your Obſervations upon the Evidence to yourſelf, you ſhall be heard at large all that you can ſay in your proper Time.

Mr. *Aſhton.* I do aſſure myſelf, my Lord, of all the Favour that can be ſhown to a Man in my Circumſtances.

L. C. J. Holt. You ſhall have all that is juſt, I do aſſure you.

Mr. *Aſhton.* My Lord, I am glad in the Circumſtances I am in, that I am to be tried before your Lordſhip. But, good Woman, by Virtue of the Oath that you have taken, Did I ever ſpeak to you directly or indirectly of going to *France?*

Mrs. *Pratt.* Yes, and you asked for a Hole to hide what you might have occaſion to keep ſecret.

Mr. *Aſhton.* But I ask you about going to *France*; did I ſpeak to you about going to *France?*-----Mrs. *Pratt.* Yes, you did.

Mr. *Aſhton.* Then, as I hope to be ſaved, I never ſpoke directly or indirectly of going to *France* to her.

Mrs. *Pratt.* You were not to go for *Holland* or *Flanders*, I am ſure.

Mr. *Aſhton.* Nay, I did take it for granted, that you did know before I met you, that we were to go to *France*; but I never ſpoke to you of it in my Life, that I am ſure of; but I only urge this to let your Lordſhip know, that Woman has forgotten herſelf.

L. C. J. Pollexfen. Mr. *Aſhton*, You will have all lawful Favour; but your Time for arguing upon the Evidence is not come.

Mr. Serj. *Thompſon.* You muſt ask your Queſtions now, and make your Obſervations afterwards; you muſt reſerve yourſelf for that, till after we have done.

Mr. *Aſhton.* But then, my Lord, I ſhall have too many Things for my Memory to retain; and therefore I beg leave, as they occur to my Memory now, and as the Witneſſes go along, to make my Obſervations.

Mr. Serj. *Tremain.* Mrs. *Pratt*, Pray, when the Veſſel was hired, and you were told it was to go to *France*, what Perſons did Mr. *Aſhton* ſay were to go with him?

Mrs. *Pratt.* Three Perſons he ſaid were to go, but he did not name them.

Mr. Serj. *Tremain.* Then ſet up *William Paſeley.* [*Which was done.*

Sir *W. Williams.* What can you ſay of any for the hiring of a Veſſel?

Paſeley. I did not know the Veſſel was hired before I came thither.

Mr. Serj. *Thompſon.* Prithee tell us what thou doſt know.

Paſeley. The Woman came to me when I was at *Billingſgate*, and ſaid I muſt go a little Way along with her; and as we were going, ſhe told me it was to go to M. *Burdett*'s in *Queen-Street*; and when we came there, *Elliot* and *Aſhton* were not within: But by that time we had been there a little while in came Mr. *Aſhton*, and preſently after him Mr. *Elliot*; and Mr. *Aſhton* bid the Woman give him the Money out of the Place where it was.

Juryman. My Lord, we do not hear him.

Sir *W. Williams.* Pray begin again, and ſpeak out.

Paſeley. I met with this Woman at *Billingſgate*, and ſhe told me I muſt go a little way along with her.

L. C. J. Holt. That Woman, name her.

Paſeley. Mrs. *Pratt*; and I went along with her, and askt her where ſhe was going; ſhe ſaid up into *Queen-Street:* And coming to *Queen-Street*, we went to Mr. *Burdett*'s Houſe, I was never there in my Life before. When I came there, *Aſhton* nor *Elliot* were neither of them there; after a little while in came *Aſhton*, and preſently after in came *Elliot*, and he went up Stairs into the Bed-chamber; and being in the Bed-chamber, they brought the Money out, rolled up in a half Sheet of Paper, ſet up an Edge, and told it out at the Window.

L. C. J. Holt. Who told it?

Paſeley. *Aſhton* told the Money out; and after the Money was told, he pulled out two pieces of a Six-pence, and when he had pulled out the two pieces of a Six-pence, he gives one half to this Mrs. *Burdett*, and the other half he kept himſelf; and he bid her pay this ſame Money, when the other half Six-pence that *Aſhton* kept, came to this Woman, to match that which ſhe had; and after the Money was told, we ſtaid but a ſmall while there, and came down Stairs; and when we came down Stairs we went down to *Billingſgate.* I think *John Fiſher* was there, and we carried away with us a Trunk and a Hamper; *John Fiſher* carried the Trunk, and another man the Hamper; and after that we had carried the Things on Board, I came up to the Houſe again; and after I came up to the Houſe, they directed us to go to the *Seven-Stars* in the little *Piazza*, there was a Note written to direct us, which ordered us to go thither betwixt 10 and 11 at Night. When we came there, I think there was neither of them there preſent, but by that time we had been there a ſmall Space, in they both came and ſate down; and a Gentleman came in and ſaid the Cock crowed, and therefore they ſhould have no good Luck. And then they talked about Papers being toſſed in a Hat, I don't know what, and in came two Gentlemen more, juſt before we went away, to ſee them; and after thoſe Gentlemen had ſeen them, they ſtaid but a little while. Says *Elliot* to me, Maſter, come along with me; ſo I went along with him, and we came to *Surrey-Stairs*, and on the Corner on the Left-Hand, there was an Ale-houſe. He called the Waterman out of the Ale-houſe, and he bid me go before, and I went down: and by the Time that I had gotten down, the Waterman came and halled his Wherry to, and I went in, and by that time I was gotten to the Stern, down came *Aſhby* and *Elliot*, and my Lord, and his Man.

L. C. J. Holt. You mean *Aſhton*, not *Aſhby?*

Paſeley. Yes, my Lord, that is the Man. And after they had got into the Wherry, and were ſeated, they bid the Waterman put off from Land, and ſo we went through Bridge; and after we were through Bridge, we got on Board the Smack, and they got into the Cabbin; and when they were got into the Cabbin, I called my Men, and bid them hale up the Anchor, and they did ſo; it proved to be but little Wind, but that Tide we got below half-way Tree, and were forced there to drop our Anchor, and ſtay till the next Morning: The next morning we weighed Anchor, and by that time it was Nine a-Clock, we got to *Long-Reach*, where lay the *George* Man of War, and there they hid.

Mr. Sol. Gen. And how was the hiding pray?

Mr. *Paſeley.* It was down in the Quarters under the Hatches.

Mr. Sol. Gen. Why did they hide?

Paſeley. We reckoned they would come on Board a Preſſing, and they bid me ſhew my Protection.

Mr. Serj. *Tremain.* Did they deſire to be hid?

Paſeley. Yes; and after we came by the *George* Man of War, they came up again, and remained afterwards in the Cabbin, till we came almoſt to *Graveſend:* A little before we came to *Graveſend*, they all hid again; and when they were hid, remained hid all, I think, but only *Elliot*, I think, he popt up; and they were reſolved to go eat their Victuals; but then I told them there was a Barge a-coming, and ſo he went down again, and there they remained till they were taken, for the Barge was on Board preſently, and found them there.

Mr. Serj. *Tremain.* What kind of Place was it that they were hid in?

Paſeley. They could not ſit, nor ſtand upright in it, but lay all along, or leaned on their Elbows.

L. C. J. Holt. What did they lie upon there, pray?

Paſeley. There was Ballaſt, and ſlit Deal a-top of the Ballaſt.

Mr. S. *Thomp.* Well, what happened when the Captain came on Board?

Paſeley. When Captain *Billop* came on Board, Maſter, ſays he, You have got a Couple of ſtout young Men, I muſt preſs them, or to that Effect. I hope not ſo, Captain, ſaid I. Why what have you to ſhew, ſays he? I told him, I had a Protection. Let me ſee it, ſays he: So I ſhews him my Protection, and he looks in it. Well, ſays he, Maſter, I muſt look farther; and went to rights to the Place where they lay, and found them lying all together. After they were taken, and were come out, Captain *Billop* commanded them into his Boat, and commanded me and my two Men, to go into the Barge; afterwards he ſet his Man on ſhore at *Hungerford Stairs*; and when we came to *Whitehall* Bridge, the Gate was not opened, and we ſtaid a little while at *Whitehall* Bridge; and when we came a Shore, *Elliot* gave me Half-a-Crown, and bid me ſay, when I came upon my Examination, that we were bound for *Flanders*, and not for *France.*

Mr. Serj. *Tremain.* Where were you bound for, pray?

Paſeley. They examined me in the Chamber, when they paid the Money, if I knew they went to *France*; and I told them, Yes, very well.

Mr. Serj. *Thompſon.* Did they deſire you to go to any particular Port in *France?*

Paſeley. No, we were to touch at any Place we could.

Sir *W. Williams.* Did they mention any thing of *Flanders* to you?

Paſeley. No, they did not.

L. C. J. Holt. Did any body mention going to *France* to you?

Paſeley. Yes, they did. They ask'd me, whether I could carry them to *France* ſafe.

L. C. J. Holt.

L. C. J. Holt. Who did aſk you that?

Paſeley. *Elliot* or *Aſhton*, one of the two, I cannot directly ſay which; but if I be not miſtaken, it was *Aſhton*.

Mr. Serj. *Tremain.* When came you from *Rigby*'s at the *Seven-Stars*, Who came away with you? —— *Paſeley.* *Aſhton* and *Elliot*.

Mr. Serj. *Tremain.* Did *Elliot* and *Aſhton* both come out with you?

Paſeley. Yes, they did.

Mr. Serj. *Tremain.* And did they part after they were come out?

Paſeley. Yes, *Aſhton* did go away from us preſently after we were come out.

Mr. Serj. *Thompſon.* When you came on Board, had you any Diſcourſe with *Aſhton* about going to *France?*

Paſeley. No, not that I remember.

L. C. J. Holt. Did you go on foot from the *Seven-Stars?*---*Paſeley.* Yes.

L. C. J. Holt. And did they part after you come out?

Paſeley. Yes, they did.

L. C. J. Holt. And who went with you, did you ſay?

Paſeley. *Elliot* came with me.

L. C. J. Holt. Whither went Mr. *Aſhton* then?

Paſeley. I cannot tell, my Lord.

Mr. Sol. Gen. What did he ſay to you when he went from you?

Paſeley. He bid me go along with *Elliot*.

L. C. J. Holt. Was Mr. *Aſhton* there as ſoon as you?

Paſeley. Not quite; but by that time the Waterman had got the Boat to the Shore, and I in the Stern, they were all come down.

L. C. J. Holt. When *Aſhton* came, who came along with him?

Paſeley. I ſaw them all upon the Stair-head; I was in the Boat when they came. I never ſaw my Lord, till he was upon the Stairs.

Juryman. My Lord, I deſire to aſk him, What the Sum of Money was that was paid at *Burdett*'s?

Paſeley. It was 93 Guineas and Six-pence.

L. C. J. Holt. Who brought it?

Paſeley. It was laid down in the Window.

L. C. J. Holt. But I aſk you, who brought it?

Paſeley. I did ſee *Aſhton* bring it, and lay it down in the Window, and he told it out, and put it up again, and gave it to Mrs. *Burdett*.

Juryman. My Lord, I deſire to know what is the uſual Rate to go to *Flanders?* What may a Smack and three Men deſerve?

Paſeley. Truly I cannot tell, I never went upon my own account in my Life.

L. C. J. Holt. Mrs. *Pratt*, what ſay you, what is the uſual Rate to go for *Flanders* or *Holland?*

Mrs. *Pratt.* I believe they may go for a matter of 20*l.* or 30*l.*

L. C. J. Holt. You hear them, Gentlemen, what they ſay?

Juryman. Yes; but; my Lord, he ſays, he gave them Notice the Barge was a-coming: I deſire to aſk him, Did he know there was a Deſign to ſearch him or no?

Paſeley. Sir, I knew that there was a Search for Seamen.

L. C. J. Holt. But did you know there was to be a Search, in order to the taking theſe Gentlemen on Board you? For that is the Queſtion, I believe, the Jury would aſk you.

Paſeley. No, I did not know of it.

Mr. Sol. Gen. But you ſay, theſe Gentlemen deſired to be hid?

Paſeley. Yes.

Mr. Sol. Gen. And you hid them according to their Deſire?--*Paſeley.* Yes.

Mr. Serj. *Tremain.* Before you went on Board, had you any Diſcourſe of hiding? Did they aſk you for a Place to hide in?

Paſeley. Yes, they did.

Mr. Serj. *Tremain.* Who did?

Paſeley. *Aſhton* and *Elliot* both aſk'd if there were a Place in the Ship to hide them, and I told them, yes, there was.

L. C. J. Pollexfen. Mr. *Aſhton*, will you aſk him any Queſtions?

Mr. *Aſhton.* My Lord, I deſire to aſk him this Queſtion: Did we deſire you to come and hide us, or did you deſire us to go down?

Paſeley. You deſired this of us, that if we ſaw any Man of War's Boat we would tell you, that you might be hid.

Mr. Serj. *Tremain.* Pray repeat that over again, did they deſire you to give them Information when any Boat was coming, that they might hide, or did you deſire them to hide yourſelf?

Paſeley. They deſired it of me.

Mr. Serj. *Thompſon.* Then ſet up *Charles Betſworth*.

Mr. Serj. *Tremain.* Before *Betſworth* is examined, I would aſk *Paſeley* one Queſtion? Was there any Coat left on Board you?

Paſeley. Yes, there were two Coats of the Waterman's left on Board, and I took them and lock'd them up.

Mr. Serj *Tremain.* Is that the Man that own'd the Coats?

Paſeley. Yes, it is.

Sir *W. Williams.* Then, *Betſworth*, will you give an Account of what you know againſt the Priſoner at the Bar?

Betſworth. I cannot tell, my Lord, I never ſaw the Gentleman in my Life before, that I know of.

Sir *W. Williams.* Prithee hear, Friend, tell what you know of carrying any Gentlemen on Board the Smack.

Betſworth. If it pleaſe your Lordſhip, I was going Home from our Stairs about 7 or 8 a-Clock in the Evening; that is, from *Surrey* Stairs, and a Gentleman called, Sculler. Said I to him, Sir, where do you go? Says he, As far as the *Tower*; ſaid I, 'Tis againſt Tide, I cannot go; it will be Ten a-Clock before it be high Water. Says he, Will you go with us at that Time? Said I, What will you give me? Will you give me Half-a Crown? then I'll carry you down, for I cannot ſtay out ſo late for nothing, Yes, ſays he, I will give it you. Then I came and brought my Boat to the Shore; he aſked me then, What my Name was; I told him *Charles Betſworth*. Says he, Will you be ſure to ſtay till we come? Yes, ſaid I, if you will be ſure to come; and if I be not here, I will be at ſuch a Houſe an Ale-houſe, that was there by; the Sign of the *Swan:* So I ſtaid, and carried a Fare or two over the Water; and about 11 a-Clock comes a Gentleman down, and calls *Charles*, and I went out a Doors down towards my Boat and there comes one Gentleman down, and a kind of a Seaman, as I thought; and the Seaman went into the Stern, and the Gentleman ſat down at the Back-board, and there was three Gentlemen more came down the Stairs into the Boat; one had a whitiſh Cloak, and the other a looſe Coat; and they brought a Leather Bag that would hold about a Peck; ſo I put off with them, and rowed down the River, and all that I heard them ſay, was, when we came under the *Temple*, ſays one of the Gentlemen, When do you hear the King goes away? Says another of them, He goes away a *Tueſday*; and when we got through Bridge, one of the Gentlemen aſk'd where the Veſſel lay, and a Man in the Stern ſaid, On *Southwark* Side, over-againſt the *Tower*; and when we came a little below *Battlebridge*, near *Pickle-Herring* Stairs, the Maſter ſaid, There lies the Veſſel, and it had a long Pendant and a Top-Sail looſe; ſo they paid me before they came on Board, and when they were got a-board, away rowed I, and when I came to Land to take out my Sculls and Things, there I miſt my Cloaths; and I rowed after them, thinking they could not be got far; but when I came to the Place where they went on Board, the Veſſel was gone, and I rowed down as low as *Limehouſe Reach*, and in *Blackwall Reach* I overtook a Veſſel, which I thought was the Veſſel. I aſk'd them who they belonged to, and they ſaid they came from *Horſeleydown*; and I made anſwer, I brought two Fares on Board a Veſſel at *Pickle-herring* Stairs, and had forgot to take my Cloaths that they had; they made Anſwer, I brought no Fare on board them; ſo I rowed on farther beyond *Barkinſhelf*, and becauſe there was no Wind, I thought none could have gone beyond that Place, and therefore reſolved to row back again when it was Flood; and I rowed up to *Greenwich*, but could not meet with the Veſſel; and I heard nothing of my Cloaths, till laſt *Friday* was Seven-night I had my Cloaths brought to me.

Sir *W. Williams.* Can you ſay this Gentleman, Mr. *Aſhton*, the Priſoner at the Bar, was one of them that you carried on Board the Smack?

Betſworth. No, I know never a one of them.

Mr. Serj. *Tremain.* But you ſay the Perſons that you took in at *Surrey* Stairs carried away your Cloaths with them.

Betſworth. Yes, Sir.

Mr. Serj. *Tremain.* Then I aſk you, *Paſeley*, is that one of the Perſons that he brought on Board your Smack?

Paſeley. Yes, he was.

Mr. Serj. *Tremain.* How many came on Board the Smack?

Paſeley. Four; my Lord *Preſton*, Mr. *Aſhton*, Mr. *Elliot*, and my Lord *Preſton*'s Man.

Mr. Serj. *Tremain.* Did you take in your Pendant?

Paſeley. Yes, I did.

Mr. Serj. *Tremain.* When did you take it in?

Paſeley As ſoon as we weighed Anchor.

Mr. Serj. *Tremain.* How came you to take it in?

Paſeley. *Elliot* ſpoke to me to take it in.

L. C. J. Holt. Did they mention how many were to go in the Smack?

Paſeley. He ſaid, there were three of them, not four, as I remember, that were to go.

Sir *W. Williams.* Will you aſk him any thing, Mr. *Aſhton?*

Mr. *Aſhton.* No, Sir: But I deſire the Woman may not go out of Court.

L. J. C. Holt. No, no; She ſhall ſtay.

Mr. Serj. *Thompſon.* Then call *John Fiſher* and *James Amonds*.

(Fiſher *ſtood up.*)

Sir *W. Williams.* Pray do you acquaint the Court and the Jury what you know of this Matter, whether you carried any Things on Board the Smack, and what, and who came on Board, and what hapned?

Fiſher. My Lord, a matter of ſix Hours before they came on Board, my Maſter carried me a-ſhore, and brought me to Mr. *Burdett*'s Houſe, and gave me a Trunk, and I went with it, and another Man with a Hamper, and brought them on Board; and about 11 or 12 a-Clock, my Maſter comes and brings Mr. *Aſhton* and the other aboard; and he bid me go forward, and heave up the Anchor, and ſo I did, and we went down the River; but we could go but a little way becauſe there was no Wind and when we came to *Halfway-Tree*, the Tide turning, we were forced to caſt Anchor again, and ſtay till the Morning; and in the Morning we weigh'd Anchor again, about 8 a-Clock, and about 9 we came into *Long-Reach*, where lay the *George* Man of War, and then Mr. *Aſhton* and they hid; and when we came below them again, they came up again till we came almoſt near the *Block-Houſes* at *Graveſend*, and there they hid again; and Mr. *Aſhton*, I think, came up afterwards, and bid me go down to the Hamper, and fetch them up ſome Victuals for their Dinner, and I went down and fetched up ſome Beef, and Mr. *Aſhton* took hold of it; and I took a Bottle of Wine or two out; and juſt before I brought all the Victuals up, the Barge was ſpied a-coming to us; and then he went down again, and there they hid, and the Piece of Beef was a Top of them. Captain *Billop*, when he came near, waved his Hat, to bid us lie by; and we did lie by till he came up to us; and when he came up to us, ſays he, Maſter, you have gotten a Couple of good likely Men, worth the coming on Board for. Says the Maſter, I hope, Captain, you won't preſs them. What have you to keep you clear? Says he, I have a Protection. Have you, ſays the Captain? Let me ſee it. So he ſhewed him the Protection, and he read both our Names in it. Then, ſays he, Maſter, I muſt look farther; and he went down to the Quarter-Hatches, and took them up juſt where they lay. Firſt my Lord came out; and he ſearched them all as they came out: Mr. *Elliot* came out next, and Mr. *Aſhton* ſtaid within, being the laſt Man. And after he had ſearched them, and done what he pleaſed, he got all the Papers and Writings; then he commanded us all to go into the Barge, and they came on Board the *George* Frigate in *Long-Reach*. And at the Ship, Mr. *Elliot* came to us, and bid us ſay, we were going to *Flanders*. And after we came to *Whitehall*, Mr. *Aſhton* gave me a Half-Crown Piece, and bid me ſay, we were bound for *Flanders*, and not for *France*.

L. C. J. Holt. Was that after they were taken, or before?

L. C. J. Pollexfen. When was the firſt time, that they would have you ſay, they were bound for *Flanders?*

Fiſher. It was on Board the *George* Frigate in *Long-Reach*.

L. C. J. Holt. Who was it that bid you ſay ſo?

Fiſher. Mr. *Elliot* and Mr. *Aſhton* both, in the Ship's Steerage, where they came to us.

L. C. J. Pollexfen. Where was the next Place that they bid you ſay ſo?

Fiſher. At *White hall* Bridge *Aſhton* gave me a Half-Crown Piece, and bid me ſay ſo.

Juryman. Did he ſpeak that aloud, or ſoftly at *Whitehall?*

Fiſher. He whiſpered it in my Ear.

L. C. J. Holt. Did they ever ſay they were bound for *Flanders*, till after they were taken?—*Fiſher.* No.

Mr. Serj. *Tremain.* What manner of Place was this that they hid in?

Fiſher. An ugly Hole, where a Man has no Room to lie along at Eaſe; he can neither ſtand upright, nor ſit upright.

Mr. Serj. *Tremain.* Did you ſee the Waterman that brought them on Board?—*Fiſher.* No.

Mr. Serj. *Tremain.* Was there any Waterman's Coat left?

Fiſher. Yes, there was two.

L. C. J. Holt. But didſt thou ſee the Boat?

Fiſher. We were aſleep when they came on Board, and the Boat was put off aſſoon as ever they came on Board.

Mr. Serj. *Tremain.* Then aſſoon as ever they were on Board, you got up the Anchor, and pulled in the Pendant?—*Fiſher.* Yes. We immediately hove up the Anchor, and took in the Pendant.

Mr. Serj. *Tremain.* Did any Sculler hale you afterwards, as you were going down?—*Fiſher.* Yes, as we were going down there did.

Mr. Serj. *Tremain.* What did you ſay to him?

Fiſher. I was not ſteering then; but this other Man made Anſwer.

L. C. J. Holt. Mr. *Aſhton*, Will you aſk him any Thing?

Mr. *Aſhton.* When I gave you the Half-Crown that you ſpeak of, what did I ſay to you?

Fiſher. You bid me, when I came to be examined, ſay we were going to *Flanders*, and not to *France*.

Mr. *Aſhton.* What did I ſay elſe?

Fiſher. You bid me take that Half-Crown for to Night, to help to bear my Charges, and To-Morrow you would take farther Care of us.

Mr. *Aſhton.* I told you, you were Priſoners now, and I gave you that, and told you I would take farther Care of you.

Fiſher. You did not ſay we were Priſoners, but you ſaid you gave me that to help to bear Charges for that Night, and on the Morrow you would take farther Care of us.

Mr. Serj. *Thompſon.* Then ſet up *James Amonds.*

Sir *W. Williams.* Are you ſworn, Friend?—*Amonds.* Yes, Sir.

Sir *W. Williams.* Then let the Court and the Jury know what you can ſay in this Matter.

Amonds. My Lord, they came on Board about 11 or 12 a-clock at Night; I was aſleep in the Cabbin, and heard a Boat coming aboard, and I turned out, and before I could get out of the Cabbin, they were got aboard, and I ſee no Boat, nor nothing. So ſays the Maſter, Go forward and heave up the Anchor; and after we had heaved up the Anchor, I goes into the Ship to tow the Veſſel down, becauſe there was no Wind, and we would not let the Veſſel go foul on the Ships that were in the River, and a little after we came on Board again; and when I came on Board again, they were all on Board, all Four. After that comes a Waterman, and I was at the Helm ſteering, and he called out to us, Oh hoe! ſays he; did not I bring a Parcel of Gentlemen on Board this Smack? Not as I know of, ſaid I. Says he, I carried a Parcel of Gentlemen on Board ſome Smack that had a Pendant out, and I know not where it is; they carried my Cloaths on Board with them. Said I, I know nothing of it, nor I did not; for I ſaw neither Waterman nor Boat; ſo away the Waterman goes, and we went down the River, and when we came to *Halfway Tree*, we came to Anchor, and my Maſter went and laid himſelf down, the Tide being almoſt done, and there being no Wind, and Mr. *Aſhton* and they lay in the Cabbin; and ſays Mr. *Aſhton* to me, Take Care of us now, and we will take Care of you hereafter; ſays he, we ſhall help you to many a Freight, and many a Pound. Ay, ay, ſaid I, you will be taken Care of to be ſure at Day-break, or when the Day comes on. About 8 a-Clock, we hove up the Anchor again, and fell down as low as *Long Reach*, where the *George* Frigate lay; and when we came there, they went down to hide in the Quarter-Hatches. I ſteered it down till; and when we were got paſt that Man of War, the Hatches were taken up, and they came up again out of the Quarters, and ſat in the Cabbin again, and we had a freſh Gale of Wind, and run down to *Graveſend* quickly, and when we came near the Block-Houſes, ſaid I, We are almoſt at the Block-Houſes; then ſaid they, We will go down and hide a little; and ſo they did till they were paſt there, then reſolving to go to Dinner.

L. C. J. Holt. What time a-Day was this?

Amonds. About 11 a-Clock, as near as I can gueſs.

Mr. Sol. Gen. Well, they did go down to hide then, did they?

Amonds. Yes, they did go down and hide, and came up again, I am ſure ſome of them; I heard ſome of them in the Cabbin.

Mr. Sol. Gen. Well, what followed?

Amonds. After they were gotten up, and paſt *Graveſend*, this Man was ſent for Victuals for them, and ſo he fetch'd them ſome Roaſt Beef, and ſome other Things; and juſt as the Roaſt Beef was going into the Cabbin, ſaid I, *Here comes a Barge off to Preſs.* So when I cried, the Barge was a-coming, they took the Victuals down into the Quarters, and there lay they, and the Victuals a-top of them. And when the Barge came near us, the Captain waved his Hat to command us to lie by. Said I, *We muſt lie by, for the Barge is coming up to us.* And we clapp'd the Helm a-lee, and lay by; and after we were laid by, the Barge came on Board us. Says the Captain of the Barge, *You have got a Couple of likely, good Men, Maſter*, ſaid he. *Ay*, ſays the Maſter, *but I hope you wont preſs them.* Says the Captain, *Have you got any thing to keep you clear? Yes, if it pleaſe you, noble Captain, I have got a Protection. I am ſorry for that*, ſays he, and comes on Board, for he ſtaid all this time in the Barge; and ſmiling upon him, he comes on Board, and ſays he, *Come, let's ſee your Protection.* And the Maſter ſhew'd it him and he read it. Says the Captain, *I muſt look a little farther.* And he goes into the Cabbin, and took up the Hatches, and there lay all theſe Gentlemen. They were ſomething longer in coming up than he would have them; ſo ſays the Captain to his Men in the Barge, *Come on Board, and ſee who is here.* And ſo ſome of his Men did come on Board; and, to the beſt of my Remembrance, my Lord was the firſt Man that came up: And when my Lord came up, the Captain run his Hands into his Coat Pockets, to feel for Papers, as I ſuppoſe; and my Lord deſired the Captain to be kind, and take nothing away. Says he, *I'll take nothing but Papers; 'tis Papers I look for:* And he pull'd out a Watch, and gave it him again. After that, *Elliot* came out; and whether he found any thing upon Mr. *Elliot*, or no, I cannot tell. Mr. *Aſhton* was the laſt that came up; and when he came up, a Waterman of the Captain's calls to him, and ſays, *That Gentleman that came up laſt has put ſomething into his Boſom, but what I can't tell.* So the Captain took Mr. *Aſhton* by the Arm, and turn'd him about, and, ſays he, *What did you put in your Boſom?* Says Mr *Aſhton*, *Nothing but my Handkerchief*; and pull'd out his Handkerchief, and ſhew'd him. Then the Captain put his Hand in, and pull'd out Papers, with a Piece of Lead tied to them. And that is all that I ſaw.

Mr. Serj. *Tremain.* But tell us what happen'd afterwards?

Amonds. When that was done, the Captain commanded us all into his Barge; and I rowed, and ſome of the reſt row'd, it being cold Weather, till we came up to *London*. After we came up to *London*, they did not ſay any thing to me, becauſe I was a-rowing till then. It ſeems they did give them ſome Money, but they gave me none, not till I came into *Whitehall*; and then my Lord's Man came to me, and call'd me a one Side; ſays he, *Here's Half-a-Crown, will ſerve you to Night; and be ſure, when you come to be examined, that you ſay, you were bound for* Flanders, *and not for* France, *and you will be taken farther Care of To-morrow.*

Mr. Serj. *Tremain.* What manner of Place is that Quarter-Hatches?

Amonds. They could neither ſit, nor ſtand upright in it.

Mr. Serj. *Thompſon.* What did they lie upon?

Amonds. There were three or four ſlit Deals that were laid over the Ballaſt, but it ſeems they had ſhuffled 'em on one Side when they were taken, for the Ballaſt lay open.

Mr. Serj. *Tremain.* Did the Waterman that brought theſe Men on Board you, leave his Coat there?

Amonds. I did not ſee the Boat, nor the Waterman; and therefore I am not able to ſay any thing about it.

Mr. Sol. Gen. How came the Pendant to be taken down?

Amonds. I can't tell that; I was in the Skiff when it was taken down.

Juryman. My Lord, I do not well underſtand how the Papers came to be taken away from Mr. *Aſhton*.

L. C. J. Holt. He tells you, Mr. *Aſhton* was ſeen to put his Hand with ſomething into his Boſom; and being tax'd with it, he ſaid it was his Handkerchief; and the Captain put in his Hand, and pull'd out a Bundle of Papers.

Juryman. Did he ſee *Aſhton* take away the Papers from any other Place?

Amonds. No, an't pleaſe your Honour, I did not ſee them till they were taken out of his Boſom.

L. C. J. Holt. Did you ſee Captain *Billop* take the Papers from out Mr. *Aſhton*'s Coat?—*Amonds.* Yes, I did.

L. C. J. Holt. Where were they before they ſpy'd the Barge a-coming?

Amonds. If it pleaſe your Honour, I heard 'em talk; I thought they had been up, but it ſeems there was but one of 'em up when they ſaid, the Barge was coming aboard: I was at the Helm, and heard 'em talk.

L. C. J. Holt. Then you knew nothing of theſe Papers, but when you ſaw them taken out of *Aſhton*'s Boſom?—*Amonds.* No, my Lord.

Sir *W. Williams.* If you will aſk him any thing, Mr. *Aſhton*, now you may.

Mr. *Aſhton.* Pray, Friend, had not I been up firſt, and ſearch'd before the Papers were taken?—*Amonds.* Not as I know of.

Mr. *Aſhton.* Did not I go down into the Hold to take my Hat, and call to you, and deſired that I might go down for my Hat?

Amonds. I can't tell; for when I ſaw the Papers taken from you, I was in the Stern; I was not down.

Mr. *Aſhton.* Had not I been ſearched firſt?

Amonds. Not that I know of, till you were in the Stern.

Mr. Serj. *Thompſon.* Then ſwear Captain *Billop*.

Which was done, he ſtanding up by the Sheriff.

Mr. Serj. *Tremain*, Captain, I ſuppoſe you may be heard from that Place.

Mr. *Aſhton.* My Lord, I deſire the Witneſs may come down, elſe I ſhall not be able to diſtinguiſh what he ſays: It is the proper Place for him I think.

L. C. J. Holt. Let him come down.

Mr. *Aſhton.* I humbly deſire, my Lord, that the Witneſſes may all be obliged to ſtay in Court.

L. C. J. Holt. Let them all ſtay.

Sir *W. Williams.* You are ſworn, Sir: Are you not?

Captain *Billop.* Yes, I am.

Sir *W. Williams.* Then, pray, will you give an Account where you took theſe Perſons, how you took 'em, what you found, and how you diſpoſed of it?

Capt. *Billop.* Muſt I begin from the Beginning?

Sir *W. Williams.* Yes; Tell your whole Knowledge, in Order of Time, as it fell out.

Capt. *Billop.* What, from the Time I went out?

Mr. Serj. *Thompſon.* Make it as ſhort as you can.

Sir *W. Williams.* Yes, you muſt tell all; for you ſpeak now to a new Jury, and here is another Priſoner at the Bar to be tried.

Capt. *Billop.* The laſt of *December*, about Two a-Clock, or between One and Two, my Lord of *Danby* came to me at one of the Doors of the Houſe of Lords, and told me, his Father muſt ſpeak with me; and he carried me up to my Lord *Lindſey*'s Chamber; and in a little time my Lord Preſident came there, and told me, he heard there were divers Perſons that had Papers of dangerous Conſequence, and were going to *France*, and deſired me to uſe my Skill for my ſeizing and ſecuring of the Papers,

Papers. I began then to talk of what was proper for such an Undertaking; and I told my Lord, I thought the best Way was to go to *Woolwich* or *Deptford*, and to take a Man of War's Pinnace with us: Upon that, my Lord of *Danby* being by, said, he knew of a Boat that he could have, which was my Lord Duke of *Grafton*'s; and my Lady Duchess had lent it him, and he would go and get it ready: Upon this my Lord President said, he would give me a Note of the Name of the Vessel, and where she went out; and likewise a Letter to another Person, that would instruct me farther, and shew me the Vessel: Accordingly my Lord President gave me the Letter, and I went away to look for the Person, but could not find him. My Lord *Danby* came to *Tower-Wharf* himself with the Boat; and I left a Man there to bring me Word when the Boat came up at the Place where I was; and Captain *Stringer* and Sir *Thomas Taylor* came there to me. After my Lord of *Danby* had told me what I had in the Boat, I told him, I thought there were not Arms enough; and therefore it were best to go to the *Tower*, to borrow some Arms from thence: When we came to the *Tower*, my Lord *Lucas* was not come in; and when I had staid a little Time, he did come in: And when I had acquainted him with my Business, he sent for an Officer of the Guard, and there we borrowed some Arms, a Blunderbuss of his, and a Carbine, and the like; and about Eleven a-Clock, or somewhat past, we put off from *Tower-Wharf*. It was Calm, and we rowed down towards *Gravesend*; and we went aboard a Vessel or two; but I was not willing to lose much Time, because I was resolved to take them before they were gotten too far: So we rowed away for *Gravesend*, where I refreshed my Men, and afterwards went down into the *Hope*; and I did judge that no Vessel that came from *London* that Tide could be a-head of me. I went on board several Vessels that lay in the River, in order unto the Pressing of Men; and I went on board all Sorts of Vessels, because I would give no Suspicion of what I was about; and having been on board of several, I pressed two or three *Barkin* Men; and one particularly, that knew all the Vessels upon the River; and I made him to row very near to me, that I might talk to him; I had got the Names of a great many Smacks, and gave it out, that I would press a Smack to carry for a Tender to my Ship, when the Fleet went out; and naming this Smack that I was to go to search, I told him, *I heard such a Smack sailed well, and I had Thoughts of pressing her:* He told me, *She was old:* But said I, *She will serve a Summer well enough; and that is it I intend to press, if I can find her.* Says he, *I'll shew you her, I know her when I see her.* So we went on board several Vessels as we went along. And as we were rowing along, before we came to the *Nest* Point by *Tilbury-Fort*, we saw several Smacks coming down the River; and when we came about the Point, the headmost Smack of all, the Fellow lookt out, and said, *Yonder is the* Thomas *and* Elizabeth. Then I called to one of my Men to wave, and bring them to lie by; which they did, and they lay by till I came on board. When I came on board, I saw two lusty Men stand by the Master; said I, *Master, you have got two good lusty Fellows that would serve the King; but I'll be kind and civil to you, I'll take but one.* Says the Master, *I hope not so, for I have a Protection.* With that, I came on board, and took his Protection in my Hand, and read it. As soon as I had read it, I ask'd him, If he had no more Men upon Deck than what I saw? He said, *No. Then*, said I, *I must look a little farther.* And I went into the Quarters, and took up the Scuttle, and the Hatches, and I saw some Gentlemen lie. *Oh*, said I, *what a pretty Posture is this! Where are we a-going? Gentlemen, you must turn out.* The first that came to Hand was my Lord *Preston*; but I did not know him then, nor some Time after I was in the Boat with him: So I took hold of him, and help'd him up; and when he was up, said I, *Sir, I must search you.* Says he, *I hope you will take nothing from me. Nothing*, said I, *but Papers.* So I searched all his Pockets; and as I found any Papers, I put them into my own Coat-Pocket. And I took his Watch, and pull'd it out, and gave it him again: After that I had search'd him, came up Mr. *Elliot* the first Man, and the next was Mr. *Ashton*, who crowded up while *Elliot* came up, in his Night-Cap. *I think, Mr.* Ashton, *you had your Night-Cap on.* So Mr. *Ashton* goes down again, and puts on a Perriwig, I think; but coming up again, one of my Seamen sees him take something, and put it into his Bosom: He follows Mr. *Ashton* quick, and pulls me by the Coat: and, says he, *That Gentleman has got something in his Bosom:* So I took hold of him, and turned him round: Said I, *Mr.* Ashton, *what have you got in your Bosom? Nothing*, says he, *but a Handkerchief*; and immediately he put his Hand into his Bosom, and pluck'd out the Handkerchief, and shew'd me. As soon as he had pulled out the Handkerchief, I put my Hand into his Bosom, and there I met with the Pacquet that had the Lead affix'd to't; and pulling it out, I clapp'd it into my own Pocket; for I thought that was the Matter of Moment that I was to secure. So I ordered them to go into the Boat, and the Master of the Vessel to let go his Anchor: and two Men I left in the Vessel, whom I ordered to search, and to secure what they found till farther Order; and I left two Musquets with them. And after we were in the Boat, they desired to have something handed in, which I gave Order for, a Hamper, and a Night Bag; and away we put off from the Vessel, and rowed up; it was against Tide, and very cold Weather. In a little Time Mr. *Elliot* called one of the Gentlemen My Lord; then I whispered him, and ask'd him who that Lord was; and he told me, *It was my Lord* Preston. Then I saluted my Lord; and my Lord was pleased to say, he was very well satisfied they were fallen into the Hands of a civil Gentleman. So rowing up against Tide, and it being a Westerly Wind, which blowed very fresh, my Lord desired that I would let them stop at *Gravesend*, till the Tide turned, that they might refresh themselves. I begged his Pardon, and said, there was a Ship in *Long-Reach*, the *George* Frigate, and we would stop there; and I did not doubt but I could command the great Cabbin for his Accommodation; and there he might have any Thing that he wanted. My Lord seemed contented with it: but before we came on board the Man of War, there happen'd a great deal of Discourse betwixt us of several Things.

Sir *W. Williams*. Pray repeat it, as well as you can remember; what Discourse happened?

Capt. *Billop*. Truly, my Lord *Preston* being cold, and the Hamper standing by, says he, *Captain* Billop, *we have not eaten, we will eat, if you will.* And there was a Piece of Beef at the Top of the Hamper, and Bottles of Wine; and I opened the Hamper, sitting fairest for it, and handed out the Beef, the Bread, and the Bottles; and after we had eaten what we would, my Lord ordered the rest to be given to the Men that were the Boat's Crew; and after we had done this, and taken out a Bottle or two, and shut up the Hamper again, my Lord *Preston* drank to me once or twice, and seemed very well satisfied and pleas'd with his Usage. He told me, he was sensible of my Civilities; and if ever it lay in his Power, he would not forget me. So we drank again, and talk'd again; but before we came to the Ship, my Lord *Preston* told me, that if ever it lay in his Power, he would be sure to make an Acknowledgment of the Civility I had shew'd him. And, to the best of my Memory, he had this Expression, *If there ever was any Thing he could serve me in, he would do it with all his Heart, if I would but dispose of the Pacquet.*

Mr. Serj. *Thompson*. What would Mr. *Ashton* have had you done? What did he say to you?

Captain *Billop*. Mr. *Ashton* said, it would do me no Good to injure so many Gentlemen; and desired me that I would throw the Pacquet over-board.

Mr. Serj. *Tremain*. What did he mean by so many Gentlemen?

Captain *Billop*. My Lord, I cannot tell; but that was his Expression.

Mr. Serj. *Tremain*. Who desired you to throw the Pacquet over-board?

Captain *Billop*. Mr. *Ashton* did several Times.

Mr. Serj. *Tremain*. What did he say to you? What Arguments did he use?

Captain *Billop*. My Lord, it was so many Times over, and so much Mixture of Discourse we had, that I am not able to tell the Particulars.

L. C. J. Holt. But what Arguments did he use?

Captain *Billop*. I don't know that he used any more great Arguments, more than what I have told you already.

L. C. J. Holt. Say that again that you said before.

Captain *Billop*. He said, 'twould do me no Good to injure so many Gentlemen. *Prithee, Captain* Billop, says he, *throw it over-board.*

Mr. Serj. *Tremain*. What did he say farther?

Captain *Billop*. I'll tell you, if you'll give me leave. Mr. *Ashton* did say, a little after this, with a great deal of Insinuation, *Captain* Billop, *What if you should turn about, and go along with us? No, Mr.* Ashton, said I, *that I cannot do.* Says Mr. *Elliot*, *Prithee, throw the Pacquet over-board.* This they did as we came up the River; and 'tis the most that I can remember, 'till we came on board the *George*; and when we came on board the *George*, *Elliot* called me into the Steerage, and desired me, of all Love, that I would dispose of the Pacquet: And he said, that now I had an Opportunity to make myself as Rich, and as Great as I would, and nobody could see it, if I did throw it away. While I was in the Ship, Mr. *Ashton*, my Lord, and Mr. *Elliot* were with me in the Steerage. Said I, *I shall be taken notice of to be whispering; pray forbear. Ashton* then spoke to me again, to desire me to throw the Pacquet over-board. By this Time the Victuals was handed in, and there we eat and drank, and my Lord smoaked a Pipe of Tobacco before the Tide turned; and when the Tide made, we went into the Boat again, and rowed up towards *London*, and they were using these Sorts of Arguments over and over again. And once Mr. *Elliot*, I think 'twas, to the best of my Remembrance, told me, *Now you have it in your Power to make your Fortune, and may be as great a Man, and as rich a Man as you can desire.* And Mr. *Ashton* said some Words something to the same Purpose: *Prithee*, said he, *throw it over-board: What Good will it do you?* So I refusing it, as I did many Times, Mr. *Elliot* told me, that I might take the Letters that were taken in my Lord *Preston*'s Pocket, and tie the Lead to them, and throw the Pacquet over-board. *No*, said I, *Mr.* Elliot; *sure you would take the King's Counsel to be a very odd Sort of Men, that they cannot find out such a Thing as this. Prithee, dear* Billop, said he, *throw it over-board*; many Times whispering me in the Ear; and so did Mr. *Ashton* many Times, saying, *You may do us a great Kindness in it.* And we drank, and had several Intermissions; and they at me again, and I denied them, and they desisted; and then they at it again: And Mr. *Elliot* then told me, *Prithee, dear* Billop, *throw it over-board.* Said I, *Mr.* Elliot, *If I should be so great a Villain to do such a Thing, if ever it was your Day, would you trust me again? Put it to be your own Case.* Says he, *You have Gentlemen to deal withal. But*, said I, *I will never put it into your Power.* Mr. *Elliot* seemed to be angry at this, and said, *Every Dog had his Day.* Said I, *I hope never to see it your Day: But I pray, forbear this Discourse; let me beg that of you; for I do not desire to be provoked to use you otherwise than as Gentlemen.* And after that, they never urged me more to throw the Pacquet over-board; But Mr. *Elliot* was angry, and very much disturbed, and wished a Thunderbolt might strike the Boat and sink it. So I brought them up, through *London-Bridge*, and they said no more about the Pacquet; but *Elliot* wished, that *London-Bridge* might have fallen on our Heads. At length I brought them to *Whitehall*; and I put my Man ashore at *Hungerford* Stairs, that he might get before, and give the Porter Notice at *Whitehall-Bridge*, that he might open the Gate. I brought my Lord *Preston* and the rest to the Bridge; and while I was arming my Men, to guard them up to my Lord *Nottingham*'s Office, I suppose they then took the Opportunity to give the Men Money, getting near to them; I know nothing of that: But I carried them up to my Lord *Nottingham*'s, and there I delivered them and the Pacquet to my Lord. After some Time, the Pacquet lay upon the Table, and my Lord *Nottingham* sends me for my Lord *Preston*. When my Lord *Preston* came in, I withdrew without bidding, and the Pacquet lay upon the Table unopen'd: And when my Lord *Preston* came out, I went in on myself, and the Pacquet lay in the same Place and Posture, and not opened. And I stay'd while Mr. *Ashton* was called in, and my Lord *Nottingham* asked him a great many Questions,

Mr. *Ashton*. Pray repeat those Questions, Captain *Billop*; and what Answers I made.

Captain *Billop*. Truly, my Memory does not serve me to remember all of them, and I was in a very uneasy Condition at that Time, and would much

much rather have been in my Bed, than any where elſe: For the Night before I went down, I had a Plaiſter of *Spaniſh* Flies put to my Back, and they had raiſed a great Bliſter, and it had not been dreſſed ſo long, that the Napkin that was applied ſtuck ſo to it, that the Fleſh was jagged, and I was in a great deal of Pain, ſo that I did not mind ſo much as I ſhould have done at another time, what was ſaid.

Mr *Aſhton.* But pray, Captain, remember as much as you can what paſs'd.

Capt. *Billop.* But I'll tell you what I remember; I remember my Lord *Nottingham* aſk'd, who I took the Packet from? And you owned, I took it from you.

Sir *W. Wil.* Pray, Mr. *Aſhton*, give us leave to have done with him, and then you ſhall aſk him what you pleaſe. Pray go on, Captain *Billop.*

Capt. *Billop.* Then my Lord *Nottingham* ſent for Mr. *Elliot* in, and aſk'd him whither he was going? And he ſaid for *Flanders.* My Lord aſked him, what he was going there for? He ſaid, He was going to ſeek his Bread; he was turned out of all at Home, and he had rather go Abroad to ſeek his Bread, than ſtay at Home to ſtarve.

Mr. Serj. *Tremain.* Was this the Lead that you took fixed to the Packet?

Capt. *Billop.* Yes, Sir; that is the Lead.

Mr. Serj. *Tremain.* Did you take that Lead, with the Pacquet, out of Mr. *Aſhton*'s Boſom?

Capt. *Billop.* This was tied faſt to the Packet that was taken out of Mr. *Aſhton*'s boſom. Theſe honeſt Men ſaw me take it.

Sir *W. Wil.* Now, if you have a Mind to aſk him any Queſtions, you may.

Mr. *Aſhton.* Pray, Captain *Billop*, did not you ſearch me before you took the Pacquet upon me?

Capt. *Billop.* No, not that I remember.

Mr. *Aſhton.* Had not you taken ſome other Papers from me before?

Capt. *Billop.* No, Sir; I took none from you but the Pacquet.

Mr. *Aſhton.* Pray recollect yourſelf, for perhaps my Life may turn upon it: You are as much a Witneſs for me, as for the King; you are to ſwear the Truth, and the whole Truth.

Capt. *Billop.* And I will do you all the Juſtice I can, I will aſſure you.

L. C. J. Holt. Anſwer his Queſtion, Captain *Billop.*

Mr. *Aſhton.* Was not I the firſt Man that ſpoke to you after we came up?

Capt. *Billop.* No, Mr. *Elliot* was the firſt Man that ſpoke to me, that I knew.

Mr. *Aſhton.* Did not I aſk you to give me leave to go down for my Hat?

Capt. *Billop.* Truly, I don't remember that.

Mr. *Aſhton.* Did not you reply, That the Man ſhould go down and fetch my Hat?

Capt. *Billop.* 'Tis likely I might, but I don't remember it.

Mr. *Aſhton.* Had not you ſearched me then, and taken my Papers from me?

Capt. *Billop.* No, Mr. *Aſhton*; for upon the Oath that I have taken, I took no Papers that I remember, but the Papers that I took out of my Lord *Preſton*'s Pocket, and the Pacquet that I took out of your Boſom; for my Lord *Nottingham* aſk'd me, if that Pacquet was all the Letters I took? I told him no; and ſhewed him the Papers I took out of my Lord *Preſton*'s Pocket, and they proved to be of no Conſequence, and my Lord *Nottingham* gave them me again, and I carried them to my Lord *Preſton.*

Mr. *Aſhton.* Did I not go down into the Hole for my Hat?

Capt. *Billop.* I believe you might.

Mr. *Aſhton.* And was it not after that that you took the Papers out of my Breaſt?

Capt. *Billop.* Yes, I believe it was.

Mr. *Aſhton.* Where is your Man that called to you, and ſaid, I put ſomething in my Breaſt?

Capt. *Billop.* Here he is by me, if you would aſk him any thing?

Mr. *Aſhton.* You ſay, I ſpoke to you about diſpoſing of theſe Papers: Pray, from the Time that we came into your Boat, before we came on Board the *George* Man of War, did I ſpeak to you?

Capt. *Billop.* Yes, of the Pacquet you did: You ſaid, *What Good would it do me to injure ſo many Gentlemen?*

Mr. *Aſhton.* There paſs'd no more than general Diſcourſe before we came on Board.

Capt. *Billop.* Yes, Mr. *Aſhton*, I'll tell you another Thing you put me in mind of. When you ſaw that, though you were ſo eager with me, nothing would prevail, you ſaid, *I know Capt.* Billop, *and have known him many Years; and nothing will prevail on him, if he have no mind to it: And I know, if he will ſerve us, he will ſerve us generouſly, and like a Gentleman.*

Sir *W. Wil.* Speak that again.

Capt. *Billop.* He ſaid, *I know Capt.* Billop; *if he will ſerve us, he will do it generouſly, and like a Gentleman.*

L. C. J. Holt. Who ſaid ſo?——Capt. *Billop.* Mr. *Aſhton.*

Mr. *Aſhton.* Did I ſpeak to you to diſpoſe of the Papers after we came from on Board the Ship? I ſuppoſe you remember it was cold, and the Tilt was call'd for, to be laid over us, and I fell aſleep; and you know I never wak'd, nor ſpoke, till I came to *London-Bridge.*

Capt. *Billop.* Yes, yes; we had the Tilt over us.

L. C. J. Holt. Pray ſpeak your Queſtions out, that we may hear 'em, Mr. *Aſhton.*

Capt. *Billop.* Mr. *Aſhton* did go to Sleep a while; but he had many times urg'd me, and ſpoke to me to throw the Papers over-board.

L. C. J. Holt. Who was it that told you, *Every Dog had his Day?*

Capt. *Billop.* That was *Elliot.*

Sir *W. Wil.* Was there any Diſcourſe about turning of the Tide?

Capt. *Billop.* Mr. *Elliot* ſaid, *You have now an Opportunity to make your own Fortune, and you may be as Great, and as Rich as you pleaſe; for 'tis impoſſible the Tide can run long this way.*

Mr. Serj. *Tremain.* Did Mr. *Aſhton* ſay any thing about going along with them?

Capt. *Billop.* Yes: You may remember, Mr. *Aſhton*, that you ſaid, *Come, go along with us, you may do as well there, or better than you do here.*

Mr. Serj. *Tremain.* Did he tell you where you were to go with 'em?

Capt. *Billop.* No, Sir; nor I did not aſk him the Queſtion.

Mr. *Aſhton.* Pray, When did you give my Lord *Nottingham* theſe Papers?

Capt. *Billop.* Do you mean that Bundle that I took out of your Boſom?

Mr. *Aſhton.* Yes.

Capt. *Billop.* As ſoon as ever I followed my Lord *Nottingham* into his Room, I pull'd 'em out, and gave 'em him.

Mr. *Aſhton.* Did not you go out of my Lord *Nottingham*'s Room, and give my Lord *Nottingham* ſome looſe Papers?——Capt. *Billop.* Yes.

Mr. *Aſhton.* After this, was not my Lord *Preſton* called in to be examined?---------Capt. *Billop.* Yes.

Mr. *Aſhton.* How long was my Lord *Preſton* in the Room while you were out?-------Cap. *Billop.* I can't tell very well.

Mr. *Aſhton.* Pray, Sir, anſwer that Queſtion.

Capt. *Billop.* I believe it might be half a quarter of an Hour: I do not think it was much more.

Mr. *Aſhton.* I believe you muſt remember ſome ſort of Diſcourſe that was betwixt you and Captain *Elliot*, even to a Quarrel almoſt. And did you not ſpeak to my Lord *Nottingham*'s Servants, to fetch your Hat out of my Lord *Nottingham*'s Room?

Capt. *Billop.* Yes, I do remember that.

Mr. *Aſhton.* This muſt be a good conſiderable Time: It was all the Time that my Lord *Preſton* was within with my Lord *Nottingham*, that you were out?-------Capt. *Billop.* Yes, it was.

Mr. *Aſhton.* And all that while was not the Bundle of Papers out of your Sight?-------Capt. *Billop.* It lay upon the Table.

Mr. *Aſhton.* Pray, anſwer my Queſtion: Was it not out of your Sight?

Capt. *Billop.* Yes, it was.

L. C. J. Holt. Yes, yes; it muſt be, for he was out of the Room.

Mr. Serj. *Tremain.* When you came into the Room, did you find the Papers in the ſame Condition?

Capt. *Billop.* Yes, they were un-opened, except that my Lord had taken off the Lead, and a little Paper fell looſe from the reſt.

Mr. *Aſhton.* Pray, take Notice of that, Gentlemen.

L. C. J. Holt. But pray don't infer more from thence than it will bear.

Mr. *Aſhton.* It ſeems ſome of the Papers were taken out.

L. C. J. Holt. He does not ſay any ſuch thing, that ſome of the Papers were taken out.

Mr. *Aſhton.* He ſays, ſomething was cut, and ſome Papers fell out.

Capt. *Billop.* There was a little Paper or two tied to the great Pacquet.

L. C. J. Holt. What became of them?

Capt. *Billop.* They were cut looſe, but not opened.

Mr. *Aſhton.* How can you tell they were not opened?

Capt. *Billop.* Becauſe I ſtood by when they were cut.

Mr. *Aſhton.* But how can you tell that; for you ſee the little Papers taken, and they were looſe from the others?

Capt. *Billop.* They were taken from the great Bundle before I went out.

Mr. *Aſhton.* Had not my Lord opened thoſe Papers before you came in?

Capt. *Billop.* No.

Mr. *Aſhton.* How can you tell that?

Capt. *Billop.* I tell you, as near as I can judge, they lay in the ſame Poſture that I left them in.

Mr. *Aſhton.* Was the Pacquet ſealed when you took it?

Capt. *Billop.* No; but it was tied. There were ſeveral Letters in it that were ſealed; it was tied up very hard.

Mr. *Aſhton.* I do not queſtion but my Lord *Nottingham* will do me the Juſtice to ſay how long he was in the Room.

L. C. J. Holt. You muſt not comment, nor make your Obſervations till your proper Time.

Juryman. Pray, my Lord, I deſire he may be aſked, who was with my Lord *Nottingham* when my Lord *Preſton* was there?

Capt. *Billop.* There was Nobody elſe then.

Juryman. Then 'tis not probable they were altered before Captain *Billop* came in.

Mr. *Aſhton.* But I hope Probabilities ſhall not be Evidence to condemn any Man.

Juryman. Thoſe two little Papers you ſpeak of, were they ſevered from the Pacquet?

Capt. *Billop.* I cannot tell whether they were or no; they ſeemed looſe upon untying the Bundle

L. C. J. Holt. Were they cut in your Preſence?

Capt. *Billop.* Indeed, my Lord, I cannot ſay that I did ſee them cut.

Mr. *Aſhton.* Pray take Notice of that, Gentlemen of the Jury.

L. C. J. Holt. They are Twelve honeſt Gentlemen, they will do you right.

L. C. J. Pollexfen. Obſerve what the Witneſs ſays; he ſays, That he does not remember that they were cut in his Preſence, but he does not ſay they were not.

Mr. *Aſhton.* If he does not ſwear they were, it is reaſonable to conclude they were not cut in his Preſence.

L. C. J. Holt. He ſays, the great Pacquet was not opened, the two little Papers were looſe from the reſt of the great Bundle.

Capt. *Billop.* There might be two or three of them, leſs or more, I cannot tell.

Mr. Serj. *Thompſon.* You will be farther ſatisfied in this Matter upon my Lord *Nottingham*'s Evidence, I ſuppoſe.

Mr. Serj. *Tremain.* We have done with Capt. *Billop* for the preſent. Pray call *Johnſon.* [*Who was ſworn.*]

Sir *W. Wil.* Were you at the taking of that Gentleman, and the other in the Smack?——*Johnſon.* Yes, I was.

Sir *W. Wil.* Then pray give an Account of the Matter how it was?

Johnſon. We went down in a Pleaſure Boat, and went to the *Tower*, we ſet through Bridge againſt Tide, my Lord of *Danby* was with us; and when we came to *Tower Wharf*, there they went to the *Tower* for Arms, and we ſtayed till Ebbing Water, and rowed to *Graveſend*; and when we came to *Graveſend*, we went on Board ſeveral Ships, and I thought we were going a-Preſſing; and we ſtayed at *Graveſend* the Time of the Writing of a Letter, and then we went both into the Boat again, and rowed after a Smack that had gained of us; but that not being the Smack, we turned back again, and then it was

High

high Water: And when we came to the upper end of the *Hope* we saw several Smacks coming, and there was a Fisherman on board that said, That was the Smack the Captain enquired after, that was coming down there; and when they came on board, the Captain said, there were two or three brave Men, and he hoped he could spare one of them: and the Master said, he hoped he would take none of them, because they had a Protection, which he shewed to the Captain. Then the Captain went in and bid me take some small Arms, and go on board with him, and told the Master he must look a little further; and the Boards were taken up, and I saw a great Piece of Roast-Beef, and under that, my Lord *Preston*, and Mr. *Elliot*, and this Gentleman, Mr. *Ashton*: My Lord *Preston* came up first, and Mr. *Elliot* next to him; and I see this Gentleman take up something and put it into his Bosom, and I told the Captain of it, and he asked him what it was, and he said, Nothing but his Handkerchief, and plucked out the Handkerchief; but the Captain put his Hand into his Bosom, and pulled out something else.

L. C. J. Holt. What was it?

Johnson. It was a Parcel of Papers tied up, with a Piece of Lead tied to it, for I came up close after him, and see him take it up.

Sir *W. Williams.* What else were there found with the Papers? was not there some Seals?

Johnson. That was afterwards; but when the Captain asked him what he had gotten in his Bosom, he pulled out his Handkerchief, and said, Nothing but his Handkerchief; but the Captain took the other Papers out of his Bosom, and so I went down, and there were the two Seals, and I took them up; and when I came up, *Elliot* had a pair of black Whiskers on, and he borrowed a Pair of Scissars and cut them off, and said, he should remember me again if ever he lived, he should know me by my Tooth being out. And coming up into *Long-reach*, *Elliot* was a cold, and got to the Oar and rowed, and said, You row as if you were rowing to Prison; and he wished that a Thunder-bolt might drop into the Boat, and that *London-Bridge* might drop down upon his Head. And when we came up to *Whitehall*, I stood a Guard over them.

Juryman. Did you see Captain *Billop* take the Packet of Letters from that Gentleman's Breast?

Johnson. Yes, I did.

Juryman. Did you belong to Captain *Billop?*

Johnson. Yes, I was one of the Boat's Crew.

Mr. *Ashton.* Had not I been up and searched before?

Johnson. Yes, I think you had been up before.

Mr. *Ashton.* And then you saw me take up the Pacquet off from the Ballast?

Johnson. Yes, I saw you take it out of the Ballast and put it into your Bosom.

Mr. *Ashton.* Gentlemen, I hope you will be pleased to take notice of that.

L. C. J. Holt. No doubt of it they will.

Mr. *Ashton.* Did not that Bundle of Papers that was taken out of my Breast, did not they lie near to the Place where the Seals lay?

Johnson. Yes, it lay just by them.

Mr. Serj. *Thompson.* Pray set up Captain *Billop* again *(which was done.)* When you brought these Papers to *Whitehall*, Captain *Billop*, who did you deliver them to?

Captain *Billop.* To my Lord *Nottingham.*

Mr. Serj. *Thompson.* After he received them, what did he with them?

Captain *Billop.* After he had examined all these Gentlemen, he went to opening of the Papers, and he desired me to stay in the Room till they were opened, which I did; and my Lord looking on some of the Papers said, If this Pacquet had gone, we had quickly been visited by the *French.* With that I took them up, and look'd into them. My Lord said, I might look into as many Papers as I pleased; but I was very uneasy, and full of Pain, and had more mind to be gone, and be a Bed, than looking into Papers; but several of the Papers I did look into, and several I put my Mark upon; and the next Day at the Council, what of them I did know, I did put my Mark upon.

Mr. Serj. *Thompson.* After my Lord *Nottingham* had perused them, what did he do with them?

Captain *Billop.* My Lord put them up in a Cover, and tied them with a Piece of Twine, and put his Seal upon them, and gave them me, and desired me to carry them to my Lord President; which I immediately did; and, without stopping, carried them to my Lord President.

Mr. *Ashton.* When was this, Sir? Was it that very Night that we were brought to *Whitehall?*

Captain *Billop.* Yes.

Mr. Serj. *Tremain.* Then we must desire my Lord *Nottingham* to be sworn.

The Earl of Nottingham *Sworn.*

Mr. Serj. *Thompson.* Will your Lordship please to give the Court an Account how these Papers came to your Lordship, and how your Lordship disposed of them?

Earl of Nottingham. Captain *Billop* came to my Office——

Mr. *Ashton.* I humbly desire your Lordship would please to speak louder; for I cannot hear your Lordship, and I fear the Jury cannot.

E. of Nottingham. I speak as loud as ever I can, but I have a great Cold.

L. C. J. Holt. You may hear my Lord very well, if the Court be but silent.

E. Nottingham. Captain *Billop* brought to me a Pacquet tied about with a Packthread, to which there was a Piece of a Leaden Pipe fixed, in which Pacquet there was stuck in another Paper; I think there was but that one besides the Cover, but what it was particularly I do not remember: this Pacquet was laid upon the Table while he was by; and I called in my Lord *Preston*, not being willing to make him stay, and after I had some Discourse with my Lord, to examine him what Account he could give of these Proceedings; then I called in yourself, Mr. *Ashton*, and Captain *Billop* was by also, but the Pacquet so tied with the Packthread, I cut open in *Billop*'s Presence with a Pair of Scissars; the same Papers that were in that Pacquet, together with the little Paper that was stuck in, I tied up; I am sure I sealed them in a Sheet of Paper, and gave them back again to Captain *Billop* to carry them to my Lord President.

Sir *W. Williams.* Captain *Billop*, you have already declared, that all you received from my Lord *Nottingham* you carried to my Lord President.

Captain *Billop.* All the Papers that I received from my Lord *Nottingham*, just as I received them, sealed with my Lord's Seal, I went directly to my Lord President's, and gave them him.

Sir *W. Williams.* Pray, my Lord, did your Lordship deliver to Captain *Billop* all the Papers that you received from him?

Earl of Nottingham. My Lord, all the Papers that Captain *Billop* brought to me, that were in the Pacquet (for he brought some Letters that he took out of my Lord *Preston*'s Pocket, that were of no Consequence) but all the Papers that were in the Pacquet, I delivered back to Captain *Billop*, sealed as I received from him, and no more; and no others; for the other Letters, they being from my Lord *Preston*'s Children, and not relating to the Publick, I gave them to him to give my Lord *Preston* again.

Mr. *Ashton.* My Lord, I humbly beseech your Lordship to tell the Court how long my Lord *Preston* was with your Lordship in the Room?

E. Nott. Truly I am not able to tell you particularly how long it was, I believe it might be about a quarter of an Hour, or scarce so much.

Juryman. Was there no body with your Lordship, when Captain *Billop* was out, but only my Lord *Preston?*

E. Nott. No, not that I know of.

Mr. *Ashton.* My Lord, I have one Favour more to beg your Lordship, I humbly pray your Lordship will please to tell the Court and Jury what Answer I gave to your Lordship, when you asked me how I came by those Papers?

E. Nott. As near as I remember, the Account that you gave of them was, That you went down again after you were come up, as you said, to fetch your Hat; and that when you did go down into the little Hole to fetch your Hat, you brought these Papers with you.

Mr. *Ashton.* My Lord, this was the Account I did give. Now this very well corresponds with that Man's Evidence, that says he saw me take up the Papers and put them into my Breast.

L. C. J. Holt. He does say so, and this does all very well agree.

Mr. *Sol. Gen.* Now we desire my Lord President would be pleased to be sworn. *The Lord President sworn.*

Mr. Serj. *Thompson.* Pray, my Lord, will your Lordship please to declare to the Court what Papers Captain *Billop* brought to your Lordship, and how your Lordship disposed of them?

L. President. Captain *Billop* did bring me a Pacquet tied with a Packthread, and that was sealed with my Lord *Nottingham*'s Seal, I knew it to be his Seal; and he told me, that my Lord *Nottingham* commanded him to bring the Pacquet to me. I opened the Pacquet, and perused all the Papers; it was very late, and I locked them up till Morning, and I then carried those very Papers to the King, and in the King's Closet, at *Kensington*, the King read some of them, and in my Sight, for I never parted from the King, but was by all the while: The King put up all the Papers again, and commanded me to call a Cabinet Council, and to let them be delivered there to the Council; accordingly I did deliver them Paper by Paper, and they were all marked there by my Lord *Sydney*, who is here present; and they were then delivered into the Hands of my Lord *Sydney.*

L. C. J. Pollexfen. Will you please to ask my Lord any Questions, Mr. *Ashton?*

Mr. *Ashton.* My Lord, if your Lordship will be pleased to pardon me, I would ask your Lordship, Did any of your Lordship's Servants, or Family read any of these Letters?

L. President. No, not one.

Mr. *Ashton.* Were they locked up where any of your Lordship's Secretaries, or Servants could come to them?

L. President. No, I lock'd them up in a strong Box in my Closet.

Mr. *Ashton.* My Lord, I only desire this Favour further of your Lordship: Your Lordship, at the Committee of the Council was pleased to ask me, how I came by those Papers; I presume you may remember, and I pray your Lordship to declare, what Answer I gave.

L. President. Truly, Mr. *Ashton*, to tell you Truth, I do not remember the Particulars; I remember you denied every Thing; I can only say that, in the general; but what you said in particular I cannot remember.

L. C. J. Pollexfen. Do you put my Lord in mind if you can; see whether he does remember it.

Mr. *Ashton.* My Lord, I only desire to ask my Lord President, whether I did not tell him I went down, after I had been search'd, into the Hold, and there I see the Papers lie, and brought them up, and put them into my Breast; they were no sooner in my Hands but Captain *Billop* had them in his; for the Man called and said, This Gentleman has something in his Breast, and the Captain put in his Hand and pulled it out.

L. President. Truly, Mr. *Ashton*, I do not remember the Words that you used, but remember you said something to which I made answer, What makes it matter, They were found upon you, and taken out of your Bosom, do you look to it how you came by them. I do not remember what you said, for I cannot remember particular Words, but I believe you might say some such thing.

Mr. *Sol. Gen.* Then, pray, my Lord *Sydney*, will you be pleased to be sworn. *The Lord* Sydney *sworn.*

Mr. *Sol. Gen.* Will your Lordship be pleased to declare what Papers you received from my Lord President?

L. Sydney. At the Cabinet Council my Lord President delivered a Pacquet of Papers, I received them every one there, and mark'd them, and put them into my Pocket.

Mr. Serj. *Tremain.* Did your Lordship deliver them to any Person afterwards?

L. Sydney. The next Day, or the Day after, I gave them to Mr. *Bridgman* to copy out, and he delivered them back to me again.

Mr. *Sol. Gen.* Pray, my Lord, give me leave to ask this Question——

Mr. Serj. *Thompson.* Your Lordship had mark'd them before you delivered them to Mr. *Bridgman* to copy?

L. Sydney. Yes, I mark'd them at the Council Table, at my Lord *Nottingham*'s Office.

Mr. *Sol. Gen.* My Lord, those Papers that you mark'd, were the same Papers that my Lord President brought, and delivered in at the Council?

L. Sydney. Yes, the very same.

Juryman. My Lord, shall we have Leave to ask my Lord *Sydney* a Question?

L. C. J. Holt. Ay; what is it?

Juryman. Pray, my Lord, did the Pacquet come to you sealed? That which was taken from this Gentleman, was it sealed when it came to you?

Mr. *Sol. Gen.* No, it had been opened by my Lord *Nottingham*, and my Lord President.

L. C. J. Holt. Sir, you are under a Miſapprehenſion of the Matter. My Lord *Nottingham*, after he had opened them, ſealed them up again, and delivered them to Captain *Billop*; Captain *Billop* carried them ſealed to my Lord Preſident; my Lord Preſident opens them, and lays them up; they were never out of his Poſſeſſion; he carries them to the King; the King read ſome of them in his Lordſhip's Preſence; he delivers them at the Cabinet Council to my Lord *Sydney*; and my Lord *Sydney* ſwears he read them there, marked them, and when he had done, put them in his Pocket.

Mr. *Sol. Gen.* My Lord *Sydney*, will your Lordſhip be pleaſed to look upon theſe Papers, and ſee if theſe be Part of them.

L. Sydney. I know them very well, I have read them ten Times, I marked them at the Council, and that is my Mark.

Mr. *Sol. Gen.* Pray, my Lord, are thoſe two Papers that you have in your Hand, Two of thoſe Papers that my Lord Preſident delivered at the Cabinet?

L. Sydney. Yes, that they are.

Mr. *Sol. Gen.* My Lord Preſident, will you pleaſe to look upon them.

(Which his Lordſhip did.)

L. Preſident. Theſe are two of the ſame Papers that Captain *Billop* brought me.

Mr. *Sol. Gen.* Now we ſhall deſire to have them read; but give me leave to obſerve to you, That one of them is a Copy of the other; only in the one ſome Words are written ſhort, that are written out at length in the other.

Juryman. Pray, my Lord, I deſire to aſk, are they of the ſame Hand?

Mr. *Sol. Gen.* No, they are of different Hands.

Mr. Serj. *Thompſon.* Pray, Gentlemen of the Jury, take Notice, and obſerve theſe Papers, for there is a great deal of Matter of great Moment in them; for you cannot expect the King's Counſel ſhould repeat every thing that is in ſo many Papers as we ſhall read; it is impoſſible we ſhould take Notice of all.

L. C. J. Holt. Or I either, therefore pray, Gentlemen, obſerve what is read, for I ſhall be able only juſt to ſtate the Evidence to you.

Mr. *Aſhton.* My Lord, I hear them ſay, one of thoſe Papers is a Copy of the other; I deſire, the Original may be read, and not the Copy.

Mr. Serj. *Thompſon.* Who knows which is the Original?

L. C. J. Holt. Look you, Mr. *Aſhton*, we don't know which is the Original, or which is the Copy, they are both found together, they contain the ſame Matter, and the ſame Words: It may be you can tell which is the Original.

Mr. Serj. *Thompſon.* You may look upon them your ſelf, and tell us which is the Original, if you pleaſe.

Mr. *Aſhton.* That is very well obſerved, Sir. That is throwing Water upon a dead Mouſe. Then I deſire both of them may be read.

Mr. *Sol. Gen.* Indeed, Mr. *Aſhton*, I think there is a particular Reaſon why you ſhould not deſire to have the Copy read, becauſe leaſt it ſhould prove to be your own Hand-writing.

Mr. *Aſhton.* Pray, let both be read.

Cl. of Peace reads. The reſult of a Conference ——

Mr. Serj. *Tremain.* Pray attend, for this is the Scheme of the whole Work.

Cl. of Peace reads. The Reſult of a Conference, *&c.*

And the other was likewiſe read as before.

L. C. J. Pollexfen. Pray let Mr. *Aſhton* ſee that Paper.

The Paper was handed to Mr. Aſhton, *being one of the Papers before read.*

L. C. J. Pollexfen. Mr. *Aſhton*, look upon that ſame Paper a little, ſatisfy your own Mind a little whoſe Hand that Paper is in. Look upon it well, I would have you be ſatisfied about it. Look particularly upon the latter Part of it.

Mr. *Aſhton.* My Lord, I have looked upon it, I have ſeen it all.

L. C. J. Pollexfen. Come then, give it me back again, and think of it a little in your own Heart.

Mr. *Sol. Gen.* My Lord *Sydney*, pray, will your Lordſhip look upon this Paper.

L. Sydney. This is one of the Papers that was, among the reſt, delivered by my Lord Preſident, at the Cabinet.

Mr. *Sol. Gen.* Pray ſhew it my Lord Preſident; What ſays your Lordſhip to it?

L. Preſident. This was one of the Papers I gave my Lord *Sydney*, and was brought to me in the Pacquet by Captain *Billop*.

Cl. of Peace reads. That the King would return with a Deſign of making an entire Conqueſt of his People———

Mr. Serj. *Thompſon.* Pray, my Lord, give me leave, before it be read, to acquaint the Jury what this is, that they may make the better Obſervations upon it. This, Gentlemen, is the Heads of a Declaration that was intended to be publiſhed when the *French* came; and you will ſee what it is when it is read. Pray obſerve it.

Cl. of Peace reads. That the King will return, *&c. As before.*

Mr. Serj. *Tremain.* The next Paper is an Account which they had taken with them of the Force of the Kingdom, of the Ships, particularly how many in Number, what Rates, what were in Repair, what out of Repair, and what a Building. Pray ſhew it my Lord *Sydney.*

L. Sydney. This is another of the Papers that I received from my Lord Preſident, and marked at the Cabinet.

Mr. Serj. *Thompſon.* Then ſhew it my Lord Preſident.

L. Preſident. This is one of the Papers that were in the Pacquet that Captain *Billop* brought me. *Clerk of the Peace reads.*

Mr. *Sol. Gen.* Pray, my Lord *Sydney*, look upon theſe Papers, and tell where your Lordſhip had them.

The Papers were ſhewn both to the Lord Preſident and the Lord Sydney.

L. C. J. Holt. My Lord Preſident ſays he received them from Captain *Billop*, and gave them to my Lord *Sydney*; and my Lord *Sydney* ſays, they are the ſame he received from my Lord Preſident.

Juryman. Are thoſe the Papers that have been read, my Lord?

Mr. *J. Eyres.* No, but they both ſay the ſame, as to thoſe that have been read.

Juryman. Then pray, my Lord, what are thoſe Papers that are going to be read?

Mr. Serj. *Tremain.* Theſe are two Letters, Gentlemen, that are written, giving an Account how the Affairs in *England* ſtood with reference to the Perſons Concerns that they are written to; and there is a particular Paſſage in one of them, How their young Maſter prevailed in his Intereſt, and got Ground of his Adverſaries. If you obſerve them, you will eaſily underſtand what is meant by them.

Clerk of the Peace reads. This is directed for Mr. *Redding*, New-year's Eve, Though the Bearer of this, *&c. As before.*

Clerk of the Peace reads. This is directed for Mrs. *Redding.* As it is impoſſible for me to expreſs, *&c. As before.*

Mr. *Sol. Gen.* Now we deſire my Lord *Sydney*, and my Lord Preſident would look upon theſe Papers.

Juryman. My Lord, I deſire the former Part of that laſt Letter may be read again. *Which was done.*

L. Sydney. Theſe I had from my Lord Preſident.

L. Preſident. And I had them out of the Pacquet that Captain *Billop* brought me.

Mr. Serj. *Tremain.* If your Lordſhip pleaſe, I will open them to the Jury. Here are two Letters, in one of them there is an Account given, that they were heartily ſorry they were diſappointed, and that they had not been here already, but hoped they would be here as faſt as they can; that the Match was concluded, the Settlement prepared, and no doubt but the Daughter's Portion would be well ſecured, if they would come quickly.

Clerk of the Peace reads. Dec. 31, 1690. 'Tis directed for Mrs. *Charlton.* I muſt not let this Bearer depart, Madam, *&c. As before.*

Mr. Serj. *Tremain.* That Letter tells you that the Daughter's Portion would be well ſecured; this that we now produce will tell you, how it ſhall be raiſed. It ſays, the old Tenants are weary of their Maſter, and a little Matter, if he would but appear in *Weſtminſter-Hall*, would redeem the Eſtate; and the Cauſe might be brought to a final Hearing before the End of *Eaſter* Term, if they made haſte, and it were well ſollicited.

Clerk of the Peace reads. This is directed for Mr. *Jackſon, Dec.* 31, 1690. The Bearer hereof will give you, *&c. As before.*

Mr. *Sol. Gen.* We muſt deſire my Lord Preſident, and my Lord *Sydney*, would be pleaſed to look upon theſe Papers.

L. Preſident. I received theſe from Captain *Billop* in the Pacquet, and gave it to my Lord *Sydney.*

L. Sydney. Theſe are ſome of the Papers I had from my Lord Preſident.

Mr. Serj. *Tremain.* The Letters we now produce to be read, ſeem to be written by a Man that was involved in a great Trade, that had great Projects in his Head, and drawn many Schemes in his own Brain how to carry on the Trade; he directs what Sort of Wares he would have ſent, what was proper for their Markets, that he had got many a new Cuſtomer, and hoped they ſhould not be diſobliged; that all muſt be ſent before the Firſt of *March*, at leaſt before the Tenth, or the whole Summer Profits would be loſt.

Clerk of the Peace reads. 31 *Dec.*

L. C. J. Holt. Read the Superſcription firſt.

Cl. of the Peace. There is no Superſcription, my Lord, at all.

L. C. J. Holt. Well, read on.

Clerk of the Peace reads. Dec. 31. The Interruption of the former Correſpondence had a very ill Effect many ways, *&c. As before.*

Mr. Serj. *Tremain.* Gentlemen, doubting that Letter might not be preſſing enough, here is another to the ſame Effect.

Clerk of the Peace reads. Dec. 31. It is a Preſumption incident to thoſe that are any ways upon the Spot, *&c. As before.*

Mr. Serj. *Tremain.* One would imagine this Letter were written by ſome Perſon that uſed to talk Cant, that he is ſo ready at it.

Mr. *Sol. Gen.* Pray, my Lord Preſident, what ſays your Lordſhip to theſe Papers?

L. Preſident. Theſe two Letters were in the Bundle that Captain *Billop* delivered to me, and I delivered them to my Lord *Sydney.*

L. Sydney. Theſe are ſome of the Papers I had from my Lord Preſident, at the Cabinet.

Mr. Serj. *Tremain.* That firſt of theſe Papers is a Letter wherein the Party gives an Account of his own Condition here, and how he would venture to bring about what was deſired.

Cl. of the Peace reads. 31 *Dec.* 1690. Was my Condition more deſperate and uneaſy than it is, *&c. As before.*

Mr. Serj. *Tremain.* This little Paper was incloſed in the other.

Cl. of the Peace reads. I beg, *&c. As before.*

Mr. Serj. *Tremain.* Now ſhew this Paper to my Lord Preſident, and my Lord *Sydney.*

Which was done.

L. C. J. Holt. My Lord Preſident, and my Lord *Sydney* ſwear the ſame for this Paper, as for the reſt.

Mr. Serj. *Tremain.* This Paper ſhews they were going about a Deed that they did not deſire to have known; 'tis a Key how to explain their Meaning.

Clerk of the Peace reads. For Mrs. *Anne Ruſſel*, &c. *As before.*

Then three other Papers were ſhewn to, and ſworn by the Lord Preſident, and the Lord Sydney, *to be Part of the ſame Papers.*

Mr. Serj. *Tremain.* The Papers that we are going to read are theſe. Gentlemen, here is a Letter of Recommendation in behalf of one Mr. *Orbinet*, which is a Name, they pretended of ſome Perſon that was at *Paris*, or to go there, and 'tis written by one Mr. *Dellivere*, to his Correſpondent there; and he tells him, the Bearer had ſomething to diſcloſe to him, and that he might have an entire Confidence in him: but the Letter of Recommendation alone, without a Sum of Money, they reckoned would meet with a bad Welcome in *France*, and therefore they take 500 *l.* with them, and here are two Bills to pay it.

Then Mr. Humphrey Levermere *was ſworn to interpret them, being in* French, *(which he did) and read them as in the former Trial.*

Juryman. Were theſe Bills found in that Pacquet?

Mr. Serj. *Tremain.* Yes, Yes; they are ſworn to by both thoſe Lords.

Mr. *Sol. Gen.* Now, pray, my Lord, will you pleaſe to look upon theſe Papers?

The Lord Preſident and Lord Sydney *both teſtified, That thoſe were Part of the Papers.*

Mr. Serj. *Thompſon.* This next Paper that we give in Evidence is very ſhort. It ſeems to be a Table for the Memory of the Perſon that was to carry it? They are ſhort Heads for the Memory, conſiſting of a great many Particulars; You will make your Obſervations upon them, and what Judgment you think fit of them.

Mr. Serj. *Tremain.*

Mr. Serj. *Tremain.* My Lord, I desire to take Notice of these Papers that we are now going to read; you will observe these Things in them, which are worth your remarking, Gentlemen; because these Papers that we now read to you, are of themselves sufficient to prove every Article in the Indictment: For these Papers give an Account of the Ships, their Number and Force, the Forts of the Kingdom, how they are Manned, how they may be surprized, where the *French* Fleet should Fight, where they should Assault us, how they should hinder the *Dutch* and *English* Fleets from joining, what Number of Soldiers would be sufficient, and what Number of Ships in *Newcastle* to plague the City of *London*, how to manage this whole Affair; and it gives Characters of the Clergy of *England*, and particularly of the City of *London*, and says, they are the worst of Men.

Mr. Serj. *Thompson.* No, Brother, 'tis the worst of all the Clergy.

L. C. J. Holt. Come read them.

Clerk of the Peace reads. Lady *D.* 2000*l.* &c. *As before.*

The Jury desired to see the last Papers, and had them delivered to them.

Mr. *Sol. Gen.* Then we rest it here, to see what the Prisoner will say to it.

L. C. J. Holt. Mr. *Ashton*, the King's Counsel have done their Evidence for the King, what have you to say for yourself?

Mr. *Ashton.* My Lord, I humbly desire to know of your Lordship, whether all the Letters are read, that were read at the Trial of my Lord *Preston?*

L. C. J. Holt. What is that material to you, whether they be or not?

Mr. *Ashton.* My Lord, I am informed, that there were several Letters, that particularly name my Lord, implying him to be the Bearer, and I desire those Letters may be read.

Mr. Serj. *Thompson.* With all my Heart, if you do desire it, it shall be read, we do not think it material.

Mr. *Ashton.* I do desire it; it will be plain, I believe, from hence, that I could know nothing at all of this Matter; and if your Lordship please, my Lord, to observe it, three or four of these last Papers, as Mr. Serj. *Tremain* observed, were the Ground-Work of all this Business, which refers to *Portsmouth* and *South-Sea*, and some other Papers; these, I think, with Submission, were proved to be the Hand of another Gentleman, and I desire it may be proved again to the Jury, by which I think it will be plain, that they do not affect me.

L. C. J. Holt. Look you, Mr. *Ashton*, it is not proved to be your Hand, nor pretended to be so.

Mr. *Ashton.* But positively proved to be another's Hand, as I am informed, and 'tis that which Mr. Serj. *Tremain* observed, was the Ground-Work for carrying on the whole Design. I presume the Witnesses are in Court that proved it then, and I hope your Lordship will be so kind as to let it be proved now; they did prove it to be another Person's Hand upon a Trial not long ago.

L. C. J. Holt. If you have a Mind to call any Witnesses to prove the Papers to be another's Hand, you may call them.

Mr. *Ashton.* I hope the King's Witnesses are now in Court that did prove them to be his Hand-writing, and they'll prove it now I suppose.

L. C. J. Holt. If you have a Mind, you may call them; they have not a Mind to produce them for the King.

Mr. *Ashton.* I know not where they are, my Lord. Pray Mr. *Aaron Smith*, be you so kind as to call them.

L. C. J. Pollexfen. You should have sent and subpœna'd them to be here.

Mr. *Ashton.* Mr. *Warr* is there, my Lord, I desire he may be asked the Question: and I believe Mr. *Blane* is in the Court, pray let him be asked.

L. C. J. Holt. Mr. *Warr*, you are called by the Prisoner, as a Witness, to prove my Lord *Preston*'s Hand.

Mr. *Ashton.* Mr. *Warr*, Mr. *Townsend*, and Mr. *Blane*, I desire may be all asked.

L. C. J. Holt. Mr. *Ashton*, you have insisted upon it, that these Papers were my Lord *Preston*'s own Writing.

Mr. *Ashton.* My Lord, I do insist upon it, to know whether they were not proved to be his Hand.

Mr. Serj. *Tremain.* Yes, they were so, 'tis agreed.

Mr. Serj. *Thompson.* We do grant the King's Witnesses proved, that they did believe them to be my Lord *Preston*'s Hand.

L. C. J. Holt. The King's Counsel do admit, that these three last Papers were not your Hand, but they admit them to be my Lord *Preston*'s Hand, and 'tis very well done of them to admit it; so that now 'tis to be taken for granted, that those three last Papers were my Lord *Preston*'s Hand.

Mr. *Ashton.* Then, my Lord, I desire the Substance of those Papers may be the more press'd upon the Jury, because Mr. Serj. *Tremain* observed that the whole Design in the Scheme of it lay in those Papers, and they are not my Hand, but another's; and for what is in them I know nothing, nor am concern'd.

L. C. J. Holt. What have you farther to say, Sir?

Mr. *Sol. Gen.* You mentioned another Letter, which you did desire should be read.

Mr. *Ashton.* Ay; two or three where my Lord is nam'd.

Mr. *Sol. Gen.* This is the Letter I suppose you mean, the Clerk shall read it.

Clerk of the Peace reads. *Sir, I vow to you, I do not repine at having lost all for your Sake*, &c. *As before.*

Mr. *Ashton.* Gentlemen, I hope you will observe, in that Letter my Lord is called the Bearer; and it tells that he brings Papers with him, by which it is plain, that you cannot imagine I could know any Thing of these Papers. And, Gentlemen, it has not appeared, by any Evidence that has been given, that I knew any thing more, than that they were unfortunately found upon me: But with Submission, I believe there is another Letter, if I am informed right, wherein my Lord is named, and called, my Lord the Bearer.

Mr. *Sol. Gen.* Sir, I do assure you now we have to my Observation, read every Letter, and every Paper, that was read on *Saturday*.

Mr. *Ashton.* Mr. *Solliciter*, I am satisfied, for I am confident you would not affirm it, if it were otherwise.

L. C. J. Pollexfen. There is not any Letter that says my Lord the Bearer, but my Lord will give you an Account, so and so; the Bearer will tell you these and these Things. Will you have it read again? You shall if you will.

Mr. *Ashton.* I am unwilling to take up your Lordship's Time, unless the Jury desire to have it read again.

Juryman. Pray, my Lord, when that Letter was read on *Saturday*, how was it construed by the Court? How did they take it then?

L. C. J. Holt. We did take it then, because my Lord was mentioned, that he might possibly be the Bearer.

L. C. J. Pollexfen. It is very probable, and so it was understood then, that the Lord mentioned in the Letters was my Lord *Preston*, and so that my Lord was the Bearer that could give an Account of the Countess's Condition; and in the Beginning of those Papers that are of my Lord's Hand, there is mentioned so much Money for the Lady *D*——, which is my Lady *Dorset*, I suppose, that is there meant, and that writ that Letter.

Mr. *Ashton.* No, my Lady *Dorchester*.

L. C. J. Pollexfen. *Dorchester*, I cry your Mercy; and it is probable, the same Reason is a Reason still to make it believed that my Lord *Preston* was meant.

Mr. *Ashton.* I think my Lord Chief Justice was pleased to observe, as I have been informed, in giving his Charge to the Jury, that these Papers, some of them naming my Lord, must be meant of my Lord *Preston*, there being no other Lord but he; and he likewise gave another Reason; says he, They lay by my Lord's Seals that were produced, and therefore it was plain, they could not be *Ashton*'s nor *Elliot*'s.

L. C. J. Holt. No, not so, but my Lord might be concern'd, because my Lord's Seals were there where the Papers were found.

Mr. *Ashton.* I am wrong inform'd, if those were not the Words my Lord Chief Justice *Pollexfen* used.

L. C. J. Pollexfen. What do you say were the Words? If you will repeat them, I'll tell you as near as I can.

Mr. *Ashton.* Your Lordship seem'd to infer, That my Lord being nam'd, and the Bearer in the same Paper, that of Consequence, that must be my Lord *Preston*, and the Papers must be his; and you did give another Reason for it, to inforce it, that the same Man that saw me take them up, saw them lie by the Seals, which were proved to be my Lord *Preston*'s, from whence your Lordship did say, it is plain they were my Lord *Preston*'s, and that *Ashton* or *Elliot* could not be concerned in them.

L. C. J. Holt. You mistake that Matter, sure there was not any such Word said, for that Evidence that tended to convict my Lord *Preston*, did by no means tend to acquit you; the Question then was, How far my Lord *Preston* was concerned; my Lord insisted upon it, says he, They were not taken from me, but from Mr. *Ashton*; there the Question was not about you.

Mr. *Ashton.* I humbly hope, my Lord, you will forgive me for insisting upon these Matters, because I am for Life.

L. C. J. Pollexfen. I would do you all the Right I can, I assure you, Mr. *Ashton*: but certainly, there was no such Thing said as you have mentioned.

Mr. *Ashton.* My Lord, I do not question but you will do me Right, and I thought so, when I chose the Jury out of the first that appeared, without challenging any.

L. C. J. Holt. Well, Sir, pray go on to your Defence.

Mr. *Ashton.* My Lord, my own Defence will be very weak upon the Whole, for I am very illiterate and unskill'd in the Laws, but where I do fail of taking Advantage, to observe what may be for my Advantage, I hope your Lordships will be so kind to me, as well as just (I may call it) to yourselves, being upon your Oaths, as to take Notice of it. My Lord, in the first Place——

Mr. Serj. *Tremain.* Before Mr. *Ashton* proceeds, I would observe one Word in a Letter that has been read, which is one of these Papers; it says, *I say nothing of another Gentleman that takes Opportunity to see those Parts, but he has shewn a Zeal and Sincerity in the Affair equal to most.*

Mr. Serj. *Thompson.* You hear, Gentlemen, that there is Notice taken of another Person besides the Bearer.

Mr. *Ashton.* Pray, my Lord, is it any Consequence that I must be the Person that must be meant, or that I must know what the Contents of the Letter was. There was another besides me, and so it is not plain, who was meant; or if I were the Man meant in this Letter, it must not therefore follow that I must know of it.

Mr. Serj. *Tremain.* I did not mention it as a Proof that you were the Person meant, but only to shew that there was another Person besides my Lord taken Notice of in them.

L. C. J. Holt. I must confess, I think Mr. *Ashton* observes right, it does not concern him, for as well as he was there, there was another, and it is uncertain whether it relates to him or the other, and so it signifies nothing at all; that's my Mind. Pray go on, Mr. *Ashton*.

Mr. *Ashton.* My Lord, upon the Whole I have this to observe; first as to my Business of going into *France*, I must ingenuously own it, though I protest to you I never own'd it or named it to the Woman, though she had sworn it, but yet I do now. My Design was to go to *France*, and I had very great and good Reason for it, I think; I had endeavour'd all Ways I could in the World to procure a Pass to go to *France*; 'tis very well known, I did Business under Lieutenant-General *Worden*, that died half a Year ago; his Accounts are now depending, and such Accounts as may be prejudicial in some Points to his Family, to whom I have always own'd, and must, a great Obligation, and would be very glad upon all Occasions to serve it, and all the Branches of it: This was not the Whole nor the only Design I had in going thither, but I had likewise some Business of my own, I have a considerable Sum of Money owing me, if it be necessary to prove it, I can prove it by a Bond from a Person that is there; a great Sum it is, a very considerable one to me at least. And, my Lord, I did think, if I did not go myself, it was impossible for me to do any thing in that Affair; and that was the true and only Reason of my Design in going to *France*, having been out of Hopes of getting any other Convenience otherways; this was not a Design just now formed, as if I were just now upon some Plot concerning the Publick, but it has been my Design ever since Lieutenant-General *Worden* died, and he upon his

Death-bed

Death-bed ingaged me to do it; and I once went down, hoping to have gone from *Dover*, and there I was apprehended and taken. And, my Lord, I have uſed all manner of Endeavours to go other ways, but they have always failed me, and this way I hoped would have taken: My Lord, I do own I did hire the Boat, and I did pay the Money; but, with Submiſſion, I think that is not any manner of Treaſonable Act, my Lord; perhaps it is an ill Act, but it does not amount in the leaſt to Treaſon going to the King's Enemies, ſuppoſe I went upon that Account, that is no manner of Treaſon in the World; carrying Papers to the King's Enemies, except it be proved that I was privy to them, and knew the Contents of them, if Lawyers inform me right, is not Treaſon; then what remains? 'Tis true, I muſt own the Papers were found upon me, and I believe there is nobody that has heard the Evidence that has been given, but muſt readily conclude, that I found them in the Place where the Seaman ſays I took them up; and beſides, my Lord, there is not any manner of Proof ſo much as aim'd at by the King's Counſel in all their Evidence, that I was privy to any one of theſe Papers; ſo that, my Lord, I think there is very little proved upon me at all: I had the Misfortune to be taken in this Company that was going where theſe Papers were taken, it's true, but they have not attempted to prove that I was privy to, or knew any Thing of them at all, nor that I was more concerned than that they were taken in my Stomach; this is all I have to obſerve upon the Whole: As to the Buſineſs of the Indictment, there are great and grievous Aggravations in it, and ſuch as I am not able to comprehend the Meaning of, the Words confound me; and therefore I humbly deſire your Lordſhip to tell me upon what Statute I am indicted.

L. C. J. Holt. I'll tell you, Mr. *Aſhton*, you are indicted upon the 25th of *Edward* the Third, for conſpiring, compaſſing, and imagining the Death of the King and Queen, and for that Purpoſe going to *France*, and endeavouring to incite the *French* King to invade the Kingdom, and telling him how he ſhould do it, and letting him know in what State and Condition the Kingdom was, and how fit to be invaded.

Mr. *Aſhton.* Pray, my Lord, is that at all proved upon me?

L. C. J. Holt. That is the Queſtion that the Jury are to judge of upon the Evidence that has been given.

Mr. *Aſhton.* As to that of compaſſing the Death of the King and Queen, I am ignorant of Dealings in Law; but I conceive there are ſeveral Species of Treaſon mentioned in that Act of the 25th of *Edward* III. and as to the imagining the Death of the King, that's only to be proved by ſome Overt-Act: Now I think nothing at all has been proved of any open Act conducing to prove the Imagination or Compaſſing the Death of the King or Queen, no manner of Conſultation or Treaſonable Act at all; and therefore, my Lord, I do not ſee that there is any great Matter that is proved upon me, and I hope you are of that Opinion too.

L. C. J. Holt. Mr. *Aſhton*, that you may not go away with a Miſtake, any that deſigned the Depoſition of the King and Queen, and the Invaſion of the Kingdom, which is proved by any Overt-Act, is ſufficient to prove that they compaſs and imaagine the Death of the King and Queen.

Mr. *Aſhton.* I preſume it may be ſo; I believe that may be the Conſtruction of the Law.

L. C. J. Holt. And I make no queſtion but thoſe that you have conſulted with have told you as much.

Mr. *Aſhton.* Truly as to Counſel, my Trial has been as hard as ever Man met withal.

L. C. J. Holt. Why do you ſay ſo, Mr. *Aſhton?* the Court has not been hard upon you.

Mr. *Aſhton.* My Lord, I do not complain of the Court, but as to the matter of Time, I had Notice by that Gentleman, Mr. *Bale*, to prepare for my Trial, and that was on *Friday*, and not before.

L. C. J. Pollexfen. *Friday* was Sevennight, you mean, I ſuppoſe.

Mr. *Aſhton.* Yes, I do mean *Friday* was Sevennight, I was then a cloſe Priſoner, I had not the Opportunity or Liberty of ſeeing any Chriſtian Soul; I ſpake to him then, and told him, Mr. *Bale*, this is very ſhort Notice, pray be ſo kind as to move my Lord that I may have Counſel; truly he was civil enough, and ſaid, he would do all he could; ſays he, Will you give me the Names of your Counſel? So I gave him the Names of four and of a Sollicitor; but I never heard more of him in the Matter: I did with all my Induſtry and Skill give my Friends Notice, but I was under great Difficulty, for I had not the Liberty of Pen, Ink, nor Paper, nor a Man to ſend upon a Meſſage on *Saturday*; I gave my Friends Notice of it upon *Sunday*, which was no very good Day for Buſineſs, they applied themſelves to my Lord *Sydney*, whoſe Favour and Kindneſs I ſhall always own as long as I live; he gave me all the Diſpatch poſſible, and got me an Order to ſee my Wife that Day, though it was *Sunday*; the next Day I made Application to have my Counſel come to me, that was *Monday*; he with the ſame Readineſs procured that: but it was *Tueſday* in the Afternoon before I could ſee any living Soul but my Wife; and ſome of the Counſel that I deſired would not readily come to me, and it was *Wedneſday* before I did ſee any Body of them, and ſo I had but *Wedneſday* and *Thurſday* to conſult with them in. On *Friday* I was brought here, and I endeavoured to procure a Copy of the Pannel, that I might inform myſelf of the Characters of the Men that were to be my Jury; and my Lord, I would deſire you would give me Leave to clear one Point, which through Inadvertency ſlipt from me about the Time that I deſir'd to ſend to enquire about the Jury. I did not mean, as was apprehended, to ſend to them to take them off, but I only meant to enquire after their Characters; this was done upon *Friday*; I had not a Copy of the Pannel till laſt *Friday*, when we were Arraigned in Court, it was Two of the Clock before the Pannel was given us, it was between Three and Four when we came to *Newgate*; we were to come upon our Trial the next Morning by Eight of the Clock; ſo that before the Copies could be tranſcribed for us, there were left but ſix Hours for us to enquire into the Morals of ſo many Men, of whom ſome lived eight, ſome ten, ſome fifteen Miles out of Town; for my Part I was not able to enquire after any one, and that your Lordſhip may think, by my taking the firſt Twelve that appeared, and believing myſelf innocent of this Matter, I reſolved to put myſelf upon my Trial by any twelve indifferent *Engliſh* Men; I only beg if I have omitted any Thing in reference to myſelf, or miſbehaved myſelf with reſpect to the Bench, that you will pleaſe to ſet me right, and conſider that I ſtand here for my Life; and to grant me your pardon for any Thing wherein I have offended your Lordſhips, to whom, and to the Jury, I refer my Cauſe: only I beg leave to call two or three Witneſſes, I know it hath been allowed before in ſuch Caſes, to give ſome ſhort Account of my Life and Converſation, becauſe it hath been reflected upon me that I was a Papiſt, becauſe I deſigned to go into *France*; but I believe there is not any Man, whoſe Devotion to the Proteſtant Religion eſtabliſh'd by Law, is greater than mine hath been, or to whom that Religion is dearer than to myſelf.

L. C. J. Holt. You are not accuſed of any ſuch thing; nobody pretends you are a Papiſt; but call whom you will.

Mr. *Aſhton.* Pray call Dr. *Burſh*, Dr. *Lake*, Dr. *Fitz-Williams*, and Dr. *Davenant*. There is Dr. *Fitz-Williams*; I beg the Favour of you, Dr. *Fitz-Williams*, to give the Court an Account of your Acquaintance with me, and particularly about my Religion.

Dr. *Fitz-Williams.* Will your Lordſhip give me Leave, my Lord?

L. C. J. Holt. Ay; Come, what do you know of Mr. *Aſhton?*

Dr. *Fitz-Williams.* I ſuppoſe, my Lord, that he calls me in as a Witneſs to his Religion and to his Morality, I think ſo; with my Lord's Permiſſion I will give the trueſt Teſtimony I can: I have known him for ſome Time, he uſed to be frequently at the Service of the Church in the Proteſtant Part of the Family at St. *James's*, where I was Chaplain; during the Time I was there, I obſerved him to be a frequent Receiver of the Holy Communion; and, as far as I could obſerve, lived anſwerable to what he profeſſed to be, a ſincere Member of the Church of *England*, and a ſerious Chriſtian. For his Sincerity and Zeal for the Proteſtant Religion, I can give this Inſtance, he had an Aunt that had a Relation to that Family, one Mrs. *Du-pee*, who he thought did warp a little towards Popery, and he deſired me about five Years ago to have recourſe to her, and deſired to know if ſhe were diſſatisfied with any Point of Religion in the Church of *England*, in Communion with which ſhe lived viſibly, and I would do my Endeavour to ſatisfy her; as I do not doubt but I could. She was deſirous to know who was the Perſon that ſent me: I told her I came of my own head in the greateſt Part; but I ſuppreſs'd the Interpoſition of Mr. *Aſhton* for ſeveral Reaſons, and told her, I had great Suſpicions of her inclining the other Way; and I had great Reaſon for it, becauſe of her Huſband who was a Papiſt, and the great Reſort of Popiſh Prieſts to their Lodgings. She told me then, She was ſatisfied in every Thing, and if ſhe had any Diſſatisfaction ſhe would ſend for me to give me an Account. Some Months after I came to St. *James's* to wait, and obſerving her to be more than uſually before from Prayers in the Chapel, I went to her, and aſked her the Reaſon: She told me, it was becauſe ſhe was making ſome Linnen for her Maſter King *James*, which was to be made in haſte: But ſhe then deſigned to go for *Flanders* quickly; and Mr. *Aſhton*, about that Time, or two or three Days after, told me his Aunt was gone to *France*, and ſpoke it with very great Concern, and that he believed, under the Pretence of her calling over her younger Son, ſhe was gone to declare herſelf a Papiſt, and he was very much troubled at it, This I know for his Zeal for the Proteſtant Religion.

L. C. J. Holt. When was this, Doctor?

Dr. *Fitz-Williams.* This was, my Lord, about five Years ago.

Mr. *Aſhton.* That is, as to the Buſineſs of my Aunt, I ſuppoſe; I know not how he comes to mention it; but as to my Life and Morals, you can give a later Account.

Dr. *Fitz-Williams.* My Lord, I have adminiſtred the Sacrament to him.

L. C. J. Holt. What Queſtions do you farther aſk him, Mr. *Aſhton?* or can you ſay any more, Doctor?

Dr. *Fitz-Williams.* No, my Lord, I can ſay no more, but that he received the Sacrament about half a Year ago.

Mr. Serj. *Thompſon.* We have not objected any thing, as to his Religion, at all.

Mr. *Aſhton.* But I know it has been a Reflection that has gone about of me, that I am a Papiſt, therefore I beg Leave to prove my Religion and Converſation.

L. C. J. Holt. Nay, call whom you will, you ſhall not be hindred, take what Courſe you pleaſe.

Mr. Serj. *Tremain.* Pray, Doctor, you ſay he has received the Sacrament lately; when was that, and where?

Dr. *Fitz-Williams.* It was at *Ely* Chapel, within this ſix or ſeven Months.

L. C. J. Pollexfen. Have you been lately converſant with him?

Dr. *Fitz-Williams.* Truly, my Lord, I have not been very lately.

L. C. J. Pollexfen. Pray, what have you heard him ſay concerning his Affection to King *William* and Queen *Mary?*

Dr. *Fitz-Williams.* I do not remember any Thing at all of that.

L. C. J. Pollexfen. Have you heard him ſay any Thing to the contrary?

Dr. *Fitz-Williams.* No, I cannot remember that.

Mr. Serj. *Tremain.* What have you heard him ſay about his Affection to King *James?*

L. C. J. Holt. Do not aſk him that, there may be a Snare in that Queſtion.

Juryman. You ſay, Doctor, that he received the Sacrament ſix Months ago in *Ely* Chapel: Did you deliver the Sacrament to him there?

Dr. *Fitz-Williams.* No, I did not.

Juryman. Pray, Doctor, were the Prayers that were uſed at that Time altered, as they are now, in the Common-Prayer-Book?

Dr. *Fitz-Williams.* I cannot ſay they were.

L. C. J. Pollexfen. Did you ever ſee him drink King *James's* Health?

Dr. *Fitz-Williams.* I do not uſe to drink Healths, I came here only to do an Office of Juſtice and Kindneſs to Mr. *Aſhton*, to teſtify about his Religion and Converſation.

Mr. Serj. *Tremain.* But anſwer the Queſtion, Did you ever ſee him drink King *James's* Health?

Dr. *Fitz-Williams.* I cannot remember I ever did.

Juryman. Was King *William* and Queen *Mary* pray'd for in thoſe Prayers?

Dr. *Fitz Williams.* I cannot ſay they were.

Mr. Juſt. *Eyres.* But the *Juryman*'s Queſtion was, Whether King *William* and Queen *Mary* were pray'd for? And whether the Prayers were as they are now altered?

Dr. *Fitz Williams.* My Lord, I ſay, I don't remember there were any Names mentioned, as the Prayers are now altered.

Mr. Serj. *Tremain.* That's very well.

Dr. *Fitz Williams.* I did neither read the Prayers, Sir, nor adminiſter the Communion at that Time.

L. C. J. Pollexfen. But you were not at the Prayers, as they are now altered, I perceive?

Dr. *Fitz Williams.* Yes, I have ſeveral times.

Mr. Serj. *Thompſon.* Not with that Gentleman, Mr. *Aſhton?*

Dr. *Fitz Williams.* But I have been an hundred times at the Prayers, as they are now altered.

Mr. *Ashton.* I deſire Dr. *Lake*, who is there upon the Bench, that he may be asked what he knows of me.

Mr. Serj. *Tremain.* But I have one Queſtion to aſk of Dr. *Fitz Williams* before he goes.

L. C. J. Holt. What will you aſk him?

Mr. Serj. *Tremain.* I would aſk you, Sir, one Queſtion. Have you taken the Oaths to this King and Queen?

Dr. *Fitz Williams.* No, I have not, Sir, that's my Unhappineſs; but I know how to ſubmit, and live peaceably under them.

Mr. *Ashton.* But there is one Dr. *Lake* that has taken them, he'll give you an Account what he knows of me.

Dr. *Fitz Williams.* If any one can ſay I have done or acted any thing againſt the Government, I will readily ſubmit to be puniſhed for it.

L. C. J. Holt. Well, Dr. *Lake*, what ſay you?

Dr. *Lake.* My Lord, I have known Mr. *Ashton* above theſe ſixteen Years, we liv'd together in the ſame Family ſeveral of them; I always obſerved him to be a Perſon of exemplary Piety, and ſingular Devotion; he duly came to the Prayers of the Church twice a Day, and to the Sacrament once a Month; he has taken Occaſion, that I know, ſeveral times, both at St. *James*'s and at *Edinburgh*, to teſtify his Zeal againſt Popery: and I am apt to think, that he has ſuffered ſometimes for doing ſo.

Mr. *Ashton.* Dr. *Burſh*, Pray, as to my Religion, I beg you to give an Account what you know of me; particularly ſomething you may remember of me, of my perhaps Over-heat againſt Popery.

Dr. *Burſh.* My Lord, I have long known Mr. *Ashton*, the Priſoner at the Bar, and, till within theſe two Years, frequently converſed with him; and while I did ſo, I believed him a good Proteſtant, and I have ſo many Inſtances of it, and particularly before ſome upon whom his Fortune depended; but as to any thing of late, I can ſay nothing, becauſe our Converſation has ceaſed.

Mr. Serj. *Thompſon.* Dr. *Burſh*, have you known any thing of Mr. *Ashton*'s Converſation for two Years paſt?-----Dr. *Burſh.* No, Sir.

L. C. J. Holt. Have you any thing more, Mr. *Ashton?*

Mr. *Ashton.* No, my Lord, I have nothing more, unleſs your Lordſhip deſire any thing more of this Nature.

L. C. J. Holt. Call whom you will.

Mr. *Ashton.* Here is one Mr. *Tomlinſon.*

L. C. J. Holt. Come, what ſay you, Sir?

Mr. *Tomlinſon.* My Lord, I waited upon Major General *Worden* when he was ſick, and there read the Prayers of the Church, and Mr. *Ashton* was a conſtant Attender upon the Publick Prayers at the Viſitation of the Sick, and was very devout; that's all I can ſay.

L. C. J. Holt. When was this?

Mr. *Tomlinſon.* It was in the Sickneſs of Major Gen. *Worden.*

L. C. J. Holt. How long ago was that?

Mr. *Tomlinſon.* It was about half a Year ago.

L. C. J. Pollexfen. Were thoſe Prayers as they are altered now, or not?

Mr. *Tomlinſon.* It was only the Viſitation of the Sick, and the Collect for the Morning, and Collect for the Evening, becauſe the General's Sickneſs was ſuch, that he could not bear long Prayers.

L. C. J. Holt. Sir, have you been acquainted with the Priſoner any time?

Mr. *Tomlinſon.* About eight Months.

L. C. J. Holt. Have you any more Witneſſes, Mr. *Ashton?*

Mr. *Ashton.* No, my Lord.

L. C. J. Holt. Then I would have you to anſwer me this one thing; Why were you ſo deſirous, and uſed ſuch Importunity, that the Papers ſhould be thrown overboard?

Mr. *Ashton.* My Lord, that is a Point I ought to have ſpoke to, to clear myſelf.

L. C. J. Holt. It ſeems material, and I would not have it forgot, if you can anſwer it.

Mr. *Ashton.* I humbly thank your Lordſhip, and whatſoever my Fate is, I cannot but own I have had a fair Trial for my Life, and I thank your Lordſhip for putting me in mind.

L. C. J. Holt. And take this other thing with it, Why did you deſire Captain *Billop* to go along with you where you were going?

Mr. *Ashton.* He has ſworn it, my Lord, that I did ſo, but as I hope for Salvation, if I were to die immediately, I do not know that I ſpoke to him of any ſuch thing How was it poſſible that I ſhould prevail with him? or how was it likely that I ſhould force him to go along with us, when he had about twelve or fourteen Men with him armed, and we unarmed?

L. C. J. Holt. Nay, it was not forcing, it was but perſuading him to go.

Mr. *Ashton.* My Lord, I do not know any thing of it, I'll aſſure you; but as for endeavouring to perſuade him to throw the Pacquet overboard, I muſt own I did endeavour to perſuade him to it; and, I do preſume, there is nobody in Court, that had been engaged with a Perſon ſo unfortunate, that would not have done the ſame thing for any common Friend, not knowing what the Contents of thoſe Papers were, ſeeing them in that Poſture, eſpecially when I ſaw ſome body elſe ſo near me, ſo uneaſy and concern'd to have them ſeen.

L. C. J. Holt. Then, Mr. *Ashton*, there's another thing which you open'd, which I would have you prove; you ſay you were to go into *France* upon the Affairs of Col. *Worden*'s Family; firſt you ſay Col. *Worden* had a great Account to make up; how will you make that out?

Mr. *Ashton.* My Lord, if your Lordſhip pleaſe, I will prove here in Court, though it is a ſort of Surprize upon me, that there is a great Account depending; I believe I may appeal to Mr. *Sollicitor* himſelf, who knows that there is a Petition in the Houſe of Commons, now depending, from the Queen's Tradeſmen and Debtors, whom ſhe owed 68000*l.* She did aſſign the Arrears of ſome growing Rents for the Satisfaction of this Debt: but the King and Government have not thought fit to let it be applied to her Uſe, or to the paying of thoſe Debts ſhe aſſign'd it to Nay, it has gone farther: I can appeal to ſeveral Perſons, there is one Man by Chance in the Court, that I believe does know that I promiſed and engaged, and actually have paid a great Part of this Debt; for believing that the Money was good upon the Aſſignment, I have actually paid ſome of theſe Men out of my own Pocket, and perhaps more than became me to venture; I think it may very well call my Diſcretion in Queſtion.

L. C. J. Holt. Who will you have called, Mr. *Ashton?*

Mr. *Ashton.* My Lord, here is Mr. *Spalding.*

L. C. J. Holt. That the late Queen does owe People Money, that I believe is true.

Mr. *Aſhton.* Pray, Mr. *Spalding*, will you give the Court an Account, whether there is any Money due from the Queen to you?

Mr. *Spalding.* My Lords, and you Gentlemen of the Jury, I have a Debt due to me from the late Queen, as her Coach Harneſs-maker; it is 470*l.* or ſomething thereabouts, and Mr. *Ashton* has paid me Part of this Debt; this I do own.

Mr. Serj. *Tremain.* Pray, how long have you been acquainted with Mr. *Ashton*, Sir?-----Mr. *Spalding.* A dozen Years, Sir.

Mr. Serj. *Tremain.* Have you any Intimacy with him?

Mr. *Spalding.* He and I have been very well acquainted.

Mr. Serj. *Tremain.* Have you ſeen Mr. *Ashton* write at any time?

Mr. *Spalding.* Yes, I have.

Mr. Serj. *Tremain.* Do you know his Hand?

Mr. *Spalding.* Yes, I think I do.

L. C. J. Pollexfen. Pray how came Mr. *Ashton* to pay you that Part of your Money?

Mr. *Spalding.* I preſs'd Mr. *Ashton*, and told him my Neceſſities, and he did advance me this Money.

L. C. J. Holt. How much did he advance?

Mr. *Spalding.* Almoſt 400*l.*

L. C. J. Pollexfen. When was it he paid it you?

Mr. *Spalding.* Almoſt a Year ago.

L. C. J. Holt. Did he pay it out of his own Pocket?

Mr. *Spalding.* I believe ſo.

L. C. J. Holt. I believe ſo; or was it Money that he had returned to him?

Mr. *Spalding.* I believe it was out of his own Pocket, my Lord.

L. C. J. Holt. Why do you believe ſo?

Mr. *Spalding.* Truly I believe it was out of his own Pocket.

L. C. J. Pollexfen. Pray who was to repay him?

Mr. *Spalding.* About that very Time we were petitioning the Houſe of Commons, that we might have our Debts ſecured, and our Money out of the Arrears of Rents due to the late Queen, according to her Aſſignment; and we ſo far preſs'd the Matter that there was a Clauſe inſerted into the Bill for the ſecuring of our Debt; but upon the next Day, or the Day following, the Parliament was prorogu'd.

L. C. J. Pollexfen. Which way did he expect to be repaid?

Mr. *Spalding.* I'll tell you which way, I ſuppoſe, my Lord.

L. C. J. Pollexfen. Did he not tell you which way?

Mr. *Spalding.* No, he never told me.

L. C. J. Pollexfen. Mr. *Aſhton*, did you never tell him how you ſhould be repaid?

Mr. *Aſhton.* My Lord, I hoped to be repaid, and concluded I ſhould, out of the Arrears of Rent in the Tenants Hands.

L. C. J. Holt. But you are very kind to pay Money out of your own Pocket upon ſuch Hopes.

Mr. Serj. *Tremain.* Pray, Sir, will you look upon that Paper; do you know the Hand?

Mr. *Spalding.* No, Sir, I do not.

L. C. J. Holt. I ſuppoſe he did compound with you.

L. C. J. Pollexfen. This does ſhew an extraordinary Kindneſs towards ſome ſort of People.

Mr. *Aſhton.* If he diſcounted the Intereſt to the Time that we reckoned it would be paid, you know that Prejudice would be to him, and not to me; it may, indeed, prove a Prejudice at laſt, if the Debt be not paid, becauſe the Receipt is conditional: if it be not allowed him, ſhe ſhall diſcount to me again.

L. C. J. Pollexfen. Was there no Money return'd over from the Queen, K. *James*'s Queen that was?

Mr. *Aſhton.* No, my Lord, directly nor indirectly, not one Penny. I believe they are not in a Condition to return Money.

L. C. J. Holt. Well, Mr. *Aſhton*, what have you more?

Mr. *Aſhton.* I have nothing more to ſay, I ſubmit my Cauſe to your Lordſhip.

L. C. J. Pollexfen. Look you, Mr. *Aſhton*, as to ſome Things that you have mentioned, Firſt, there's nobody queſtions but you are a Proteſtant; nay, as far as I diſcern, ſo they are all that are concern'd in this Matter. The whole deſign ſhews, that they are all ſo careful of the Proteſtant Religion, that they deſign to reſtore and eſtabliſh it by the King of *France*; ſo that it appears they are all Proteſtants concern'd in this Project.

Mr. *Aſhton.* Pray, my Lord, who is it that propoſes that?

L. C. J. Pollexfen. The Papers that were carrying to *France*, Mr. *Aſhton*, you have heard them read.

Mr. *Aſhton.* I hope, my Lord, that no doubtful Inſinuations or Suggeſtions are to affect me.

Mr. Serj. *Tremain.* There is a Gentleman that was called to by the Priſoner, it may be, he knows his Hand; pray, Dr. *Fitz Williams*, look upon that Paper, you have been acquainted with him many Years, do you know his Hand?

Dr. *F. Williams.* No, Sir, I do not know his Hand, I never did ſee him write; I cannot ſay I ever received a Letter from him.

Mr. *Aſhton.* I entirely ſubmit my Cauſe to your Lordſhip and the Jury.

L. C. J. Holt. Then you have done, Mr. *Aſhton?*---Mr. *Aſhton.* Yes.

Mr. Juſt. *Eyres.* Mr. *Aſhton*, becauſe you cannot reply again upon my Lord Chief Juſtice, after he has ſummed up the Evidence; there's another

another Thing that I would put you in Mind of, that you may give an Anſwer to it. Captain *Billop* ſwears, before the Papers were found upon you (and it ſeems to ſtick upon you) when he was informed by the Seamen, that you had put ſomething in your Boſom, and he aſk'd you what it was, you ſaid, Nothing but your Handkerchief: Now, if you knew not what was in the Papers, how came you to deny you had any Thing in your Boſom?

Mr. *Aſhton*. For the ſame Reaſon that I would have endeavoured to have had them thrown over-board; out of Kindneſs to the Perſon with whom I happened to be taken.

L. C. J. Pollexfen. Conſider, Mr. *Aſhton*, what a many ſtrange Things you run upon: Firſt, you would have it believed, that you had a Mind to go into *France* upon your own Account.

Mr. *Aſhton*. I do own that.

L. C. J. Pollexfen. Next then, that you hired a Veſſel for you and *Elliot*. Why would you have *Elliot* to go with you into *France?*

Mr. *Aſhton*. I would not have him; he deſired the Favour of going.

L. C. J. Holt. Who deſired my Lord *Preſton* to go, or did he deſire to go with you?

Mr. *Aſhton*. I had not ſeen Mr. *Elliot* of three Months before I went into the City to hire the Boat.

L. C. J. Pollexfen. Why would you have my Lord *Preſton* go with you?

Mr. *Aſhton*. Why would I have my Lord *Preſton* go with me? My Lord, I hop'd to have got my Paſſage free with a Perſon of my Lord's Quality.

L. C. J. Holt. Then you hired this Veſſel for my Lord *Preſton?*

Mr. *Aſhton*. No, my Lord.

L. C. J. Holt. Was it my Lord's Money, or your own that you paid?

Mr. *Aſhton*. The Money I paid; but how I ſhould be repaid I cannot tell.

L. C. J. Holt. Would you, for your own Convenience, pay a Hundred Pounds for a Boat to go to *France*, and yet hope to get your Paſſage free by taking in my Lord *Preſton?*

Mr. *Aſhton*. Truly, my Lord, I cannot tell how it would have been; at the utmoſt, we could but have paid our Share of it.

L. C. J. Holt. But you can tell me if you will; I aſk you, How it was agreed amongſt you?

Mr. *Aſhton*. Truly, my Lord, as I hope to be ſaved, I cannot tell.

L. C. J. Holt. Then there is another Thing: Why did you deſire one of the Seamen to ſay, That you were to go to *Flanders*, and not to *France*, and give him Half-a-Crown to ſay ſo?

Mr. *Aſhton*. I preſume, your Lordſhip knows that it is a Fault, though it be not a treaſonable Fault, to go into *France?*

L. C. J. Pollexfen. But, Mr. *Aſhton*, Truth is the Thing that we are enquiring after; and that is the Thing we would have prevail, and I hope ſhall in all Caſes: If you are not guilty, we hope it will prevail of your Side; if you are guilty, we hope it will prevail on the other Side. Now, how likely is it that you ſhould get into this ſame Company by Chance, without a previous Agreement? You ſent ſomething from *Burdet*'s, a Hamper and a Trunk; and afterwards ſome other Things went from *Rigby*'s, who is your Father-in-Law.

Mr. *Aſhton*. No, there was nothing at all carried from Mr. *Rigby*'s.

L. C. J. Holt. Yes, the Leather Bag, I believe. But another Thing is this, that, if it be poſſible, you will do well to give an Anſwer to: Why did you enquire for a Hiding-Place? Why did you aſk the Maſter of the Ship, whether there was a convenient Place to hide in?

Mr. *Aſhton*. As to that Matter, my Lord, I had heard of divers People, that actually had Paſſes, and were going to *Flanders*, yet were ſtopped and brought to Town again. I believe my Lord *Nottingham* has bail'd many a one, and your Lordſhip knows it to be ſo, and has bailed many yourſelf; and therefore I had great Reaſon, upon that Account, to endeavour Secrecy as much as I could.

L. C. J. Pollexfen. Mr. *Aſhton*, as I remember, you ſaid yourſelf, you were once before a going over, and had the Misfortune to be ſtopt: Now, to venture a ſecond Time without a Paſs, was ſomething ſtrange. Why had you not gone and applied yourſelf to the Secretary for a Paſs?

Mr. *Aſhton*. I had made all the Application I could to my Lord *Nottingham*, I cannot ſay in my own Name, becauſe I was ſure before-hand, I ſhould be denied; but I did by others Hands endeavour to have got a Paſs to have gone into *Flanders*, becauſe it was of extraordinary Conſequence to me, as I tell your Lordſhip, to go quickly.

L. C. J. Holt. If you had ſuch an Occaſion to go, and had made it out to the Secretary, and given Security, you might have got it, ſure.

L. C. J. Pollexfen. One Word further: Why ſhould you be ſo much concerned to have theſe Papers thrown over-board?

Mr. *Aſhton*. Perfectly out of Friendſhip; and had I been travelling with your Lordſhip, or any Man elſe that had been ſo unfortunate, I would have done the ſame.

L. C. J. Pollexfen. Well, have you any more to ſay for yourſelf?

Mr. Serj. *Thompſon*. Mr. *Aſhton*, call what Witneſſes you will, and ſpeak as long as you will for yourſelf, you ſhall be heard at large.

Mr. *Aſhton*. Mr. Serjeant, I thank you heartily, I have no more at preſent.

L. C. J. Holt. Then the King's Counſel deſire to ſpeak a Word to the Jury.

Mr. Serj. *Thompſon*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury: It falls out to be my Duty to ſum up the Evidence that has been given. I opened the Cauſe at the Beginning to you, and I opened it at large; and many Particulars there were mentioned, and truly, I do not think we have failed in the Proof of any one; I know you are Men of that Obſervation, that I need not, nor ſhall take upon me to repeat all the particular Circumſtances; but as near as I can, I ſhall touch upon the Heads of the Evidence, and do it with as equal Regard to my Duty, and as much Tenderneſs to the Priſoner, as any one can do.

Gentlemen, in the firſt Place, you ſee what the Indictment is for; 'tis for a High-Treaſon of a very great Nature, no leſs than the Depoſing the King and Queen, and Subverting this Government, and that by a *French* Power and Intereſt: If inviting an Invaſion, and giving an Account of the Weakneſs, and where the Strength of the Government lay, carrying Papers to ſollicite the *French* to come, and to incite this Nation into Rebellion, that ſo they might depoſe this King, and ſet up the late King *James* again: If theſe be High-Treaſon, as doubtleſs they are; then, Gentlemen, how far forth the Priſoner at the Bar had a Share in it, I muſt refer to you from what we have proved.

He is the Man, it ſeems, that made the firſt Step; for you may remember it was proved, that he met this Woman at *Burdet*'s, in the City, for the Hiring of this Ship, and after two or three Meetings more, they come to a Concluſion, and 93 Guineas and Six-pence are depoſited to make up 100 *l.* which was the Price agreed upon, and that was actually paid by Mr. *Aſhton*; this is ſworn to be ſo.

The next Thing is, to what Purpoſe this Money was paid, and the Ship hired; that is directly ſworn, it was to carry Mr. *Aſhton*, and two or three more of his Friends, not naming of them, and they were to go for *France*; one of the Witneſſes ſays, to any Port in *France*, it was not directly declared to what Part. This, I ſay, was the Purpoſe for which the Money was paid, and the Veſſel hired; and this was to carry you, Mr. *Aſhton*, and two or three more Friends of his into *France*.

It is true, Mr. *Elliot* afterwards did meet Mr. *Aſhton*, and I think was by at the Bargain making, or at leaſtwiſe, when the Money was paid; I will not be poſitive in that, becauſe I would do him no Wrong, he being to make his Defence hereafter.

Mr. *Aſhton*. No, he was not by; I made the Bargain myſelf.

Mr. Serj. *Thompſon*. Then afterwards I remember one Circumſtance: When he hired this Ship, he was to hire a Ship that had a Place to hide in, and ſo he muſt needs know upon what Deſign; I ſay, by that he muſt needs know, that there was a Matter of great Moment which he was to tranſact, for he was to have ſuch a Ship as he might hide in.

After this Ship was hired, then they met in *Covent-Garden*, and there they take Order with the Man to go down with them to the Stairs, where the Waterman was called; indeed Mr. *Aſhton* did part from them in the Way, but preſently after came to them at the Stairs; and there came my Lord *Preſton* and his Man, who, together with *Elliot*, that was there before, I think before, all embark'd in the Boat, and were carried to the Ship, and made all the Haſte away they could for *France*.

When they were there, and came to a Place of Danger, near a Ship of War, there was Care taken, according as they had enquired of the Maſter of the Ship before, that they ſhould be hid, and hid they were.

Afterwards, when they were paſt that Danger, when they came to the *Block-Houſe* at *Graveſend*, there they thought fit to hide again, and did ſo; and there they concealed themſelves, 'till they were ſurpriſed in that Place by Captain *Billop*.

My Lord, after ſuch Time as Captain *Billop* had ſurprized them, he tells you, how he came down after this Smack, you ſee what happened; my Lord *Preſton* firſt came up; and after he had ſearched my Lord *Preſton*, *Elliot* came up, and he was ſearched; and after Mr. *Aſhton* was once come up, he went down to fetch his Hat, and there was ſeen to take up this Bundle of Papers, and there the Papers, upon Search, were found in Mr. *Aſhton*'s Breaſt.

This being ſo found in his Breaſt, you have heard what Applications were made by this Gentleman to get theſe Papers caſt over-board, and what Promiſes were made to the Captain, and what Likelihood there was of making his Fortune, if he would go along with them, or throw away the Pacquet.

You hear, Gentlemen, that after they came to *Whitehall*, one of the Men ſwear, that this Gentleman gave them Money, that they ſhould ſay, they were not hired for *France*, but for *Flanders*.

Theſe, Gentlemen, are the ſeveral Circumſtances that do appear in this Caſe, which ſhew the mighty Care and Diligence that was uſed to get theſe Papers ſuppreſſed that had been thus taken, or to get them again into their own Cuſtody; and that is a Matter that ſhews how far this Gentleman was concerned in this Deſign; and taking all theſe Things together, I think there can no greater Evidence be given, that Mr. *Aſhton* was in this Contrivance, that he was concerned in the Meſſage, that he was to be ſent, and in all this Buſineſs that was to be done, was as much Guilty as my Lord *Preſton*, who now ſtands convicted for it.

And the Court will tell you, Gentlemen, there are no Acceſſories in Treaſon, all are Principals: Though it be not actually proved, that this Gentleman did know all theſe Papers what they were; yet in caſe he hired a Ship for himſelf and the Lord, whoſe Papers they were, to go in, and take ſuch Notice of the Papers, as to take Care of them, to ſuppreſs and conceal them, That is an Evidence of his Knowledge of the Importance of them; and if ſo, he will be equally Guilty of the High-Treaſon.

L. C. J. Holt. I doubt that.

Mr. Serj. *Thompſon*. My Lord, I would not willingly preſs any Thing further than the Nature of the Thing will bear.

L. C. J. Holt. Pray go on, Brother; we are only talking among ourſelves.

Mr. Serj. *Thompſon*. The next Thing is this, that is to be conſidered, That after ſuch Time as theſe Papers came to be laid open, what is it that appears among them? Truly, I ſhall not take upon me to repeat ſo much as the Subſtance, much leſs the Particulars of the ſeveral Papers; but, I muſt ſay, that there does appear to be a formed Deſign of Subverting the Government, of depoſing this King and Queen, and of bringing us all into War, Rebellion and Blood-ſhed; all this under a Pretence of Eſtabliſhing the Proteſtant Religion, and our Legal Government again (tho' I can ſee no Means they had to depend upon for it), but by a Popiſh Intereſt, and a *French* Power; and how far that is poſſible, or probable, to promote ſuch an End, by ſuch Means, I leave to your Conſideration.

Gentlemen, you have heard all the particular Papers read; here was the Reſolution of a Conſult and Conference, where this Project was deſigned; here were Heads of a Declaration, that was to be framed to make the Credulous believe, what mighty Things ſhould be done upon their New Revolution: You ſee, what Letters have been produced, and cannot but eaſily apprehend what is the Import and Meaning of them. I reſolve, as I ſaid, not to mention the Particulars, but there is ſcarce one

Line

Line among them, but what is Treaſon, for it all tends to this Purpoſe and Deſign, to depoſe the King, and alter the preſent Government.

Now, upon the whole Matter, Gentlemen, what this Gentleman has ſaid, I confeſs to me ſeems ſtrange; he ſaid indeed at firſt, that he had no Defence at all, or that which was very weak, and ſo it ſhould ſeem the Truth was, for you ſee what his Defence has been.

He ſays, That he went into *France*, that he owns that he was going thither; but what was it to do? It was to ſettle ſome Accounts with the Family of Colonel *Worden*, and to receive a Sum of Money that was owing to him by a Perſon there.

Gentlemen, if the Deſign had ſo much Innocency in it, certainly he might have had a Paſs; at leaſt, there was no need of hiring a Veſſel at ſuch an extravagant Rate; there was no Neceſſity of hiding in this ſecret manner, and no Neceſſity of impoſſible Suggeſtions, and proffering Great Rewards for the diſpoſing of, and concealing theſe Papers.

Gentlemen, You will remember many Particulars more, which have not ſlipt your Obſervation; I ſhall not take upon me to repeat them, but leave them to your Conſideration.

Only this I muſt ſay, That this is a Treaſon of a very high Nature, a Treaſon to depoſe a King that has ventured all he had, even his Life has been in Danger, and his Blood has been ſpilt to eſtabliſh this Government, and our Religion, and our Laws, and yet it ſeems there are Men that think this may be better done by a Popiſh Intereſt and *French* Power, which I think nobody of either Wiſdom or Honeſty can imagine, or will engage in, and therefore I leave it to your Determination.

L. C. J. Holt. Gentlemen of the Jury, you underſtand, that Mr. *Aſhton* is now tried for High-Treaſon; it is mentioned in the Indictment, to be for conſpiring the Death, and depoſing of the King and Queen, and for that Purpoſe he did endeavour to go into *France*, and to carry divers Propoſals in Writing, and ſeveral Memorials to ſhew how this Kingdom might be invaded by the *French*.

To prove this, the Evidence that has been produced and given by the King's Counſel has been long, and conſiſts of two Parts; Witneſſes *Viva Voce*, they have told how Mr. *Aſhton* deſigned a Voyage to *France*, and that he hired a Ship for that Purpoſe, and ſeveral Papers were taken out of his Boſom.

In the firſt Place the Witneſſes tell you, that about the latter End of *December* laſt, Mr. *Aſhton* and Mr. *Elliot* came to *Burdett*'s Houſe, where they met with Mrs. *Pratt*, and *Burdett* having before that ſpoken to her about a Smack that ſhe called the *Thomas* and *Elizabeth*.

Then there was a Meeting appointed between her and Mr. *Aſhton* at the *Wonder* Tavern, where they did treat and debate about the Hire of it; afterwards they came back to *Burdett*'s again, and there the Agreement was made betwixt the Woman and Mr. *Aſhton*, the Priſoner at the Bar, to have a Hundred Pounds. Ninety-three Guineas and Sixpence was fetch'd down by Mr. *Aſhton*, and told out, and depoſited in the Hands of Mrs. *Burdett*; then there was a Six-pence broken, and one Part Mrs. *Burdett* had, and the other Part Mr. *Aſhton* had; and when either the Maſter, or Mrs *Pratt* ſhould bring the Part of the Six-pence that Mr. *Aſhton* kept, to Mrs. *Burdett*, the Hundred Pounds was to be paid.

And this Agreement being made, 'tis poſitively ſworn, that they did aſk, Whether there was a Hiding-Place in that Veſſel? An Anſwer was made, There was one; and thereupon a Note was given that the Maſter and Mrs. *Pratt* ſhould go to the *Seven-Stars* in *Covent-Garden*.

Upon *Wedneſday* Night, they went there according to the Directions, where meets *Aſhton* and *Elliot*; but before that, there was a Boat hired at *Surrey-Stairs* to carry them down to the Ship through Bridge, over-againſt the *Tower*; but the Tide not ſerving till about Ten o' Clock at Night, they had agreed with a Waterman for Half-a-Crown to carry them, and he was to ſtay till the Tide ſerved. And when they went out from *Rigby*'s they parted, *Elliot* and the Maſter went together, Mr. *Aſhton* did not go with them, but came near about the ſame time to *Surrey-Stairs*, where they took Water.

Being aboard, it was obſerved that all theſe Gentlemen were very timorous, and ſeemed to be much frighted at the Sight of any Veſſel, from which there was any Apprehenſion of their being taken notice of; and therefore they went down under the Quarter-Hatches; which is a Place very inconvenient for ſuch Perſons, where none could ſtand or ſit upright, but were forced to lie upon the Boards, or upon the Ballaſt.

It ſeems ſome Intimation was given, that ſome Gentlemen had an Intention to go into *France* to proſecute ſome treaſonable Deſign: And Captain *Billop* being employed to purſue them, which he did in a Pinnace, when he came near the Veſſel where they were, he called to the Veſſel, and under pretence of preſſing Seamen, he went on Board: The Maſter of the Veſſel ſaid he had a Protection from the Admiralty; ſo that there was no Cauſe for them to fear preſſing; nor indeed was there any for Gentlemen to fear it, they being not liable to be preſſed.

When the Captain came near the Ship, and declared his Intent of coming on Board, theſe Gentlemen were gone under the Quarter-Hatches again. Captain *Billop* coming on Board, and ſpeaking about preſſing of the Men, and ſaying, There was a Couple that would make good Seamen for the King; the Maſter ſhewed his Protection, and then the Captain ſaid he would ſearch further in the Ship, and ſo he did; and then he pulls up the Boards, and there he finds all theſe Gentlemen, who were called up one after another, and ſearch'd by the Captain.

Gentlemen, There is one of the Witneſſes tells you, that when they were come up, he ſaw a Pacquet that lay in this very Place under the Quarter-Hatches, unto which was tied a piece of Lead, which Mr. *Aſhton* takes up, and puts in his Boſom, with which the Captain being acquainted, Enquiry is made by him, what Mr. *Aſhton* had there? Mr. *Aſhton* ſaid it was his Handkerchief, and nothing but that which he pulled out: But Captain *Billop* puts his Hand in his Boſom, between his Coat and his Body, and takes out the Pacquet, and carried theſe Gentlemen on Board the *George* Frigate, where they ſtayed till the Tide ſerved to bring them to *Whitehall*.

But before they came on Board the Frigate, Mr. *Aſhton* was very importunate with him to throw this Pacquet into the Water; when they were on Board the *George* Frigate, and in the Cabbin alone, they continue their Importunity.

Now, ſay they, we have you here, and you are alone, pray will you throw this Pacquet overboard? And particularly Mr. *Aſhton* ſaid, it would do the Captain no good to injure ſo many Gentlemen; and Mr. *Elliot* would have perſuaded the Captain to take the Lead that was tied to the Pacquet, and tie it to ſome Letters that were taken out of my Lord *Preſton*'s Pocket, and throw the Pacquet overboard; and then have informed the King and Council, that thoſe Letters was the Pacquet taken out of Mr. *Aſhton*'s Boſom: But the Captain very honeſtly rejected all their Motions of that kind.

Truly, Gentlemen, my Memory will not ſerve me to repeat all the Particulars, but I queſtion not your Notes will bring them to your Minds. Mr. *Elliot*, it ſeems, was ſo mightily concerned at their being taken with theſe Papers, that when they ſhot *London-Bridge*, he wiſh'd the Bridge might have fallen upon them and knock'd them on the Head; and, when they were got through, he wiſh'd a Thunder-bolt would fall down into the Boat and ſink them: That, indeed, was Mr. *Elliot*, and not Mr. *Aſhton*; but Mr. *Aſhton* was as much concerned about diſpoſing of the Pacquet as Mr. *Elliot*.

At *Whitehall* this Pacquet is opened, and you have ſeveral Papers produced in Evidence, and read to you; you have heard what Evidence has been given, that theſe are the very Papers that were in the Pacquet thus taken.

Firſt of all, Captain *Billop* tells you, he carried them to my Lord *Nottingham*, and that they lay there in his Office; he withdrew, indeed, while my Lord *Nottingham* examined my Lord *Preſton*, but the Pacquet was not opened in the Interim, but there was only a Paper ſtuck on the Outſide, that my Lord had taken off before the Captain returned into the Room, and there the Pacquet remained entire. He ſays, my Lord *Nottingham* opened the Pacquet, and put up all the Papers that were in the Pacquet in his Preſence into a Cover again, and ſealed them up with his Seal. My Lord *Nottingham* ſays poſitively, he did put up all the Papers that were in the Pacquet again, all and no more, except the Cover, and that he ſealed up and delivered it to Captain *Billop*.

Captain *Billop* ſays, he took theſe very Papers from my Lord *Nottingham*, and as he received them, carried them without opening to my Lord Preſident.

My Lord Preſident ſays, he locked them up, unopen'd, in a cloſe Cabinet in his Cloſet-Room, where nobody comes; there they were that Night, and the next Day he carried them intire to the King, and ſome of them were read by the King, in the Preſence of my Lord Preſident; and they were all taken away by his Lordſhip, no more nor no leſs; and my Lord Preſident brought them all to the Cabinet Council, where they were read, and were delivered to my Lord *Sydney*.

My Lord *Sydney* ſwears, Theſe Papers now produced, are the ſame Papers he had from my Lord Preſident; and my Lord Preſident ſwears, That they are the ſame he received by *Billop* from my Lord *Nottingham*, and my Lord *Sydney* mark'd them.

So that there can remain no Doubt of theſe being the ſame Papers, that were contained in the Pacquet, that was taken out of the Boſom of Mr. *Aſhton*.

Then, as to the Matter of the Papers, I think it is plain, beyond all Contradiction, that the Import of them is Treaſonable: They ſhew a Deſign of invading the Kingdom by a foreign Force, and of depoſing the King and Queen from the Government, and of ſetting the late King upon the Throne.

It is agreed, as it is mentioned at a Conference between ſeveral Noblemen and Gentlemen, that were of the *Whig* and *Tory* Party, as they call them, that the late King was to be reſtored, though by a *French* Power.

It was impoſſible for them to effect it by going plainly to Work, and ſaying in plain Words, the *French* ſhould invade us. It was to be done in this Manner.

The *French* King muſt pretend by all Means to be our Friend, and a Mediator betwixt the late King and the People of *England*, and this was out of Deſign plainly to get a Party of the Kingdom to join with them, the moſt credulous and inconſiderate Sort of People, who, when they ſhall be ſeduced into a Belief of the *French* King's great Kindneſs, it was not doubted but there would be a Conjunction between them and the *French* Forces, to reſtore the late King.

And to procure ſuch a Perſuaſion in the People, the *French* King was to ſhew himſelf kind to the *Engliſh* Proteſtants, to appear and act another Part than he had formerly done; he was to permit them the Exerciſe of the Proteſtant Religion, thereby to perſuade many, that his Perſecution of his own Subjects, the Hugonots, was not out of any Averſion to the Proteſtant Religion, but only to their Antimonarchical and Reſiſting Principles.

Then an Inconvenience is to be removed; for they complain, that they are too full of Bigotry at St. *Germains*, and too bare-fac'd: For they make an open Profeſſion of Popery, and ſpeak truly what they do intend; but ſay they, if they will have the Deſign take Effect, they muſt be more cloſe and ſecret; for the Folly and Bigotry at St. *Germains* was a very great Obſtruction. Therefore, they propoſed that ſome Perſons might be ſubſtituted as Agents to correſpond here, that underſtood the Temper of the Nation, and what would eaſilieſt prevail with the People: And a Model was to be framed at St. *Germains*; the Proteſtants are to be ſeemingly careſſed, Seven or Nine to be of the late King's Council, that ſo we might believe, that he was ours in Intereſt again, and that we have a Relation to him.

And if Things were carried with ſuch Cunning and Subtlety, they hoped to delude a great many People over into the Intereſt of the late King; but, if they went bare-faced, it would cauſe ſuch great Jealouſies, that they muſt totally deſpair of Succeſs.

Yet they did not hope by theſe Artifices to obtain ſo many Friends here, as might have been ſufficient to accompliſh their Deſign; and therefore they muſt have recourſe to a foreign Force, particularly a *French* Force: For ſays one of the Papers, *Uſe Foreigners to expel Foreigners*; that is, Uſe *French* to expel *Dutch* Foreigners, who are our Allies, and are falſly accuſed by them to have trampled upon the Rights and Liberties of the Nation.

There

There is one Argument uſed to encourage People to aſſiſt the *French* in the Invaſion of their own Country, which I cannot omit; namely, *That as ſoon as the* French, *with a conſiderable Expence of Men and Money, had reſtored the Proteſtant Religion, the late King to the Crown, and the People to their Liberties, that he would withdraw all his Forces, and reap no Profit or Advantage by his Succeſs.* I muſt confeſs, this carries ſo little of Perſuaſion in it, that it is ridiculous to think thereby to impoſe upon any Number of Men; but notwithſtanding the Weakneſs of their Arguments, it is apparent they were in good earneſt; the Papers give an Account to the *French*, in what State and Condition our Forts were, Portſmouth *not mann'd with above* 500, *and* Goſport *how weakly fortified.*

It was a happy Juncture between this and the firſt of *March*, when Advice is given to make uſe of the Opportunity: For Men cannot give, but Men may uſe Opportunities, and ſomething was to be done forthwith, and the Goods muſt be got in Readineſs, particularly Linnen, and the Copper, are mentioned, which are myſterious and dark Expreſſions, and you may put a Conſtruction upon them as well as I; for they are written in a Style of Trade, as if they were a Correſpondence between two Tradeſmen, and the Linnen and the Copper are ordered to be brought before the 10th of *March.*

But however obſcure ſome of theſe Expreſſions are, there are others that are more plain, *That the* French *Fleet muſt be out in* April *at fartheſt, and are to come before the Conjunction between the* Engliſh *and the* Dutch, *and* Jennings, Strickland, *or* Trevannion *are to come from St.* Malo's *in one Night, and to fight the* Engliſh *Fleet in the Chops of the Channel, and not to come ſo high as* Beachy, *where they came the laſt Year.*

And th re is an Account given, in what Condition and State our Navy was; how many Ships, what Rates, how mann'd, and who the Officers; and then as the *French* were to be in Readineſs to come in *April*, ſo they ſay our Fleet was not to be out till *June.*

Gentlemen, there are a great many other Particulars; but theſe are enough, nay half of them were enough to make any Man Guilty of Treaſon, that was concerned in them, or that had a Hand in carrying or making uſe of them.

Beſides, there are other Letters which can import nothing, but the Writer was of the late King's Intereſt; one directed to Mr. *Redding*, the other to Mrs. *Redding*; and theſe were to go to *France*, to let them know how zealous he was in his Duty, and how the Intereſt of the young Maſter increaſed. The Letters have theſe Expreſſions; *That tho' the Family were decreaſed, yet our Intereſt is increaſed, which is yours, and I ſpeak in the Plural Number, becauſe I ſpeak the Sentiments of my elder Brother, and the reſt of our Relations, and deſire them to believe they were zealous and cordial in their Duty to Mr.* Redding. Now what Interpretation you will make of this, I'll leave to you.

Then there is another Letter to Mrs. *Charlton*, and another to Mr. *Jackſon*, and divers other Things that have been read, and among the reſt, have been read the Heads of a Declaration at large, ſhewing what ſhould be done, and what Methods ſhould be taken in order to the reſtoring the late King, and depoſing this.

And there is alſo mention made in a Paper, how divers Perſons, who were to be pardoned, as particularly, *all Juſtices of the Peace actually in Commiſſion, are not to be excepted; Outlaws are to be pardoned; Chimney Money to be taken away; and all that come in within one-and-twenty Days, are to be forgiven.*

So that it is plain theſe Letters import a Deſign to depoſe the King and Queen, and the Kingdom to be invaded by Foreigners; only a little to colour the Matter, nor to loſe the Pretence of a Proteſtant Intereſt altogether, there was to be 5 or 6000 *Swedes* to be made uſe of in the Invaſion.

Gentlemen, if there was a Deſign of an Invaſion, be it by Papiſts, or by Proteſtants, if any Act was done tending thereunto, it is High-Treaſon within the Statute of 25 *E.* III. For purpoſing and intending to depoſe the King and Queen, manifeſted by any Overt-Act, hath been always held to be High-Treaſon.

This, Gentlemen, is the Sum and Subſtance of the Evidence that has been given againſt the Priſoner at the Bar.

Mr. *Aſhton* ſays for himſelf, It is true, ſaith he, my Deſign was to go to *France.* I was ſo unfortunate as to have the Papers taken about me. I did take them up; but, ſays he, it is not at all proved that any one of the Papers that are now produced are my Hand; which is true: There is no ſuch Proof.

The next thing is, that Mr. *Aſhton* being aſk'd, What Occaſion he had to go to *France?* he ſays, He had formerly a Relation to Col. *Worden*, and did tranſact, and had the Management of his Affairs, which were very great. Col. *Worden* died half a Year ago, and he enjoin'd him upon his Death-Bed to go into *France* about ſettling ſome Accounts of his, and he was deſired by the Family of Col. *Worden* ſo to do.

This Mr. *Aſhton* alledges; but he has not proved it. 'Tis very ſtrange, that if Mr. *Aſhton* was to go to *France* to negotiate that Affair for Col. *Worden*'s Family, none of that Family ſhould be produced to prove, that Col. *Worden* gave him ſuch Directions, or that the Family deſired him to go into *France* upon that Account.

Then Mr. *Aſhton* hath endeavoured to give another Reaſon for his Voyage into *France:* he affirms, he had ſome Affairs of his own with relation to the late Queen; he was concerned for her, and ſhe did owe Monies here, and he paid ſeveral Debts to Tradeſmen, particularly 400 *l.* ſhe owed to the Coach Harneſs-Maker; and he having paid it, went over to reimburſe himſelf: The Tradeſman was produced, and he ſays, Mr. *Aſhton* did pay the Money a Year ago; but whether Mr. *Aſhton* had Effects from the late Queen, or paid it out of his own Pocket, does not appear; Mr. *Aſhton* ſays, he paid it out of his own Pocket, which is very extraordinary, that he ſhould be ſo kind to pay what he was not obliged to pay, and have no Security to reimburſe himſelf.

So th t, Gentlemen, you had beſt conſider whether there be any thing at all ſaid or proved, that can juſtify Mr. *Aſhton*'s going to *France*, or whether there be any good Reaſon offered for it.

Then *Aſhton* has called Witneſſes to prove, that he was always a Proteſtant, though he did live in a Popiſh Family, where they did encourage Papiſts and diſcountenance Proteſtants; for which he had the Ill-will of thoſe he did depend upon.

Gentlemen, all that is agreed, and it is not a Queſtion in this Caſe, whether Mr. *Aſhton* be a Proteſtant, or a Papiſt; but the Queſtion is, Whether he be guilty of High-Treaſon? from which the being a Proteſtant does not ſecure a Man.

But, Gentlemen, if Mr. *Aſhton* had no Knowledge upon what Deſign the other Perſons were to go into *France*, tho' he had actually gone into *France*, it had been a Crime in this Juncture of Affairs, yet not High-Treaſon; but to go into *France*, and carry a treaſonable Scheme of a Deſign, and Project of an Invaſion, that is Treaſon.

Now the Queſtion is, Whether Mr. *Aſhton* went with ſuch a Purpoſe or not, you are to conſider; I would not lead you into any Strain of the Evidence, but only ſtate it how it ſtands. It is plain he was concerned all along in hiring the Smack, and as the King's Counſel obſerved to you, the Price was ſomething extraordinary; they were to pay 100 *l.* for the Voyage, to which was added ſome Encouragement to the Woman, that if ſhe performed this Voyage well, ſhe might get 1000 *l.* before *Lady-Day*, and the Money was paid by Mr. *Aſhton*, and he was taken aboard the Veſſel.

Mr. *Aſhton* was much concerned to ſecure the Papers, by taking them out of the Place where they lay upon the Ballaſt under the Quarter-Hatches; and after they were taken out of his Boſom, he was very importunate, and ſo often, with Captain *Billop* to throw them over-board.

And why ſhould he be ſo earneſt and concerned, unleſs he very well knew, and was acquainted with the Contents of thoſe Papers?

And he gave one of the Seamen 2 *s.* 6 *d.* to ſay, They were bound for *Flanders:* Unleſs it was a Matter of great Importance he went about, and that was not fit to be known, why ſhould he deny it, or labour to have it concealed? And 100 *l.* to be paid for this Voyage, was, upon a joint Account, as well for my Lord *Preſton*, as for Mr. *Aſhton* and *Elliot*; Mr. *Aſhton* did pay the Money, and he does not make it appear whoſe it was.

Gentlemen, it reſts upon you to conſider the Evidence you have heard, whether it is ſufficient to induce you to believe Mr. *Aſhton* was going into *France* with theſe Papers to carry on the Deſign of Depoſing the King and Queen, and Invading the Kingdom: If you are not ſatisfied in your Conſciences that he is guilty, then find him not guilty: On the other Side, if you are ſatisfied that he is guilty, I do not queſtion but you will find him ſo.

L. C. J. Pollexfen. Look you, Gentlemen of the Jury, My Lord has rightly repeated and ſtated the Evidence to you; I ſhall only ſay but a very few Words to it.

Mr. *Aſhton*, as at firſt he did, ſo in his Defence has complained of a very ſpeedy Trial, and would inſinuate ſomething of Favour that he might find for that Reaſon. It does appear he had Notice of his Trial ſufficient, and had Time enough to prepare for it: But there is one Thing extraordinary has happened to his Advantage, which I would deſire may be taken Notice of. If he had been tried on *Saturday*, perhaps he had had more Reaſon to complain than now he has; for he has now (and you ſee he uſes it, and wiſely enough too) the Advantage that happened to him upon my Lord *Preſton*'s Trial; and has had Time ſince *Saturday* to prepare for this Day's Work; ſo that there is no hard Point upon him as to that Matter, but he has had pretty good Fortune therein.

Next he does inſinuate, that he is a Proteſtant. Gentlemen, the Law does not diſtinguiſh between a Proteſtant Traytor, and a Papiſt Traytor; if he has committed ſuch an Offence, as by the Law is High-Treaſon, the Law does not diſtinguiſh, nor may we. And Proteſtants may ſerve Papiſts Deſigns, though they do not directly intend it. Therefore the Evidence to prove him a Proteſtant is nothing before you; for the Matter is only, whether he be guilty of this Crime or not.

In the Trial of my Lord *Preſton*, then the Labour was, that my Lord was not the Man that was concerned, as the Bearer of this Pacquet of Letters or Writings wherein the Treaſon is contained; but then it was Mr. *Aſhton*, the Pacquets were found about him; but now it is not Mr. *Aſhton*, but my Lord *Preſton*, and this is now the Queſtion before you, that he ſtands upon.

But if ſo be they were all concerned in the Carriage and Tranſporting of this Buſineſs, then they are all alike guilty of Treaſon, and therefore they cannot ſhuffle it from one to another.

Now there appears ſome Reaſon why they would not all agree to be tried together; for now it is but turning it from my Lord *Preſton* upon *Aſhton*, and Mr. *Aſhton* upon my Lord *Preſton*, and *Elliot* upon either of them, and ſo by this Means all might eſcape, if this were ſufficient to ſerve their Turn.

But the Queſtion before you is, Whether all theſe Perſons are not all in all equally concerned? and 'tis the Evidence that muſt be your Guide and ours: for it is not Mr. *Aſhton*'s Affirmation, that he had Buſineſs to go into *France*, and he happened unluckily to fall into theſe Men's Company, that will be a ſufficient Excuſe, unleſs he prove it.

It had been an eaſy Matter for him to have proved, if he had been going into *France* upon Buſineſs for Col. *Worden*; but at length that is turned off, and then the Pretence for going is, to recover ſome Money he had owing to him there, and that he had payed for another Perſon. Had he Papers of Inſtructions of this kind? Had he any one Witneſs of this Thing?

The Merchandize that he carried out with him is of another Import. Where were the Notes or Bonds that he was to recover? Where is the Account that he had to make up with any body beyond Sea? There is no Manner of Evidence of any ſuch thing.

Next, Gentlemen, do but conſider, if the Man were ſo innocent as he would inſinuate, as if he had not gone with the reſt upon this Errand, how came the Man to have ſo heavy a Concern upon him? Why ſhould he go to take up theſe Papers, if they were not his Brats? Why ſhould he clap them into his Boſom, if he knew nothing what was in them? Why was his Concern ſo great to have them thrown over-board?

Gentlemen, if you expect that the Hearts of Men ſhould be proved otherwiſe, than as Men gueſs by one another's Meanings, by their Actions, 'tis impoſſible to convict any Man of a Crime; for if his own Affirmation ſhall be a Defence, he will never want a Defence to keep himſelf from being convicted: But that is not what the Law gives Credit to; it muſt be

Proof

Evidence and Proof that you are to judge upon. But of all he pretends to, he proves nothing.

How came he acquainted with my Lord *Preſton?* Sure he was a Man ſufficiently known in the World! Why ſhould he go with him and Mr. *Elliot?* Are they not all known? Are they not Perſons of the ſame Diſpoſition, and much in the ſame Imployment?

He had been taken a little before, he ſays himſelf, and was hindred from going; and he had ſtrange ill Luck, if there was nothing elſe in the Buſineſs than what he pretends.

Gentlemen, in ſhort, if you do find by the Evidence, that he was going upon a good and an honeſt Deſign, and that he knew nothing of the Danger that was in theſe Papers, and that theſe Perſons were in by reaſon of theſe Papers, and yet would go about to have theſe Papers concealed; and endeavour to have them thrown away, without knowing what was in them: Theſe are Evidences that will be good for you to go by, if you have any ſuch; but to take his Affirmation, becauſe he ſays it, when he proves nothing, that is no Evidence to go by.

I leave it to you, as my Lord has done. If you are ſatisfied upon the Evidence that he is guilty, I doubt not you know, and will do your Duty, and will find him ſo; and if you have no ſuch Evidence, or any to prove the contrary, that he is not guilty, then you ought to find him ſo too.

Mr. *Aſhton.* I beg your Pardon for one Word.

L. C. J. Holt. What would you ſay?

Mr. *Aſhton.* My Lord, I ſhall reckon it a particular Favour, if you will pardon me one Word, after your Lordſhip has given the Charge.

L. C. J. Holt. Well, what ſay you?

Mr. *Aſhton.* I think with Submiſſion, that there is no Proof, I knew, or was privy to the Contents of any of theſe Papers.

L. C. J. Pollexfen. Pray, Mr. *Aſhton*, ſhew any Man any Reaſon, if you can, why did you go down and catch up theſe Papers, if you did not know what was in them? They might be for your Advantage to be ſhewn, for any thing you pretend to know.

Mr. *Aſhton.* I did it for my L. *Preſton*'s Sake, whoſe Hand was proved, and he ſtands convicted as the Bearer of thoſe Papers.

Mr. *J. Eyres.* But you forgot one thing that was plainly proved, Mr. *Aſhton*, that when you importun'd Capt. *Billop* to throw away the Papers, you uſed this as an Argument, *It would do him no good to injure three honeſt Gentlemen.*

Mr. *Aſhton.* I did not ſay ſo, my Lord, that I know of, tho' indeed he has ſworn it.

L. C. J. Holt. Look you, Mr. *Aſhton*, you have been heard as long as you did deſire to ſpeak, and were aſk'd over and over again, whether you had any more? You are not now ſaying any new Matter; if you could urge any thing that had been omitted, which made for your Advantage, I believe the Court would indulge you, tho' it be againſt the Courſe.

Mr. *Aſhton.* My Lord, I ſay there is nothing under my Hand, there is no Privity proved. Does Suppoſition condemn a Man? And is there any thing but Suppoſition againſt me? There is not my Hand proved in any of the Papers. I beſeech your Lordſhip and the Jury to obſerve that.

L. C. J. Holt. Your being in the Company, and being ſo concern'd, and importunately endeavouring to' have thrown them overboard; the Hiring the Veſſel to go with theſe Treaſonable Papers to an Enemy's Country, and the Papers found about you, is Fact proved, and is left to the Gentlemen of the Jury to conſider of.

Mr. *Aſhton.* But does all this amount to more than Suſpicion?

L. C. J. Holt. Look you, Mr. *Aſhton*, if you ſpeak after we have charged the Jury, you will give us an Occaſion of ſpeaking to anſwer you; the Gentlemen of the Jury are Men of Underſtanding; they have very well obſerved the Evidence, and I perceive they have been very extraordinary intent upon it; they will be able to make a right Judgment, no Queſtion of it.

Mr. *Aſhton.* All that I deſire, is; there is nothing proved upon me, of my knowing what was in theſe Papers.

Mr. *J. Eyres.* And there is that which is very conſiderable too, that 'tis plain, what you ſay about Col. *Worden*'s Account, is but a Pretence; for when you were ſearch'd, there was not one Paper, nor one bit of Account found about you, nothing but this Bundle of Treaſonable Papers and Letters.

Mr. *Aſhton.* My Lord, I humbly beg you will obſerve what is for me, as well as what is againſt me.

L. C. J. Holt. Gentlemen of the Jury, do you think you ſhall ſtay out any time? The Court deſires to know it, becauſe they will order themſelves accordingly.

Juryman. My Lord, we do not know till we come together.

L. C. J. Holt. Nay, take your own Time, only the Court would comply with your Conveniency in the Adjournment.

Then the Jury withdrew, and the Court adjourn'd for half an Hour, and when they were returned, the Jury came in to give their Verdict, and being called over, anſwered to their Names.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. John Aſhton, hold up thy Hand. [*Which he did.*] Look upon the Priſoner; How ſay you? Is he guilty of the High-Treaſon whereof he ſtands indicted, or not Guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels?

Foreman. None that we know of.

Maj. *Richardſon.* Look to him, he is found guilty of High-Treaſon.

Cl. of Arr. Then hearken to your Verdict, as the Court has recorded it. You ſay, That *John Aſhton* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Lands nor Tenements, Goods nor Chattels, at the Time of the High-Treaſon committed, nor at any time ſince, to your Knowledge, and ſo you ſay all?

Jury. Yes.

L. C. J. Pollexfen. Gentlemen, I think truly you have gone according to your Evidence, which the Law requires you to do, and that it is which will preſerve us all. And tho' it be truly a Thing that falls hard upon the particular Men that are concerned in ſuch Things; yet notwithſtanding, we muſt have more Conſideration of the general Good and Preſervation, and the Support of the Government, and that the Law have its due Courſe, than of any particular Man's Caſe, as to the hard Point of it: we muſt look to theſe Things, or there will be no living in the World.

Sir *W. Hedges.* My Lord, we humbly deſire of your Lordſhip, that we may be diſmiſs'd from further Attendance this Seſſions.

L. C. J. Pollexfen. Ay.

Cl. of Arr. Gentlemen, you are diſmiſs'd, and the Court thanks you for your Service.

Then the Court adjourn'd for an Hour, and then the Lord Mayor and Deputy Recorder, with ſeveral of the Juſtices and Aldermen, returned into the Court, and after Proclamation for Silence, Order was given to bring the Lord Preſton *and Mr.* Aſhton *to the Bar* [*Which was done*], *the Lord* Preſton *ſtanding without the Bar, and Mr.* Aſhton *within.*

Cl. of Arr. Sir *Richard Grahme*, hold up your Hand. [*Which he did.*

John Aſhton. hold up your Hand. [*Which he did.*

My Lord *Preſton*, you ſtand convicted of High Treaſon, for conſpiring the Death of the King and Queen's Majeſties, for adhering to the King's Enemies, and endeavouring to ſubvert the Government: What can you ſay for yourſelf, why the Court ſhould not proceed to give Judgment againſt you of Death, according to the Law?

Lord *Preſton.* 'Tis true, my Lord, the Jury have found me guilty of the Treaſon aſſigned in the Indictment. My Lord, it is a Treaſon of a very heavy and black Nature; 'tis of ſuch a Nature, that if I had been conſcious to myſelf to have deſerved, I ſhould be very willing to undergo that Judgment that is like preſently to paſs upon me. It is to endeavour to bring in the King of *France* to conquer and invade this Kingdom; 'tis a Thought I always abhorred; I love my Religion, my Family, my Country too well to attempt or endeavour any ſuch thing; I muſt appeal to your Lordſhip, though now perhaps it is too late, whether the Treaſon that is laid againſt me has been perfectly proved; for in the Caſe of proving Hands, and particularly in the Caſe of Colonel *Sydney*, it was diſallowed that Compariſon of Hands ſhould be Evidence; there ought to be at leaſt one, if not two, Evidences to prove the Writing of it. My Lord, I know this is too late, I ſhould have offered this to the Jury before, but being in the Crowd, and in great Diſorder by ſtanding ſo long, I had not Strength or Ability enough to urge it as I ſhould. I have nothing more to ſay in the Caſe, but ſubmit to that Judgment that the Law has aſſigned.

Mr. D. Recorder. My Lord *Preſton*, your Lordſhip knows the Proceedings of the Law in ſuch Caſes; there is no averring againſt the Verdict of the Jury; they have found your Lordſhip guilty, and the Law ſays, that Judgment muſt be given upon you according to that Verdict.

Lord *Preſton*, Mr. *Recorder*, I do not aver againſt the Verdict. I own it is too late; I ſhould have offered it before, and I muſt ſubmit to the Judgment of the Law.

Cl. of Arr. John Aſhton, hold up thy Hand. [*Which he did.*

You are in the ſame Caſe with the Priſoner laſt before you. What can you ſay for yourſelf, why Judgment ſhould not be given againſt you to die according to Law?

Mr. *Aſhton.* My Lord, I would humbly deſire I might have a Sight of my Indictment; I have ſome Reaſon, perhaps, to believe that I am found guilty upon an Erroneous Indictment; and if it be ſo, I would deſire to have Counſel to argue the Errors of the Indictment.

Mr. D. Recorder. You have heard it twice read in *Engliſh* and once in *Latin*, and that is all that is allowed to any one in your Caſe; I never knew the Record of any Indictment ſhewn to any Priſoner at the Bar.

Mr. *Aſhton.* Suppoſe there be any Error in it?

Mr. D. Recorder. I am not to ſuppoſe any ſuch thing; if there is any, it has been read to you, aſſign it, and the Court will conſider of it.

Mr. *Aſhton.* If I can aſſign the Errors in the Indictment, may I have the Advantage of it then?

Mr. *D. Recorder.* If there be Errors, you will have the Advantage of them, if you will aſſign them; if there be none, you can have none.

Mr. *Aſhton.* Then I ſay, if there be Words in the Indictment, that there are no ſuch Words in Nature, then, Sir, I am told it is a Vicious and Erroneous Indictment, and that is enough to viciate the Indictment.

Mr. D. Recorder. No ſuch Words in Nature! It is hard to tell what you mean by that; perhaps there are Terms of Art in the Law, which, though you are not acquainted with, we are.

Mr. *Aſhton.* Then there are ſuch Words in Nature.

Mr. D. Recorder. That is an inſenſible Expreſſion, *Words in Nature!*

Mr. *Aſhton.* I am informed that even a Letter in an Indictment is enough to viciate it, or if it be falſe *Latin*, that will make it an Erroneous Indictment.

Mr. D. Recorder. No, that is not ſo; but if you will tell me what that Letter is, I'll tell you what I ſay to it; it may, or it may not be material.

Mr. *Aſhton.* We know it was lately diſputed in a Caſe of this Nature at this Place, and I am informed the Court were of Opinion, if it had been in the Body of the Indictment, it had been an Error.

Mr. D. Recorder. If you pleaſe to tell me wherein the Error in your Indictment conſiſts, I may be able to give you a good Anſwer to it, or you will have the Advantage of it.

Mr. *Aſhton.* I ſay it conſiſts in this; the Word *Cymba* is written with an *S* in the Indictment, whereas it ſhould be with a *C*.

Mr. D. Recorder. How do you know it?

Mr. *Aſhton.* It is no matter how I know it; I have ſome Reaſon to know it, it may be.

Mr. D. Recorder. Mr. *Hardeſty*, look upon the Record.

Mr. *Aſhton.* With Submiſſion, that is an Error, for there is no ſuch Word as *Cymba* with an *S*.

Cl. of Arr. It is a long Indictment; will you pleaſe to aſk him whereabout it is?

Mr. D. Recorder. Mr. *Aſhton*, will you tell me where 'tis written?

Mr. *Aſhton.* In the Indictment, when you come to ſpeak of *Cymba* a Boat.

Mr. D. Recorder. By the Sound I cannot diſtinguiſh whether it be *S* or *C*.

Mr. *Aſhton.* Sir, I hope you will do me the Juſtice to examine the Indictment itſelf.

Mr. D. Recorder. The Clerk is looking upon it: how is it, Mr. *Hardeſty?* Is it with an *S* or a *C?*-----*Cl. of Arr.* It is with a *C*.

Mr. D. Recorder. The Clerk has read it, and he certifies me it is in both Places with a *C*, which is true *Latin*.

Mr. *Aſhton.* Is it in all Places with a *C?*

Cl. of Arr. I have look'd in two Places, and 'tis right; I'll look further, if you pleaſe.

Mr. *Aſhton.* Pray do. [*Which he did.*

Cl. of Arr. It is with a *C* in all Places.

Mr. D. Recorder. The Clerk tells me it is the ſame, and right in every Place, and he has look'd over all the Indictment as to the Matter.

Mr. *Aſhton.* Then, Sir, I ſubmit to it.

Mr. D. Recorder. Make Proclamation for Silence. [*Which was done.*

Mr. D. Recorder: My Lord *Preſton*, or rather Sir *Richard Grahme*, and Mr. *John Aſhton*, Ye have been Indicted, Arraigned, and Convicted of High-Treaſon againſt their preſent Majeſties King *William* and Queen *Mary*, whom God preſerve. Ye have had a long, a fair, and favourable Trial, as any Perſons that ever have been tried at this Bar.

The Jury that has paſſed upon your Lives and Deaths has convicted you; and the Court are now to do their laſt Act, which is to pronounce that Sentence that the Law does inflict upon ſuch Crimes as ye ſtand convicted of.

It is a great Trouble to me to pronounce a Judgment that is ſo heavy upon you; but I muſt ſay, the Evidence that has been given againſt you was ſo clear, and, I ſuppoſe, not only convincing to the Twelve Men that tried you, but to all Byſtanders, that I can do it with that Satisfaction that becomes one who is intruſted with the King's Juſtice, that the Law may obtain, and that there ſhould be no Interruption of Juſtice. And the Sentence that the Law has declared ſhould be pronounced in this Caſe, is this:

> *That Ye do reſpectively go to the Place from whence Ye came; from thence to be drawn upon a Sledge to the Place of Execution, to be there hanged up by the Neck, to be cut down while Ye are yet alive, to have your Hearts and Bowels taken out before your Faces, and your Members cut off and burnt. Your Heads ſevered from your Bodies, Your Bodies divided into four Quarters, Your Heads and Bodies reſpectively to be diſpoſed of according to the King's Will and Pleaſure; and the Lord have Mercy upon your Souls.*

Then the Priſoners were conveyed away to *Newgate*, the Place from whence they came. Lord *Preſton* obtained a Pardon; but Mr. *Aſhton* was executed on the 28th of *January*.

THE Queen having remitted that Part of Sentence, as to Drawing and Quartering, he went in a Coach, with two Divines, to *Tyburn*, where he was executed, and his Body given to his Relations to bury. He delivered this Paper to the Sheriff.

Mr. Sheriff,

Having obſerved, that the Methods of making Speeches at the Place of Execution, were not always attended with the deſigned Succeſſes; and thinking it better to employ my laſt Minutes in Devotion, and Holy Communion with my God, I have prepared this Paper to leave in your Hands, as well to aſſert my Principles, as to teſtify my Innocency.

As to my Religion, I profeſs, by God's Grace, to die in the Faith in the which I was baptized, that of the Church of *England*, in whoſe Communion (nothing doubting of my Salvation, thro' the Merits of my Saviour) I have always thought myſelf ſafe and happy. According to her Principles, and late much eſteemed Doctrine (tho' now unhappily exploded) I have regulated my Life; believing myſelf obliged, by my Religion, to look upon my rightful, lawful Prince (whatever his Principles were, or his Practices might be) as God's Vicegerent, and accountable, (if guilty of Male-Adminiſtration) to God only, from whom he received his Power; and always believing it to be contrary to the Laws of God, the Church, and the Realm, upon any Pretence whatſoever, to take up Arms againſt him: And let all the World take Notice in this Belief I die. But I have more particular Obligations to the King, my Maſter, whom I had the Honour to ſerve, and received many ſignal Favours from him, for 16 Years paſt; ſo that Gratitude (a Thing not much eſteemed at this Time) as well as Duty and Religion, commanded the utmoſt Service I could pay him. And when I add theſe Conſiderations, That we were born his Liege Subjects; That we had ſolemnly profeſſed our Allegiance, and often confirm'd it with Oaths; That his Majeſty's Uſage, after the Prince of *Orange*'s Arrival, was very hard, ſevere, and (I may ſay) unjuſt; and, That all the new Methods of ſettling this Nation, have hitherto made it more miſerable, poor, and more expoſed to foreign Enemies; and, That the Religion we pretend to be fond of preſerving, is now, much more than ever, likely to be deſtroyed: There ſeemed to me no Way to prevent the Impending Evils, and ſave theſe Nations from Poverty and Deſtruction, but the calling Home our injur'd Sovereign; who, as a true Father of his Country, has (notwithſtanding all his Provocations and Injuries,) a natural Love and Tenderneſs for all his Subjects. And I am ſo far from repining at the Loſs of my Life, that had I ten thouſand, I ſhould rather think myſelf obliged to ſacrifice them all, than omit any juſt and honeſt Means to promote ſo good and neceſſary a Work. And I adviſe and deſire all my Fellow-Subjects to think of their Duty, and turn to their Allegiance, before the ſevere Judgments of God overtake 'em for their Perjury and Rebellion: But certainly the Good and Intereſt of theſe Nations, abſtracted from all other Conſiderations, will ere long convince them of the Neceſſity of doing it.

Having thus frankly declared my Principles, I know the Inference will be, that I have acted accordingly, and conſequently, that I am now juſtly condemn'd: But, as I ingenuouſly own the Inference, ſo I as poſitively deny the Conſequence; for whatever my Inclinations or Actings have been, yet, as to the Matter I was ſentenced to die for, I declare myſelf innocent. And I will appeal, even to the Judges themſelves, whether or no, upon my Trial, there appeared the leaſt Proof that I knew a Tittle contained in the Papers; but Preſumptions were with the Jury thought ſufficient to find me guilty, tho' I am told I am the firſt Man that ever was condemned for High-Treaſon upon bare Suſpicion or Preſumption; and that contrary to my Lord *Coke*'s, and other eminent Lawyers Opinions. The Knowledge of my own Innocency, as to the Indictment and Charge againſt me, was That that arm'd me with ſo much Aſſurance, and occaſioned my caſting my Life upon the firſt twelve Men of the Pannel, without challenging any. But tho' I have, I think, juſt Reaſon to complain of the ſevere Charge given by the Judges, and hard Meaſure I have received; not to mention my cloſe Impriſonment, the haſty and violent Proceedings againſt me, nor the Induſtry us'd in the Return of fitting Perſons to paſs upon me; the denying me a Copy of the Pannel, *&c.* Yet, as I beg for Pardon and Forgiveneſs at the Hands of God, I do moſt heartily pray for, and forgive them, and all my Enemies, all the World; nay, even that Judge and Juryman who did ſo ſignally (contrary to common Juſtice) expoſe themſelves to deſtroy me. But let the Will of God be done, I rely wholly upon his Mercy, and the Merits of my bleſſed Saviour, for Salvation; I do chearfully and intirely reſign myſelf into his Hands, as into the Hands of a faithful Creator, in ſure and certain Hopes of a happy Reſurrection.

Bleſs, protect and ſtrengthen, O Lord God, my good and gracious King and Maſter! In thy due Time let the Virtue, Goodneſs, and Innocency of the Queen, my Miſtreſs, make all their Enemies bluſh, and ſilence the wicked and unjuſt Calumnies that Malice and Envy have raiſed againſt her. Make her and theſe Nations happy in the Prince of *Wales*; whom, from unanſwerable and undoubted Proofs, I know to be her Son. Reſtore them all, when thou ſeeſt fit, to their juſt Rights, and on ſuch a Bottom as may ſupport and eſtabliſh the Church of *England*, and once more make her flouriſh, notwithſtanding what ſhe hath received of late from her prevaricating Sons. Forgive, forgive, O Lord, all my Enemies; bleſs all my Friends; comfort and ſupport my dear afflicted Wife, and poor Babes; be thou a Huſband and a Father to them; for their Sakes only I could have wiſhed to have lived; but pardon that Wiſh, O good God, and take my Soul into thy everlaſting Glory! *Amen.* (a)

J. Aſhton.

(a) *See* State Trials, Vol. VIII. p. 464, 465.

CXLIX. *The Trial of* Henry Harrison *at the* Old-Bailey, *for the* Murder *of* Andrew Clenche, *Doctor of Phyſick*, April 6. 1692. 4 W. & M.

Wedneſday, April 6. 1692.

Judges preſent { Lord Chief Juſtice *Holt*, Lord Chief Baron *Atkins*, Mr. Juſtice *Nevil.*

THE Keeper of the Priſon of *Newgate* did, according to Order of the Court, being then ſate, bring up the Body of *Henry Harriſon*, Gent. to the Seſſions-Houſe in the *Old-Bailey*, *London*, who being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found that Day by the Grand Jury for the City of *London*, in Manner following:

Cl. of Arr. HEnry *Harriſon*, hold up thy Hand. [*Which he did.*] You ſtand Indicted by the Name of *Henry Harriſon*, late of *London*, Gent. for that you, not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the fourth Day of *January*, in the third Year of the Reign of our Sovereign Lord and Lady, King *William* and Queen *Mary*, of *England*, &c. about Eleven of the Clock in the Night of the ſame Day, with Force and Arms, *&c.* at *London*, *viz.* in the Pariſh of St. *Peter*, *Cornhill*, in the Ward of *Lime-ſtreet*, in *London* aforeſaid, being in a certain Coach with one *Andrew Clenche*, Doctor of Phyſick, and a certain Man yet unknown, in and upon the ſaid *Andrew Clenche*, in the Peace of God, and of our Sovereign Lord and Lady, the King and Queen, then and there, being violently, felonioufly, and of your Malice before-thought, did make an Aſſault. And that you the ſaid *Henry Harriſon*, with the Help and Aſſiſtance of the ſaid Man unknown, with a Pocket Handkerchief, with a Coal in the ſame being put, of the Value of Two-pence, about the Neck of him the ſaid *Andrew Clenche*, then and there, felonioufly, voluntarily, and of your Malice before-thought, did put, faſten and bind; and that you the ſaid *Henry Harriſon*, with the ſaid Handkerchief with the Coal aforeſaid in it by you the ſaid *Henry Harriſon*, with the Help and Aſſiſtance of the aforeſaid Man unknown, about the Neck of the ſaid *Andrew Clenche* then as aforeſaid, put, faſtened and bound, him the ſaid *Andrew Clenche*, then and there with Force of Arms, *&c.* felonioufly, voluntarily, and of your Malice before-thought, did choak and ſtrangle; by Reaſon of which Choaking and Straugling of the ſaid *Andrew Clenche* by you the ſaid *Henry Harriſon*, with the Handkerchief aforeſaid, with the Coal as aforeſaid put in it, he the ſaid *Andrew Clenche* inſtantly died: So that you the ſaid *Henry Harriſon*, with the Help and Aſſiſtance of the ſaid Man unknown, him the ſaid *Andrew Clenche*, the ſaid fourth Day of *January* in the Year aforeſaid, at the Pariſh and Ward aforeſaid, in Manner and Form aforeſaid, felonioufly, voluntarily, and of your Malice before-thought, did Kill and Murther, againſt the Peace of our Sovereign Lord and Lady, the King and Queen now, their Crown and Dignity.

How ſay you, *Henry Harriſon*, are you Guilty of this Felony and Murther whereof you ſtand indicted, or not Guilty?

Mr. *Harriſon.* Not Guilty in Thought, Word nor Deed.

Cl. of Arr. Culpreſt, How will you be tried?

Mr. *Harriſon.*

Mr. *Harriſon.* By God and my Country.

Cl. of Ar. God ſend you a good Deliverance.

Then the ſaid Mr. Harriſon *was taken away from the Bar by the Keeper of* Newgate.

And afterwards the ſame Day, about Eleven of the Clock in the Morning, the ſaid Henry Harriſon *was brought to the Bar, and he deſired the Court that he might then be tried, which was granted, and thoſe Perſons who were return'd upon the Jury were called over twice, and their Appearances recorded.*

Cl. of Ar. You *Henry Harriſon*, Theſe Men that you ſhall hear call'd, and Perſonally do appear, are to paſs between our Sovereign Lord and Lady, the King and Queen, and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be ſworn, and before they be ſworn.

L. C. J. Holt. Mr. *Harriſon*, you may challenge ſuch of the Jury as you ſhall think fit before they be ſworn.

Then the Jury was called and ſworn, and then were counted; and the Twelve ſworn were theſe whoſe Names follow:

JURORS.

John Roll	*John Lawford*
Nathaniel Houlton	*Nicholas Wildeboare*
Michael Pindar	*Robert Williamſon*
James Hulbert	*William Merriden*
Joſeph Howe	*Thomas Simpſon*
Richard Chewne	*Thomas Pakeman.*

Then Proclamation for Information and Evidence was made as is uſual.

Mr. *Harriſon.* My Lord, I have made no Challenges, becauſe I do believe the Jury to be honeſt Men.

Cl. of Ar. —— *Henry Harriſon*, Hold up thy Hand. (*Which he did.*) Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Henry Harriſon*, late of *London*, Gent. *&c.* [he reads the Indictment] Upon this Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty; and for his Trial hath put himſelf upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of this Felony and Murder whereof he ſtands indicted, or Not Guilty. If you find that he is Guilty, you are to inquire what Goods and Chattels, Lands or Tenements he had at the Time of the Felony and Murder committed, or at any time ſince. If you find him Not Guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his Goods and Chattels, as if you found him Guilty. If you find him Not Guilty, nor that he did fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr. *Darnell.* —— My Lord, Mr. *Harriſon*'s Agents or Friends have, ſince the laſt Seſſions, made or conveyed away a young Man that was a Principal Evidence againſt him.

L. C. J. That is a very ill Thing, and if it be prov'd, it will no way conduce to Mr. *Harriſon*'s Advantage.

Mr. *Harriſon.* My Lord, I know nothing of it. But, my Lord, one of my Witneſſes, that would have been material for me, is lately dead, Sir *Edward Hungerford*'s Son.

Mr. *Darnell.* May it pleaſe your Lordſhips, and you Gentlemen that are ſworn: I am of Counſel for the King and Queen againſt the Priſoner at the Bar, who ſtands indicted for the Murder of Dr. *Andrew Clenche*, which was as barbarous a Murder as any that hath been committed in this Age. And conſidering it was done in the Dark, I think there will be given as clear an Evidence of it againſt Mr. *Harriſon*, the Priſoner, as can be expected. And it was upon this Occaſion: One Mrs. *Vanwicke* a Widow (between whom and Mr. *Harriſon* there was a great Kindneſs) prevailed with Dr. *Clenche*, to whom ſhe was indebted Twenty Pounds, to lend her ſo much more as would make it up One Hundred and Twenty Pounds, and to take a Mortgage of a Houſe of her's in *Buckingham-Court* near *Charing-Croſs* for his Security; and Mr. *Harriſon* was preſent with Mrs. *Vanwicke* at the lending of the reſt of the Money, and executing of the Mortgage, as he was wont to be at the Management of her Affairs; but when the Time came that it was to be repaid, the Doctor could not get his Money, and Mrs. *Vanwicke* having but an Eſtate for Life in the Houſe, and having long delayed the Doctor, he brought an Ejectment for the recovering of the Houſe, upon which the Priſoner came to Dr. *Clenche*, and abuſed him with very ſcurrilous Language, and his Paſſion growing higher, he laid his Hand upon his Sword, and would have drawn it, and if it had not been for one Mr. *Johnſon*, 'twas thought he would have kill'd the Doctor at that time; ſo that the Doctor deſired Mr. *Johnſon* to take the Buſineſs upon himſelf, and to act in his own Name, he was ſo much afraid of him. And it will be proved further to you, that at another time the Priſoner ſaid, That Dr. *Clenche* was a Rogue and a Villain, and deſerved to have his Throat cut. And ſome time after this, Mrs. *Vanwicke* would have borrowed ſome more Money of the Doctor, but he refuſed to lend it her; whereupon ſhe acquainting the Priſoner with it, he ſaid, Leave him to me, Madam; I'll warrant you, I'll manage him; he is a Rogue, and deſerves to have his Throat cut. And afterwards, about St. *Thomas*'s Day laſt, the Priſoner went to Mrs. *Weſt* the Tenant, who dwelt in the Houſe mortgaged to Dr. *Clenche*, and deſired of Mrs. *Weſt* to have ſome Money for Mrs. *Vanwicke*, and it ſhould be diſcounted in Part of the then next *Chriſtmas* Rent. But the ſaid Mrs. *Weſt* refuſed to pay him any, telling him, that ſhe and her Husband were forbid by Dr. *Clenche* and the Ground Landlord, to pay any more to Mrs. *Vanwicke*; and thereupon the Priſoner expreſſed his further Malice againſt the Doctor, and ſaid, He is a great Rogue, and a Villain, and deſerves to have his Throat cut, and will not die in his Bed. And, Gentlemen, ſoon after the Priſoner began to put his malicious Deſign againſt the Doctor in Execution, and the Method he took was firſt to change his Lodgings; for on the Day before *Chriſtmas Eve* laſt, he took new Lodgings at one Mr. *Garway*'s in *Threadneedle-Street*, near the *Old Exchange*, attended by a Foot-Boy, pretending himſelf to be a Parliament-Man, and that he was juſt then come out of the Country, and lay in his Lodgings there every Night, until the firſt Day of *January* following, but lay out that Night, and the two next Nights following. And whilſt he lodged at this Mr. *Garway*'s this Matter happen'd, which does conduce ſomewhat towards the Diſcovery of this Murder: One Evening the Priſoner being in his Chamber there, and one Mrs. *Jackſon*, the Daughter of Mrs. *Garway*, making a Fire for him, he did take out his Handkerchief, and held it before the Fire to dry it, which ſhe took great Notice of, becauſe it was coarſe and dirty, and not fit for his Quality (as ſhe thought), it being made of ordinary *Indian* Stuff, like her Mother's Maid's Apron. And, Gentlemen, this very Handkerchief was the ſame with which the Murder was committed, and this Mrs. *Jackſon* will ſwear it to be the ſame; for it is a very remarkable one, and it will be produced to you. And we ſhall ſhew you further, That on the third Day of *January* (being the Day before this Murder was committed) he cauſed a ſham Letter to be left for him at his Lodgings at this Mr. *Garway*'s, as written from a Friend of his that was ſick in the Country, earneſtly preſſing him to come quickly down to him: And we ſhall prove, that the ſame Evening, he being with Mrs *Vanwicke* in *Woodſtreet-Compter*, did again threaten Dr. *Clenche*, and ſaid, That he was a Rogue, and he would have his Blood. And upon the Fourth Day of *January* laſt, he again changed his Lodgings, and took new ones at one Mr. *Jones*'s, a Cane-Chair-Maker in St. *Paul*'s Church-yard, and there he pretended himſelf to be a Country Gentleman, juſt then come out of *Cumberland*, and brought in a Portmanteau Trunk thither: And the ſame Day he ſent a Letter to Mrs. *Garway*, where he had lodged before, acquainting her, That he was gone out of Town for a Week or ten Days. And, to give you farther Satisfaction, we ſhall prove, that upon the ſame fourth Day of *January*, in the Night of which this unfortunate Gentleman was murdered, the Priſoner was at one Mr. *Robert Humſton*'s Lodgings at the *Golden Key* in *Fleetſtreet*, over-againſt *Fetter-Lane* End, at near Nine of the Clock at Night; and being aſk'd by Mr. *Humſton* to ſtay and ſup with him, he ſaid, he could not, for he had been about earneſt Buſineſs that Day, which was to be done that Night, and that a Gentleman ſtayed for him in the Street, to go with him about it, and ſo he went away. And ſoon after, about Nine of the Clock the ſame Night, two Men ſtanding in *Fleet-ſtreet*, at *Fetter-Lane* End, call'd for a Coach, and ask'd the Coachman if he knew Dr. *Clenche*, who dwelt in *Brownlow-ſtreet* in *Holborn*; and the Coachman reply'd, he did know the Street, but not the Doctor: whereupon they went into the Coach, and ordered him to drive to the End of *Brownlow-ſtreet*; and when they came thither, one of them called to the Coachman, and bade him go to Dr. *Clenche*'s, and tell him, that two Gentlemen in a Coach, at the End of the Street, deſired him to go with them to a Patient that was very ſick; which the Coachman did. And he found the Doctor in his Night-Gown and Slippers, and juſt a-going to Bed; but he immediately dreſſed himſelf, and went to them into the Coach. And it fell out very happily for the further Diſcovery of this Murder, that while this Coach ſtood at the End of *Brownlow-ſtreet*, a young Gentlewoman ſtanding at her Door near it, and fancying that while the Coachman went on the Errand, the Gentlemen would ſlip out of the Coach (I think they call it Bilking) ſhe watch'd them. And a Lamp that lighted croſs *Holborn*, over-againſt *Brownlow-ſtreet* End, and another about the Middle of *Brownlow-ſtreet*, gave ſuch a Light into the Coach, that ſhe plainly ſaw one of the Men that ſat in it, and ſee him look out of the Coach after the Coachman, and heard him ſwear at the Coachman, becauſe he made no more Haſte in going to the Doctor's Houſe; and ſhe is very certain that the Priſoner at the Bar is the ſame Perſon that look'd out of the Coach, and that did ſwear at the Coachman, and is more confident of it from the Remarkableneſs of his Voice. For ſhe hearing of this Murder, and remembring theſe Circumſtances, ſhe went to *Newgate* to ſee the Priſoner, and hearing his Voice in another Room, before ſhe ſaw him, ſhe declared to the Perſons that were then with her, that the Voice ſhe then heard, was the Perſon's Voice that ſhe ſaw look out of the Coach, and that did ſwear at the Coachman; and afterwards, when ſhe came into the Room where the Priſoner was, though with ſeveral other Men, ſhe pointed to him as the Perſon, and ſhe hearing him then ſpeak again, declared to the Perſons with her, that both by his Voice, and by his Countenance, ſhe knew him to be the ſame Man. And, my Lord, after thoſe Gentlemen had gotten the Doctor into the Coach, one of them called to the Coachman, and bade him make haſte and drive them to *Leaden-Hall-Market*, and when they were come within *Holborn-Bars*, one of them called to the Coachman, and bade him drive faſter; whereupon the Coachman drove them very faſt through *Holborn* to *Leaden-Hall-Market-Gate*; and when he came there, one of them bade him drive to the *Pye* without *Aldgate* (before which Time, without Doubt, the Murder was committed upon the Doctor, for his Hat was found next Morning in *Holborn*, near *Fetter-Lane* End; but the driving ſo long about after, is ſuppoſed to be done, leſt the Doctor might recover;) and when they were come without *Aldgate*, one of them ordered the Coachman to ask there for one *Hunt*, a *Chyrurgeon*; which he did, and being anſwered, that no ſuch Perſon was there, he ordered the Coachman to drive back again to *Leaden-Hall*, and when they came there, one of them called the Coachman, and gave him three Shillings and Six-pence, and bade him go into the Market there to one *Hunt*, a Poulterer, and buy them a Couple of Fowls, but the Coachman could not find any *Hunt*, a Poulterer; but however he bought a Couple of Fowls for three Shillings, and when he came with them to his Coach, the two Gentlemen were gone, and the Doctor left in the Coach, murder'd, with a Handkerchief tied faſt about his Neck, with a Coal in it (which will be proved to be the Priſoner's Handkerchief). Beſides, there was a Boy in the Street there, who took Notice of the Coachman's being ſent of an Errand, and ſaw the two Perſons come out of the Coach in great Haſte, and he going towards the Coach before they went out of it, one of them did ſwear at him to be gone, and of him the Boy took moſt Notice, and was as poſitive as any Man can be to the Perſon of one that he never ſaw before, that the Priſoner now at the Bar was one of them, and was the Perſon that did then ſwear at him; but this Witneſs is ſpirited away, and cannot be heard of, although he hath been deſcribed in the *Gazette*, and diligent Search and Enquiry has been made after him. But we have his Examination upon Oath before the Coroner; and we muſt ſubmit to the Court how far that ſhall be admitted as Evidence.

Gen-

Gentlemen, we will call our Witneſſes; and if they prove all this Matter, I believe every Man here will be ſatisfied, that the Priſoner at the Bar is Guilty of this baſe Murder.

Mr. *Darnel.* Pray call and ſwear Mr. *George Wigmore. (Who was ſworn with others.)*

Mr. *Darnel.* Pray, Mr. *Wigmore*, tell my Lord and the Jury what you know of any Money that was lent by Dr. *Clenche*, and to whom.

Mr. *George Wigmore.* May it pleaſe your Lordſhip, there was a Draught of a Mortgage from Mrs. *Vanwicke* to Dr. *Clenche*, made by a Gentleman of *Grays-Inn*, for the Sum of One Hundred and Twenty Pounds, and I ingroſs'd it; and I paid, by the Doctor's Order, above threeſcore Pounds of the Money, and the reſt of it was ſatisfied before; and upon Sealing of the Mortgage for the Money, Mr. *Harriſon* and one Mr. *Rowe* fell out about their Dividend of the Money, and called one another ill Names; and Mr. *Rowe* produced a Bill of what he had done and laid out for Coach-Hire and other Things for Mrs. *Vanwicke*; and Mr. *Harriſon* and he had high Words about it, and called one another Rogues; ſo I told them, if they could not agree, I would put the Money up again, and carry it Home; but Mrs. *Vanwicke* and they did agree at laſt, and ſealed the Mortgage, and I paid the Money; and Mrs. *Vanwicke* and Mr. *Harriſon* took out twenty Pounds of the Money, and paid it to Mr. *Rowe*; and after Mr *Rowe* was gone, they deſired me to go with them to the *Young Devil Tavern*, and they both uſed hard Expreſſions there againſt Mr. *Rowe.*

L. C. J. Who was the Mortgage made to?

Mr. *Wigmore.* My Lord, it was made to Dr. *Clenche* for One Hundred and Twenty Pounds.

Mr. *Harriſon.* Pray, Sir, will you tell the Jury how much Money the Gentlewoman had; and if Mr. *Rowe* had not ſtept between me and her, I had not been in Queſtion.

Mr. *Wigmore.* Mrs. *Vanwicke* acknowledged, that the Money I paid her made up One Hundred and Twenty Pounds.

L. C. J. What did you hear the Priſoner ſay againſt Dr. *Clenche?*

Mr. *Wigmore.* My Lord, I do ſay that he was very troubleſome to the Doctor.

L. C. J. Were there any Reproaches caſt upon the Doctor at that Time?

Mr. *Wigmore.* No, my Lord, only upon *Rowe*, becauſe he was a Truſtee.

Mr. *Darnel.* Did you hear him ſay any thing againſt the Doctor?

Mr. *Wigmore.* Indeed, I cannot particularly ſay.

L. C. J. He is upon his Oath, and he is ſenſible, and underſtands the Queſtion.

Mr. *Wigmore.* He did ſay very ugly Words; and when I met him afterwards in the Highway, he was very huffy, and I thought he would have drawn his Sword upon me.

L. C. J. What did he ſay of the Doctor?

Mr. *Wigmore.* I cannot ſay particularly what he ſaid.

L. C. J. Stand down.

Mr. *Darnel.* Call Mr. *Thomas Johnſon. (Who was ſworn, and ſtood up.*

Mr. *Darnel.* Sir, Pray give the Court an Account what you know concerning this Matter.

Mr. *Johnſon.* My Lord, I believe I ſhall ſay nothing that Mr. *Harriſon* will contradict. I was Attorney for Dr. *Clenche* between him and Mrs. *Vanwicke*; and I ſued Mr. *Rowe*, that was bound with Mrs. *Vanwicke* in a Bond to perform Covenants for Re-payment of the Money lent her by Dr. *Clenche* upon Mortgage; and I adviſed the Dr. and told him, Don't let us trouble the Tenant, but let us take *Rowe* firſt; and I ſued *Rowe*, and had him arreſted; and after ſome time, I ſaw that the Mortgage muſt do our Buſineſs, for *Rowe* could not pay the Money; whereupon I cauſed a Declaration in Ejectment to be delivered againſt Mrs. *Vanwicke*'s Tenant of the Houſe mortgaged by her to Dr. *Clenche*; and then Mr. *Harriſon* came to me, and he expreſſed himſelf againſt the Doctor after a ſtrange Rate, and laid his Hand upon his Sword; ſo, my Lord, I ſaid to him, What a Fool do you make of yourſelf! Muſt none go to Law, but they muſt aſk your Leave? I ſuppoſe Mr. *Harriſon* cannot deny this. Then Mr. *Harriſon* preferred a Petition to the Lords Commiſſioners of the Great Seal for Mrs. *Vanwicke*, and thereby ſuggeſted to their Lordſhips, that ſhe was wronged in the Purchaſe, and in the Mortgage-Money, and that Twenty Pounds of it was a former Debt of her Huſband's; and he finding ſhe could have no Relief before them without Payment of the Mortgage-Money, he grew troubleſome; yet ſays I, Mr. *Harriſon*, What ſhe hath done, I cannot help; but if ſhe would pay the reſt, I told him I would abate her Twenty Pounds, and the Intereſt Money alſo.

Mr. *Darnel.* Pray, Sir, did the Doctor deſire you to act for him in your own Name, becauſe he had no mind to meet with Mrs. *Vanwicke* and the Priſoner?

Mr. *Johnſon.* The Doctor did find himſelf too deeply concerned with them, and he did not care to have to do with them; whether it was that he was afraid of his Life, I cannot ſay; but he ſaid to me, Pray, Sir, go on, I will put all into your Hands, and I will truſt you with all the Affair; and let them come to you, and not trouble me; own it to be your own; and I told him I feared none of them; and the Doctor gave out, That he had made over all to me, although he had not; and upon this, I fear, comes this unfortunate Buſineſs, and the Doctor's Lady muſt look after it herſelf.

L. C. J. What did he ſay when he had laid his Hand upon his Sword in your Study?

Mr. *Johnſon.* He ſaid the Dr had cheated the Widow; and he ſaid, That he would be revenged on him, as near as my Memory will ſerve me; I ſuppoſe he will not deny it; whether he did this in a Paſſion, or to affright the Doctor or no, I cannot tell.

L. C. J. Was that before you offered to abate the Twenty Pounds?

Mr. *Johnſon.* It was before I offered to abate it.

Mr. *Harriſon.* How long was it before Dr. *Clenche* was murdered?

Mr. *Johnſon.* I think it was about a Fortnight, or three Weeks, or a little more.

Mr. *Harriſon.* I never threatned the Doctor in my Life; but I ſaid, *Rowe* had been a Villain, and a Cheat, and he and *Rowe* were the *Men*; and I ſhall make it appear, that the Dr. never wrong'd the Widow.

L. C. J. How came *Rowe* to be intruſted or concerned with the Money?

Mr. *Johnſon.* My Lord, Mr. *Cornelius Vandinanker*, a Merchant, gave a Legacy of Five Hundred Pounds to the Widow *Vanwicke* and her Children; and Mr. *Rowe* was a Truſtee on the Purchaſe, and had by that the Management of the Affair.

Mr. *Darnel.* Call Mr. *George Howard.*

(Who being ſworn, ſtood up.)

Mr. *Darnel.* Mr. *Howard*, Give the Court an Account of what you know concerning the Priſoner's threatning Dr. *Clenche.*

Mr. *Howard.* My Lord, I was at *Joe*'s Coffee-houſe, near *Warwick-Houſe* in *Holborn*, ſome conſiderable time before Dr. *Clenche* was murdered, where Mr. *Harriſon* uſed ſeveral virulent Expreſſions againſt Dr. *Clenche*; among others, one was, That he was a Rogue and a Raſcal, and deſerved to have his Throat cut. Mrs. *Vanwicke* was then in Company, and they both ſaid, That they then came from Dr. *Clenche*'s.

Mr. *Darnel.* You are ſure he ſaid that Dr. *Clenche* deſerved to have his Throat cut?

Mr. *Howard.* Yes: He ſaid, That Dr. *Clenche* deſerved to have his Throat cut.

Mr. *Harriſon.* Who was I talking to?

Mr. *Howard.* You were talking to Mrs. *Mary Sheriff.*

Mr. *Darnel.* Call Mrs. *Mary Sheriff.*

(Who was ſworn, and ſtood up.)

Mrs. *Sheriff.* My Lord, Mrs. *Vanwicke* came to my Houſe with Mr. *Harriſon*, and deſired me to go with her to Dr. *Clenche*'s Houſe; and when we came there, ſhe deſired him to let her have Twenty Pounds more, and he ſaid, No; if his Houſe were full of Money, he would not lend her any more, ſo long as ſhe kept Mr. *Harriſon* Company, for he would ſpend it; and he adviſed her to be a Gentleman's Houſe-keeper, and he would help her to a Place; and told her withal, That ſhe owed him One Hundred and Twenty Pounds, for which he would take One Hundred Pounds; and we left Mr. *Harriſon* behind us at my Houſe, and did not take him with us, becauſe we were afraid he might anger the Doctor, and fall out with him; ſo when we came back, Mr. *Harriſon* aſked Mrs. *Vanwicke*, what Dr. *Clenche* ſaid: Why, ſays ſhe, he ſaith, That he will not lend me any more Money while I keep you Company, for you will ſpend it, and that I muſt go to Service. To Service! ſaid Mr. *Harriſon*; God damn him! Have a Perſon of your Quality go to Service! He deſerves to have his Throat cut; let me alone, I'll manage him as never any Man was managed; and ſo away they went together.

Mr. *Harriſon.* Did not you ſay, That as you hop'd to be ſaved, that I was innocent of the Thing?

L. C. J. She does not accuſe you of doing the Fact, but gives an Account of ſome Expreſſions that paſſed from you.

Mrs. *Sheriff.* You were always talking againſt Dr. *Clenche*; and you ſaid, God damn him, he was an old Rogue, and that Mrs. *Vanwicke* was almoſt ſtarved to Death.

Mr. *Harriſon. Rowe, Rowe*, I meant, my Lord.

(The Priſoner then being in a Paſſion.)

L. C. J. Mr. *Harriſon*, do not fall into a Paſſion; it may be more to your Advantage in the making your Defence, if you keep your Temper.

L. C. J. Witneſs, what were the Words that he ſaid againſt Doctor *Clenche?*

Mrs. *Sheriff.* Why, he ſpeaking of Doctor *Clenche*, ſaid to Mrs. *Vanwicke*, God damn him, would he have a Perſon of your Quality go to Service! He deſerves to have his Throat cut. Well, Madam, ſays he, be contented; I'll manage him as never any Man was managed.

Mr. *Harriſon.* What had you for your Swearing?

Coroner for the King and Queen. Witneſs, he aſketh you, If you had any thing for your Swearing againſt him?

Mrs. *Sheriff.* No, I had nothing, neither have I need of any thing; I had not ſo much as my Coach-hire.

Mr. *Darnel.* Call Mrs. *Elizabeth Weſt. (Who was ſworn.)*

Mr. *Darnel.* Miſtreſs, give an Account to the Court, what you know about the Priſoner's coming to demand Rent of you, and what paſſed.

Mrs. *Weſt.* May it pleaſe your Lordſhip, this Gentleman, the Priſoner, came to me two or three Days before St. *Thomas*'s Day laſt, and deſired me to give him ſome Rent for Mrs. *Vanwicke*; and I told him I had no Power to pay him, becauſe I was warned by Dr. *Clenche* to pay no more: Says he to me again, Dr. *Clenche* and *Rowe* are great Rogues, and great Villains. Sir, ſays I to him again, I believe that the Doctor is a very honeſt Man. No, ſays Mr. *Harriſon*, he is a great Villain, and he will never die in his Bed; which of them he meant, Mr. *Rowe* or Dr. *Clenche*, I cannot tell. And Mrs. *Vanwicke* and Mr. *Harriſon*, a little time before that, preſſed me to let them have ſome Shop Goods in Part of her Rent, to grow due; and ſhe made great Complaint, that her Children were ready to ſtarve; and I then told them, that Mr. *Johnſon* had fore-warned me to pay no more Rent to Mrs. *Vanwicke*, and if I did, I ſhould pay it again; and therefore I would not pay any more Rent to her, or deliver her any Goods, until ſhe had agreed with Mr. *Johnſon*; and then Mr. *Harriſon* ſaid, that Mr. *Johnſon* was a great Villain and a great Rogue, and that they had all combined together to cheat the Widow. And Mr. *Johnſon* being at my Houſe, Mrs. *Vanwicke* fell upon him in a great Rage, and ſaid, ſhe would tear his Throat out, and laid hold on him; and Mr. *Johnſon* got from her, and went away in great Haſte. And the laſt time I ſaw Dr. *Clenche*, I preſſed very hard upon him, to let Mrs. *Vanwicke* have more Money; and the Doctor ſaid, that ſhe would never do any Good with it, for ſhe ſpent it all upon Mr. *Harriſon*; and I wiſhed him to let her have Twenty Pounds more; and he ſaid, That he adviſed her to go to Service, and that he had wiſhed her to a Service of Twenty Pounds a Year, and ſhe abuſed him for it.

L. C. J. What Cloaths had the Priſoner on?

Mrs. *Weſt.* My Lord, he had an old thread-bare black Cloth Suit of Cloaths on, which looked very ſhabby.

Mr. *Harriſon.* What Religion are you of, Miſtreſs?

Mrs. *Weſt.* I was born and bred a Proteſtant.

Mr. *Harriſon.* I believe you are a Papiſt, and will ſwear any thing; you keep Roman Catholicks in your Houſe, they have murdered Dr. *Clenche*, for aught I know.

L. C. J. Did Mr. *Harriſon* ever lodge in your Houſe?

Mrs. *Weſt.* No, my Lord, I have none but Perſons of Quality lodge in my Houſe, and they belong to the preſent Government.

Mr. *Darnel.* Call *Ann Watſon.*

(Who was ſworn.)

Mr. *Darnel.*

Mr. *Darnell.* Pray, tell my Lord and the Jury, what you know of Mr. *Harriſon*'s taking of Lodgings at Mr. *Garway*'s Houſe, and when it was.

Anne Watſon. He came about ſix a-Clock at Night, the Day before *Chriſtmas-Eve* laſt, to my Maſter's, Mr. *Garway*'s Houſe, and told us, that he was newly come out of the Country; and lodged there that Night, and ſo he did until and upon the laſt Night of *December*; and on the firſt Day of *January* he went out, and ſtaid out that Night; and on the *Sunday*, the third of *January* laſt, at Night, he came again with a Perſon with him, and fetch'd away his Portmanteau-Trunk and Things, and paid for his Lodging; and in his Abſence there was a Letter left for him, which I gave him, and he ſaid, it came out of the Country, and that he had a Friend ſick in the Country, and did intend to go down to ſee him, being one from whom he expected a Legacy, and he left that Letter on the Kitchen Window, and on the *Monday* after, being the fourth Day of *January* laſt, he ſent a Letter, ſignifying he was gone out of Town.

(*Then the Letter was produced, marked with the Penny-Poſt Mark.*)

Mr. *Darnell.* Who knows Mr. *Harriſon*'s Hand? Mr. *Johnſon*, take that Letter and look upon it, and tell the Court if you think it to be Mr. *Harriſon*'s Hand.

(*Mr.* Johnſon *takes the Letter and looks upon it.*)

Mr. *Johnſon.* My Lord, I believe it to be Mr. *Harriſon*'s Hand.

Mr. *Darnell.* My Lord, I deſire that the Letter may be read.

L. C. J. Mr. Clerk of the Peace, read the Letter; and the Subſcription firſt. (*Clerk of the Peace reads.*

To Mrs. Garraway, *at the* Hand *and* Apple *in* Threadneedle-Street, *near the* Royal-Exchange, *Preſent.*

Mrs. Garraway,

I AM ſorry it ſhou'd be ſuch an Inconveniency to you, as it is. I have left with your Maid, Three Half-Crouns, and if it is not enough, I will give you more. I am gone out of Town for a Week or Ten Days, and as ſoon as I come again, I will wait on you; which is all till I ſee you, from

Your Friend, and Servant,

4th Jan. 1691. *H. Harriſon.*

Mr. *Darnell.* Call Mr. *Henry Garway* and his Wife. [*Who were called and ſworn.*

Mr. *Darnell.* Mrs. *Garway*, take that Letter, and look upon it, and tell the Court when you received it.

Then ſhe takes the Letter which was produced, and read as before, and looked upon it.

Mrs. *Garway.* My Lord, I received this Letter on *Monday* the 4th Day of *January* laſt.

L. C. J. Watſon, when did he leave the Lodgings, ſay you?

Anne Watſon. He went away the firſt of *January* laſt, about nine a-Clock in the Morning, and returned not that Night; but on the ſecond of *January* laſt, he was at my Miſtreſs's Shop again (as my Miſtreſs told me), and he came about five a-Clock on the next *Sunday* Night (being the third of *January* laſt) with a Perſon with him, to my Maſter's Houſe, and fetch'd away his Portmanteau-Trunk and Things, and left Three Half-Crowns with me for his Lodgings, which I gave to my Miſtreſs.

Mr. *Darnell.* Call Mrs. *Catherine Jackſon.* [*Who was ſworn.*

Mr. *Darnell.* Pray, tell my Lord and the Jury, what you know concerning Mr. *Harriſon*'s coming to lodge at Mr. *Garway*'s, and when he went away, and what you know of any Handkerchief he had.

Mrs. *Jackſon.* He came on the Day before *Chriſtmas-Eve*, to lodge at my Father's, Mr. *Garway*'s Houſe, and lodged there ſeveral Nights, and went away the third of *January* at Night, with his Things, but was abſent ſome Nights between his coming and going away; and whilſt he lodged there, I obſerved a Handkerchief in his Hand, as I was making a Fire for him in his Chamber, and the more, becauſe he had ſaid he was a Parliament-Man, and I thought it more like a Seaman's Handkerchief, than a Parliament-Man's, and our Maid had an Apron of the ſame kind of Stuff.

(*Then the Handkerchief was produced in Court by the* Coroner, *and the Coal in it, wherewith Dr.* Clenche *was ſtrangled.*)

Mr. *Darnell.* Mrs. *Jackſon*, I deſire that you would look upon that Handkerchief, and tell the Court what you know of it.

Mrs. *Jackſon.* This is the Handkerchief, that I ſaw Mr. *Harriſon* hold to the Fire, when I was making of it in his Chamber, or very like that Handkerchief, for I obſerved it to be very like my Mother's Maid's Apron.

(*Then a Piece of the Maid's Apron was produced, and they being compared, were very like.*)

Mr. *Harriſon.* Did you hear me ſay, I was a Parliament-Man?

Mrs. *Jackſon.* Yes, I heard you ſay ſo.

Mr. *Harriſon.* Perhaps you might hear my Boy ſay ſo.

Mrs. *Jackſon.* Your Foot-Boy ſaid, you were a Parliament-Man: And you ſaid ſo yourſelf.

Mr. *Darnell.* Call Mr. *Garway* again. [*He appeared.*

Mr. *Darnell.* Where is the Letter you receiv'd from Mr. *Harriſon*, ſince he was a Priſoner?

L. C. J. What do you ſay about a Letter that came to your Houſe from the Priſoner?

Mr. *Garway.* My Lord, I had this Letter from him laſt *Saturday*, directed to my Wife, and I believe it to be his Hand.

[*He produceth the Letter.*]

Mr. *Darnell.* My Lord, I deſire that the Letter may be read.

L. C. J. Read the Letter, Mr. *Tanner.* [*Clerk of the Peace reads.*

To Mrs. Garway *at the* Hand *and* Apple *in* Threadneedle-Street, *behind the* Royal-Exchange, *Preſent.*

Mrs. Garway,

I WAS informed Yeſterday, that you are to appear againſt me at next Seſſions. I am ſure you never heard me mention Dr. Clenche, *in all your Life; and if you do, it will look like Malice. My Lord Chief Juſtice is ſenſible of the Wrong done me. This is all from*

Your Servant,

Henry Harriſon.

L. C. J. Mr. *Harriſon*, Did I ever tell you, that I was ſenſible of it?

[*To which he made no Reply.*]

Mr. *Darnell.* Call Mr. *John Cartwright.* [*Who was ſworn.*

Mr. *Darnell.* I would have you declare, what you heard Mr. *Harriſon* ſay concerning Doctor *Clenche.*

Mr. *Cartwright.* My Lord, upon the Third of *January* laſt, Mr. *Harriſon* came to *Woodſtreet-Compter*; it was on a *Sunday* in the Evening, about Five or Six a-Clock, I was ſtanding in the Gate, and I let him in. Aſſoon as he came in, he aſked how poor Mrs. *Vanwicke* did; ſays he, She hath been wronged of Five Hundred Pounds within theſe 12 Months: Then I let him into the Court, and he went into her Chamber; and about half an Hour after, I was ſent by my Maſter, to require ſome Chamber-rent of Mrs. *Vanwicke*, and I heard Mr. *Harriſon* and ſhe at high Words, and in a great Paſſion, and I heard Mr. *Harriſon* ſwear, God damn his Blood, he would be reveng'd of that Rogue, and named *Clenche* or *Winche*, I cannot tell which, and he would have his Blood, ere it were long.

Mr. *Harriſon.* Where were you?

J. Cartwright. My Lord, I was at the Chamber-door, and there was no Body on that Side of the Houſe, but Mr. *Harriſon*, Mrs. *Vanwicke*, and myſelf.

Mr. *Darnell.* Call Mrs. *Mary Jones.* [*Who was ſworn.*

Mr. *Darnell.* Now, my Lord, I will call one to prove, where he took a new Lodging, the very Day the Murder was done.

L. C. J. Cartwright, was that in Mrs. *Vanwicke*'s Chamber that you heard him ſwear ſo?

Mr. *Cartwright.* Yes, my Lord, in her Chamber, and none was with her, but he only.

Mr. *Darnell.* You, the laſt Witneſs Mrs. *Jones*, when did Mr. *Harriſon* come to lodge at your Houſe?—Mrs. *Jones.* He came on a *Monday*.

Mr. *Darnell.* What Day of the Month was it?

Mrs. *Jones.* I can't tell what Day of the Month, for I did not ſet it down.

Mr. *Darnell.* Was it the *Monday* before he was taken?

Mrs. *Jones.* Yes, it was the *Monday* before.

Mr. *Darnell.* Whence did he pretend to come?

Mrs. *Jones.* He ſaid, That he was come out of the Country, and had formerly lodged in *Fleet-ſtreet*, and that where he had lodged formerly, they had left off Houſe-keeping, and were gone into the Country.

L. C. J. Where is your Houſe?

Mrs. *Jones.* In St. *Paul*'s Church-Yard, at the Sign of the *Golden-Ball*.

Mr. *Darnell.* Call *James Howſeman.* [*Who was ſworn.*

Mr. *Darnell.* Do you tell what you know, about Mr. *Harriſon*'s being at Mr. *Jones*'s Houſe.

Howſeman. My Lord, he came in about Eight a-Clock at Night, and brought a Porter with him, and a Portmanteau-Trunk; and after that, the Porter went out a little before him, and then he followed him, and went out after.

Mr. *Darnell.* Did you hear him ſay, from whence he came?

Howſeman. No, I did not.

Mr. *Darnell.* Call *Anne Evans.* [*Who did not appear.*

Mr. *Darnell.* Then call Mr. *Robert Humſton.* [*Who was ſworn.*

Mr. *Darnell.* Mr. *Humſton*, I deſire you will give the Court an Account of Mr. *Harriſon*'s being at your Houſe that Night Dr. *Clenche* was murdered.

Mr. *Humſton.* My Lord, I met Mr. *Harriſon* on *Monday* the 4th of *January* laſt, and he told me, he was going to the *Compter*, to a Gentlewoman that was much oppreſſed, and that he wanted Money to get her releaſed; upon which, I gave him ſome Money, and after ſome Diſcourſe, I deſired him to bring home my Gown, that I formerly let him, and ſeemed angry with him, for that he had ſeveral times promiſed me to bring it home, but had failed therein; and thereupon he promiſed, that I ſhould have it that Night: And that Evening about Nine of the Clock, he came to my Lodgings, and brought home my Gown; and when he came, I aſked him, if he had gotten Mrs. *Vanwicke* releaſed: And Mr. *Harriſon* anſwered, No. Upon which, I blamed him for neglecting an old Friend; and Mr. *Harriſon* excuſed it, telling me, That he had met with ſome Perſons upon earneſt Buſineſs, which prevented him. And then I aſked Mr. *Harriſon* to ſtay and ſup with me, but he refuſed it, ſaying, That he had been about extraordinary Buſineſs that Day, which muſt be done that Night, and that a Gentleman ſtay'd in the Street for him, and they two were going to do it.

L. C. J. Where do you live? And how long ſtayed he at your Houſe?

Mr. *Humſton.* I lodged then at the *Golden Key* in *Fleet-ſtreet*, over-againſt *Fetter-lane* End: He came to my Lodgings about Nine of the Clock at Night, and ſtayed there but a little time.

L. C. J. What manner of Cloaths had he on?

Mr. *Humſton.* My Lord, he had a Cloak on, but I cannot tell what Cloaths he had under it, he brought my Gown up under his Cloak.

Mr. *Darnell.* Swear *Eſther King.* [*Who was ſworn.*

Mr. *Darnell.* Do you know what time Mr. *Harriſon* was at Mr. *Humſton*'s Lodgings?

Eſther King. It was on *Monday* the fourth Day of *January* laſt, about Nine of the Clock at Night, as near as I can gueſs, the Shop was ſhut up, and I let him out.

Mr. *Darnell.* Where was it?

Eſther King. At the *Golden Key* in *Fleet-ſtreet*, over again *Fetter-lane* End.

Mr. *Darnell.* What Cloaths had he on?

Eſther King. I cannot tell well, but he had a Cloak on, I do not know what Cloaths he had on beſides.

Mr. *Harriſon.* Was it Eight or Nine a-Clock?

Eſther King. It was near Nine, as near as I can gueſs.

Mr. *Darnell.* Swear *John Sikes* the Coachman. [*Which was done.*

Mr. *Darnell.* Give an Account to the Court what you know about carrying two Men in your Coach, and how you found Dr. *Clenche* murdered.

John Sikes. My Lord, on the 4th of *January* laſt, being *Monday*, I was at the *Play-Houſe*, and there I took up a Man and a Woman, and carried them into the City; ſo I brought the Gentleman back again to the *Green-Dragon* Tavern in *Fleet-ſtreet*; and then, he ſaid he would pay me by the Hour; he ſaid, That it was but much about Nine a-Clock. Then I left him, and was driving up the Street, towards

the *Temple*, and two Men ſtood in *Fleet-ſtreet*, about *Fetter-lane* End, and they aſked me, if I knew Dr. *Clenche*, who dwelt in *Brownlow-ſtreet* in *Holborn?* I told them, That I did not know Dr. *Clenche*, but I knew the Street. So they went into my Coach, and one of them bade me drive thither, and I did, and ſtopt at the Street's End; becauſe the Gate at the other End was ſhut, ſo that I could not turn my Coach: And one of them bid me go and tell the Doctor, That there were two Gentlemen in a Coach at the Street's End, that would deſire him to go with them to ſee one that was not well. The Doctor aſked me, If I could not tell who they were? Or, who it was, that he was to go to? I told him, that I could not tell. The Doctor was in his Night-Gown and Slippers, and he dreſſed himſelf: and when he came to the Coach, one of them removed from his Place, and gave him the hinder Part of the Coach, and told him, That they had a Friend that was not well: And one of them bid me drive to *Leaden-Hall-Market*; and when I came about *Holborn-Bars*, one of them called to me, and aſked me, Why I drove ſo ſlowly? and bid me drive faſter; ſo I drove faſt, and came to *Leaden-Hall:* And then one of them bade me drive to the *Pye*-Tavern without *Aldgate*, and there ordered me to ſtop. And when I had ſtopped there, one of them called to me, and told me, That I need not ſtir out of my Coach-Box; but call to the Boy at the Tavern, and aſk for one *Hunt* a Chyrurgeon, which I did do: And when the Boy came to me again, he ſaid, there was no ſuch Man. Then one of them bade me drive back again to *Leaden-Hall*; and in the Time I ſtayed there, and turned my Coach, *Aldgate* was ſhut; and when I came to the Gate, one of them gave Six-pence to the Watch, and the Gate was opened, and I drove to *Leaden-hall* Gate. And when I came there, I ſtopped again, and one of them gave me Half-a-Crown, and bade me go and buy a Fowl of one *Hunt* a Poulterer; but after I had gone a little way from the Coach, he called me again, and ſaid, Here, Coachman, you had as good take another Shilling, and buy a Couple: ſo I went, and bought a Couple of Fowls, but could find no ſuch Poulterer as *Hunt*; ſo I bought them of another, and I gave three Shillings for them. And when I came back to the Coach-Side, I found Dr. *Clenche* (as I thought) ſitting againſt the Fore-ſeat, with his Head againſt the Cuſhion: I pull'd him, and cryed, Maſter, Maſter, for I thought he had been in Drink, but I could not get one Word from him; and then I went to the Watch, who were near; and when they came, we found him ſtrangled, with a Handkerchief about his Neck, and a Coal in it, plac'd juſt upon his Wind-Pipe, but the other two Men were gone.

L. C. J. Had one of the two Men a Cloak on?

J. Sikes. I cannot remember that.

L. C. J. What kind of Habit had he? Had he black Cloaths on?

J. Sikes. My Lord, I cannot tell juſtly what Cloaths he had on.

L. C. J. You have heard him ſpeak: What ſaid he?

J. Sikes. My Lord, he never ſpoke to me; it was the other Man.

Mr. *Harriſon.* What kind of Man was the other? Was he leſs than I, or taller?

J. Sikes. He was taller than you, with his own Hair.

Mr. *Darnell.* Can you be poſitive that the Priſoner at the Bar is one of thoſe two Perſons?

J. Sikes. My Lord, one of thoſe two Perſons had a Perriwig on, of a light-coloured Hair: And I do verily believe, that the Priſoner at the Bar is the ſame Perſon; I cannot be poſitive he is one of them, but as near as I can judge of a Man whom I have ſeen but once, he is one of them.

Mr. *Harriſon.* My Lord, I deſire your Lordſhip to obſerve the Time that he took the two Men up, and what Time it was they ran out of the Coach.

L. C. J. Coachman, what Time was it that they left your Coach?

J. Sikes. About half an Hour paſt Ten, and it was about a quarter of an Hour paſt Nine, when I took them up.

Mr. *Darnell.* Pray let's aſk the Coachman one Thing more. Coachman, look upon that Handkerchief, do you know it, and where did you ſee it?

[*The Handkerchief was produced by the Coroner.*]

J. Sikes. I do believe that it is the ſame Handkerchief that was about Dr. *Clenche*'s Neck when he was found murdered.

L. C. J. Call the Coachman. Hark you, In what Poſture did you find Dr. *Clenche* when you came back to your Coach?

J. Sikes. My Lord, he was ſat in the Bottom of the Coach, leaning on one Side, with his Head againſt the Cuſhion.

L. C. J. Was a Handkerchief then about his Neck?

J. Sikes. Yes, my Lord, I untied this Handkerchief, and this is the ſame; and here is the Coal that was lapt in it: it was lapt in the Middle of it, and it laid juſt againſt the Doctor's Wind-Pipe.

Mr. *Darnell.* Call Mr. *Rebone* and Mr. *Marriott.* [*Who were ſworn.*]

Mr. *Darnell.* Mr. *Rebone*, tell what you know concerning the Handkerchief, and how you found the Doctor.

[*He takes the Handkerchief, and looks on it.*]

Mr. *Rebone.* This Handkerchief was about the Doctor's Neck, and the Coal in it. And it lay juſt upon his Wind-Pipe, when I ſaw him dead in the Coach. The Coachman came to Mr. *Marriot*'s Houſe, and aſk'd for a Conſtable, and we went to the Coach-Side, and there we found him lying along; and we took him, and carried him to the *Bull*-Inn, and there he was let Blood on the Arms, and the Chyrurgeon took about half a Spoonful of Blood out of his Right Arm; and he was let Blood on the other Arm, but that did but juſt trickle down, and we could not get him to Life again; and we found a Silver Ink-horn in his Pocket, and that, and the reſt of his Things, were ſecured. This is all I can ſay to the Matter.

Mr. *Darnell.* Call Mrs. *Elianor Aſhbolt.* [*Who was ſworn.*]

Mr. *Darnell.* Pray tell my Lord, and the Court, what you know of any Perſons you ſaw in a Coach at *Brownlow-ſtreet* End, that Night Dr. *Clenche* was murdered.

Mrs. *Aſhbolt.* May it pleaſe your Lordſhip, I went out of an Errand for one Madam *Anwell*, a Gentlewoman who lodges at my Mother's Houſe; and coming home again, I ſaw a Coach ſtop at *Brownlow-ſtreet* End, between Nine and Ten o'Clock at Night, and the Coachman went to the Side of the Coach: And one in the Coach bade him go to Dr. *Clenche*'s, and tell him, That there were two Gentlemen ſtayed for him in a Coach; and as he went up the Street, he went ſlowly, and looked back two or three times: Whereupon one of the Perſons leaned out of the Coach, and did ſwear at the Coachman to make Haſte; and I went round the Coach, and could diſcern Mr. *Harriſon*'s Face; and I ſtayed, and ſaw Dr. *Clenche* go into the Coach, and one of them gave his Place to the Doctor.

Mr. *Darnell.* Why were you ſo curious, Miſtreſs, and what did you obſerve further?

Mrs. *Aſhbolt.* I thought they might give the Coachman a Slip. I well obſerved Mr. *Harriſon*, but do not know the other Man. There were two Lamps burning, one in *Brownlow-ſtreet*, and the other in *Holbourn*, over-againſt the End of *Brownlow-ſtreet*, and they lighted quite through the Coach; and the Men pulled themſelves backwards, when they ſaw me look on them: It was that Night that the Doctor was murdered. I went to *Newgate* afterwards. Madam *Clenche* deſired me to go and ſee Mr. *Harriſon*; and when I came to *Newgate*, it ſeems he was writing Letters, ſo I ſtaid before I went into the Room: And there were two Men with me, and Mr. *Harriſon* was talking very loud; ſaid they to me, Who is that ſpeaks now? Why, ſays I, it is one of the Perſons that was in the Coach when Dr. *Clenche* was murdered.

L. C. J. Who are thoſe two Men that were with you?

Mrs. *Aſhbolt.* One of them was one Mr. *Jones*, a Coachmaker in *Holbourn*, and the other was Madam *Clenche*'s Coachman.

L. C. J. Did you know the Priſoner, when you ſaw him in *Newgate*, to be one of them that were in the Coach?

Mrs. *Aſhbolt.* Yes, I did; I knew him to be the ſame Man, as ſoon as I ſaw him: And he changed Countenance, as ſoon as he ſaw me.

Mr. *Harriſon.* My Lord, This Woman is certainly hired by the Villains that are againſt me. Pray, aſk her, my Lord, Why ſhe did not make a Diſcovery ſooner?

L. C. J. Miſtreſs, What ſay you to that?

Mrs. *Aſhbolt.* I acquainted Madam *Anwell* what I had ſeen and obſerved, and ſhe told Madam *Clenche*, after laſt Seſſions; and then ſhe deſired me to go to *Newgate* to ſee Mr. *Harriſon*, and I went accordingly; and I ſhould have told it to Madam *Clenche* ſooner, but my Mother was loth I ſhould be concerned about ſuch a Thing.

Mr. *Darnell.* My Lord, we have ſome Witneſſes who can give your Lordſhip an Account, that one of our Witneſſes, whom I mentioned to your Lordſhip before, is ſpirited, or withdrawn from us, by a Gentleman that ſaid he came to him from the Priſoner, and deſired him to be kind to the Priſoner; which Witneſs is ſince abſent, and not to be found: his Name was *Andrew Bowſell*, a Youth, and an Apprentice to one Mr. *Tims*, a Shoemaker.

L. C. J. You muſt prove upon him, that he made him keep away.

Mr. *Darnell.* Call *Barnabas Smith.* [*Who was ſworn.*]

Mr. *Darnell.* Give my Lord and the Court an Account, what you know of this Matter.

Mr. *Smith.* My Lord, This *Andrew Bowſell*, which the Counſel for the King ſpeaks of, was ſent to *Leadenhall-ſtreet* of an Errand, to the *Bull-head* Ale-houſe there. And as he was going along, a Gentleman met him, and aſked him, if he was not an Evidence againſt Mr. *Harriſon:* And being told by the Boy that he was, he deſired him to be kind to him; and pulled out a Piece of Money, and offered it him, deſiring him to be kind to Mr. *Harriſon.* Upon which the Youth replied, That he owed him Nothing, and Nothing he would take. Then the Gentleman told him, That he would come again at another Time, and ſend for him near to his Maſter's. So the Boy ſaid, and told me: And ſaid further, That if he could have gotten him to have gone to the *Bull-head* Alehouſe, he would have ſeized him.

Mr. *Darnell.* What is become of the Boy?

Mr. *Smith.* Truly, we do not know what is become of him, we never heard of him ſince the ſixth Day of *March* laſt.

Mr. *Darnell.* Call his Maſter, Mr. *Richard Tims.* [*Who was ſworn.*]

Mr. *Darnell.* Tell my Lord and the Court, what you know of this Matter, and what is become of your Apprentice, *Andrew Bowſell.*

Mr. *Tims.* My Lord, He went away from me on the ſixth Day of *March* laſt; he was inticed away by three Soldiers that Night, and on the Morrow-Morning one of them came and demanded his Coats, Shirts, and Neckcloths: Says I to him, Who ſent you, and who is your Captain? and he anſwered, Why, Captain *Harris:* He huffed, and ſaid, That if I would not give him the Cloaths, he would ſend his Officer; and then I told the Soldier, I would have him before a Juſtice of the Peace; ſo he went away, and never came to me again: And I could never hear of my Apprentice ſince, tho' I have made great Enquiry after him.

L. C. J. Did your Servant tell you of any Money that had been offered him by the before-mentioned Gentleman?

Mr. *Tims.* No, my Lord; he did not tell me, but he told Mr. *Smith*, the Witneſs that was laſt examined, as he told me.

Mr. *Darnell.* My Lord, I deſire that *Andrew Bowſell*'s Examinations before Mr. *John Browne*, the Coroner of *London*, upon Oath, may be read.

[*Which being proved by the Coroner, were directed to be read.*]

Clerk of the Peace reads. 12. Januarii, 1691.

Andrew Bowſell, Servant to *Richard Tims*, Shoemaker, ſworn and examined touching the Death of *Andrew Clenche*, Doctor of Phyſick, deceaſed, ſaith, That he, this Informant, being ſent to Mr. *Parker*'s, at the *Bull-head* Alehouſe in *Leadenhall-ſtreet*, on *Monday* laſt was Se'nnight, being the Fourth of this inſtant *January*, between the Hours of Ten and Eleven of the Clock in the Evening, ſaw a Coach ſtanding againſt *Leadenhall-Market*; and heard ſome Perſon that was in the Coach ſay, Make Haſte: And this Informant ſays, that according to the beſt of his Remembrance he heard him talk of a Poulterer's. And this Informant ſays, That ſoon after the Coachman was gone into the Market, this Informant ſaw two Perſons go out of the Coach, one whereof had, as this Informant believes, a black Coat on; and that this Informant ſaw the ſame Perſon, as ſoon as he came out of the Coach, fling a Cloak over him: and then both the Perſons went through the *Market* on the Weſt Part.

And

And this Informant faith, That this Informant going to look into the Coach, the Perſon that had the Cloak on him, cry'd Damn him; and this Informant ſaith, That he, this Informant, thereupon going away, went to Mr. *Parker*'s, and told them, that two Perſons had cheated a Coachman, or to that Effect.

And. Bowſell being further Examined the 23*d* Day of *January*, 1691, touching the Death of *Andrew Clenche*, ſaith, That he hath ſeen *Hen. Harriſon*, now a Priſoner in their Majeſties Goal of *Newgate*, and believes he was one of the Perſons that came out of the Coach at *Leaden-hall*, a little after Ten of the Clock at Night, on *Monday* the 4*th* of this Inſtant *January*; and believes he knows him by his Voice. And ſoon after, this Informant underſtood that the ſaid *Andrew Clenche* was murder'd in a Coach, being the ſame Coach which the ſaid *Harriſon*, and another Perſon unknown, a little before went out of.

L. C. J. Mr. *Harriſon*, What have you to ſay againſt that which hath been proved againſt you? what Defence can you make?

Mr. *Harriſon*. My Lord, I did attend Dr. *Clenche* about a Mortgage that was made him by Mrs. *Vanwicke*, and Dr. *Clenche* did pay one Hundred Pounds, but this Gentlewoman would pay, or allow *Rowe* but Fifteen Pounds, and we did not know how to get the Money from *Rowe*, ſo we petition'd the Lords Commiſſioners about it, which was above Six Months before Doctor *Clenche* was murder'd; and Mr. *Fairbeard* wonder'd that I would put Doctor *Clenche*'s Name into a Petition with ſuch a Rogue as *Rowe*; and I do poſitively ſay, That I had not ſeen Doctor *Clenche* in a Month before, and if Doctor *Clenche* had died in his Bed, it had been the ſame thing to me; and, my Lord, Mr. *Johnſon* and I had never any angry Words between us; and I have the Report in Chancery, which I had from Sir *John Hoſkins*, which I will read, if your Lordſhip pleaſes.

L. C. J. Let's ſee it.

[*Which was handed to the Lord Chief Juſtice, ſitting on the Bench.*]

Mr. *Harriſon*. My Lord, that is the Original, which if your Lordſhip pleaſes to remember, I had *Rowe* before you twice about it; and it is *Rowe* that hath been the Rogue, and therefore what Occaſion had we to be angry with Doctor *Clenche*?

[*Then the Report was perus'd by the Lord Chief Juſtice, and return'd to him.*]

L. C. J. Mr. *Harriſon*, this will do you no good, not being to the preſent Purpoſe; therefore proceed in your Defence.

Mr. *Harriſon*. Now, my Lord, I have ſome Witneſſes to prove where I was at the Time that the Coachman ſays the Murder was done. *Cryer, call* Thomas Turner *a Porter*, and *Mr.* Maccaffee.

[*Who appeared, but were not ſworn, and examined apart, at the Requeſt of Mr.* Darnell, *the King's and Queen's Counſel.*]

Mr. *Harriſon*. My Lord, I ſhall prove by theſe Witneſſes, that I was elſewhere when the Coachman ſaid he took up thoſe two Men, a little after Nine o'Clock. Pray, Mr. *Turner*, give an Account to the Court, what time it was I called you to carry my Trunk.

Tho. Turner. My Lord, I was, about Seven of the Clock in the Evening the 4th Day of *January* laſt, at the *Two Kings* and *Key* in *Fleet-ſtreet*, over againſt *Saliſbury-Court*; and I was told, That a Gentleman at *Joe*'s *Coffee-houſe* in *Saliſbury-Court*, wanted a Porter; and I preſently went to him thither, and it was this Mr. *Harriſon*; and he bade me take up his Trunk, which I did, and carried it to the *Two Kings* and *Key*, and he went with me; and he aſked me to get ſome Linnen waſh'd for him againſt the next Day at Noon; and he gave me ſome Linnen, which I carried to my Wife to waſh for him, and return'd to him again preſently; and I went with him from thence, and carried his Trunk to his Lodgings in *Paul's Church Yard*; and when I had deliver'd his Trunk, I left them there; and then it was about Eight of the Clock at Night.

L. C. J. At whoſe Houſe was it you deliver'd the Trunk?

Thomas Turner. My Lord, it was at Mr. *Jones*'s Houſe in *Paul's Church Yard*.

L. C. J. And did he ſtay within?

Thomas Turner. No, my Lord, he went out preſently after me.

L. C. J. Were you any where elſe with him that Night, beſides at the Places you have mentioned?—*Thomas Turner*. No, my Lord.

Mr. *Harriſon*. My Lord, I will prove that Mr. *Humſton* miſtakes an Hour.

Mr. *Humſton*. I cannot miſtake an Hour, becauſe the Shop is ſhut up about Nine a-Clock, and it was ſhut when you came firſt to my Lodgings.

Mr. *Harriſon*. My Lord, there ſtands in Court one *Thomas Johnſon*, Apprentice to Mr. *Pemmel*; he can tell what time a Night it was I came to Mr. *Humſton*'s, he let me in: I deſire he may be call'd.

Mr. *Darnell*. Swear *Thomas Johnſon*. [*Who was ſworn.*

L. C. J. What time of the Night was it that Mr. *Harriſon* came to ſpeak with Mr. *Humſton*, on that Night Dr. *Clenche* was murder'd?

Tho. Johnſon. My Lord, on the 4th of *January* laſt at Night, Mr. *Harriſon* came to my Maſter's Houſe, and knock'd at the Door; and I went to the Door, and open'd it, for I had ſhut up the Shop; and he aſk'd me if Mr. *Humſton* was within? And I told him, he was: And he came in, and went up to Mr. *Humſton*'s Chamber; and it was then about Nine of the Clock, as near as I can gueſs.

L. C. J. Where is your Maſter's Houſe?—*Tho. Johnſon*. My Lord, it is the *Golden Key* in *Fleet-ſtreet*, over againſt *Fetter-lane* End.

Mr. *Harriſon*. Pray call *Adam Maccaffee*, Mr. *White*, Mr. *Carden*, and *John Allen*.

[*Who appeared. And Mr.* Maccaffee *ſtood up.*]

Mr. *Maccaffee*. Upon *Monday* the 4th Day of *January* laſt, the Priſoner was at my Houſe, and ſtay'd from Nine a-Clock till paſt Eleven, and play'd at Cards with one Mr. *Baker*, and one Mr. *White* and his Wife; and he ſtay'd till it had ſtruck Eleven a-Clock,

L. C. J. Where is your Houſe, Sir?

Mr. *Maccaffee*. My Houſe is in *Chancery-lane*, over againſt *Serjeants-Inn*.

L. C. J. Did he tell you where he had been before?

Mr. *Maccaffee*. He ſaid, That he had been towards the City, and was very cold.

L. C. J. Did he ſay any thing of Mr. *Humſton?*

Mr. *Maccaffee*. No, my Lord.

Mr. *Darnell*. Pray what Room were you in? Did you play at Cards in the Kitchen?—Mr. *Maccaffee*. Yes,

Mr. *Darnell*. Were they up Stairs?—Mr. *Maccaffee*. No, my Lord.

Lord Mayor. At what time a-Night did they come in?

Mr. *Maccaffee*. Betwixt Nine and Ten a-Clock, my Lord.

L. C. J. What made you take Notice of the Day of the Month, and Hour of the Day?

Mr. *Maccaffee*. My Lord, I heard that Doctor *Clenche* was murder'd, and that Mr. *Harriſon* was taxed with it; and that made me take Notice of the Day.

L. C. J. Call Mrs. *Maccaffee*. [*Who ſtood up.*

L. C. J. Miſtreſs, what time did Mr. *Harriſon* come to your Houſe on the 4th of *January* laſt at Night?

Mrs. *Maccaffee*. My Lord, it was near Nine a-Clock as any thing can be, when he came in firſt.

L. C. J. How long did he ſtay there?

Mrs. *Maccaffee*. I cannot tell how long he ſtay'd, but there were two Accidents happen'd; one was, our playing at Cards; and the other was, that there was a Pick-Pocket carried by to be pump'd at *Lincolns-Inn*; it was from Nine to Eleven before he went away, and there were Mrs. *White*, Mr. *Baker*, and one Mrs. *Faireleſſe*.

L. C. J. Did any one come with the Priſoner to your Houſe? In what Humour did he ſeem to be?

Mrs. *Maccaffee*. No, my Lord, there was no one came with him, and he never ſtirr'd out, neither did he ſeem to be diſorder'd; he was neither too merry, nor too melancholy.

L. C. J. Where did he ſay he had been?

Mrs. *Maccaffee*. He ſaid that he had been in the City.

L. C. J. Did he uſe to frequent your Houſe?

Mrs. *Maccaffee*. Formerly he did; but I had not ſeen him in half a Year before.

Mr. *Darnell*. How many were there, do you ſay?

Mrs. *Maccaffee*. There was one Mrs. *Faireleſſe*, and one Mrs. *White*, and myſelf, and my Huſband was upon the Bed, and Mr. *White* came for his Wife about Ten a-Clock, to come home.

Mr. *Darnell*. Do you remember that Mr. *Baker* was there?

Mrs. *Maccaffee*. Yes, he was there.

L. C. J. Pray, Miſtreſs, did Mr. *Harriſon* come in, and find them at Cards?—Mrs. *Maccaffee*. No, we went to Cards afterwards.

L. C. J. Where was your Huſband?

Mrs. *Maccaffee*. He was upon the Bed in the Kitchen.

L. C. J. Call Mr. *Baker*. [*Who ſtood up.*

Mr. *Baker*. This Gentleman, the Priſoner, is a Stranger to me; but here is a Letter that he ſent me two or three Days afterwards. I came into Mrs. *Maccaffee*'s Houſe about half an Hour after Nine a-Clock, with two Women more: Mrs. *Maccaffee* owed me Money, and I had been in *Lincolns-Inn*, for I do ſome Work there for Sir *Thomas Cook*, and the Women aſk'd me to play at Cards; and I ſaid, that I did not care to play, becauſe I had been abroad, and could not get any Money, which made me out of Humour. My Lord, I never ſaw the Man in my Life before.

L. C. J. Who were they that play'd at Cards?

Mr. *Baker*. It was one Mrs. *Faireleſſe*, the Woman of the Houſe, and Mr. *Harriſon*, and myſelf.

L. C. J. Who were together?

Mr. *Baker*. Mrs. *Faireleſſe* and I, and the Woman of the Houſe and Mr. *Harriſon* the Priſoner, and we play'd for Penny a Corner. I cannot ſay any more to it, my Lord.

L. C. J. How long did he ſtay?

Mr. *Baker*. I left him after Ten a-Clock, and, as I hope for Mercy, I never ſaw him but once before, and I had not known him again, but by a particular Token.

Mr. *Harriſon*. Were there not ſome Accidents happen'd at that Time?

Mr. *Baker*. Yes, there came a Vintner's Boy to aſk for a Woman, one Mrs. *Frances*, and he was in great Haſte, and a Pick-pocket was carried up the Lane to be Pump'd at *Lincolns-Inn* Pump.

Mr. *Harriſon*. Call Mrs. *Faireleſſe*, call Mrs. *Whipple*.

[*Neither of which appeared.*

Call Mr. *Sutton*. [*Who appeared.*

L. C. J. Where do you live, and what is your Name?

Mr. *Sutton*. My Lord, my Name is *Sutton*, and I live in *Stone-cutter-ſtreet*.

Mr. *Harriſon*. Mr. *Sutton*, what time was it that I was coming by, when one Mr. *Ruſſel* and you were drinking.

Mr. *Sutton*. My Lord, it was about Eleven a-Clock at Night, at the *King's Head Tavern* at *Chancery-Lane* End.

Mr. *Harriſon*. What had I on, a Cloak and a Muff?

Mr. *Sutton*. Yes, I think you had a Cloak on.

Mr. *Darnell*. What time was it? before or after Eleven a-Clock?

Mr. *Sutton*. It was about a quarter before Eleven.

Lord Mayor. What Day of the Month was it?

Sutton. It was the fourth of *January*.

L. C. J. Where was he going? Which way went he?

Mr. *Sutton*. He was going towards *Fleet-Bridge*, my Lord, and I called after him, but could not make him hear at firſt; but afterwards he came to us.

Mr. *Harriſon*. Pray call Mr. *Ruſſel*. [*Who appeared.*

Mr. *Ruſſell*. I can't hear, my Lord, but if you pleaſe to permit Mr. *Sutton* to ſpeak to me, I can hear his Voice better than any Man's.

L. C. J. Speak as loud as you can, Sir, and we will let you hear us; Mr. *Sutton* muſt not ſpeak for you.

Mr. *Harriſon*. Pray, Mr. *Ruſſel*, what time of Night was that you ſaw me go by you, when you were drinking at the *King's Head Tavern?*

Mr. *Ruſſ.* I can't tell, my Lord, I have not heard a Clock theſe three Years.

L. C. J. Where were you going at that time of Night?—Mr. *Ruſſ.* I was going to *Wild-ſtreet*, to the *Chyrurgeon's-Arms*, to receive ſome Money.

L. C. J. How came Mr. *Sutton* to go with you?

Mr. *Ruſſ.* He had been with me all that Day, and I deſired him to go with me; and, my Lord, I did expect that the Money would have been brought to me, but it was not, ſo I went for it.

L. C. J. Well, and what then?

Mr. *Ruſſ.* While we ſtay'd at the *King's-Head* Tavern Door to drink Wine, Mr. *Sutton* ſent the Drawer to call Mr. *Harriſon*.

L. C. J.

L. C. J. What had you been doing before that time?

Mr. *Ruſ.* We had (I ſuppoſe) been drinking together.

L. C. J. Where had you been before you came to the *King*'s *Head* Tavern?

Mr. *Ruſ.* We had been at the *Horſeſhoe Tavern* in *Chancery-lane.*

L. C. J. Did you requeſt Mr. *Sutton* to go with you?

Ruſ. Yes, I did, my Lord.

L. C. J. You ſay your Buſineſs was to go to *Wild-ſtreet*, to receive ſome Money?

Mr. *Ruſ.* Yes, it was, my Lord, and I did receive it.

L. C. J. When was it that you met Mr. *Harriſon*, the Priſoner?

Mr. *Ruſ.* My Lord, I can't poſitively ſay, but by Computation of the Night, I believe it was about Eleven a-Clock.

L. C. J. Did you meet Mr. *Harriſon* before you went to the *Horſeſhoe Tavern*, or after?

Mr. *Ruſ.* Afterwards, my Lord, I ſaw Mr. *Harriſon* turn at the Corner of *Fleet-ſtreet*, towards *Fleet-Bridge.*

L. C. J. At the Time when Mr. *Sutton* and you went firſt out, did you agree of your going to the *Horſeſhoe Tavern?*

Mr. *Ruſ.* We went thither to ſend for the Gentleman out of *Wild-ſtreet.*

L. C. J. When you had been drinking all the Afternoon, how came you to ſtop your Coach at the *King*'s *Head?*

Mr. *Ruſ.* We ſtopt there, whilſt Mr. *Sutton* ſent for ſomebody to come to him.

L. C. J. You ſaid juſt now, That Mr. *Sutton* ſent for Mr. *Harriſon.*

Mr. *Ruſ.* No, my Lord, I do not remember that; but Mr. *Sutton* ſaid, *Harry*, or *Harriſon*, where art thou going, when he went by us.

Mr. *Harriſon.* My Lord, this Man is a Stranger to me. Call *John Allen*, Drawer at the *King*'s *Head* Tavern. [*Who appeared.*]

Mr. *Harriſon.* *John Allen*, what time of Night was it that Mr. *Sutton* and Mr. *Ruſſell* came to your Houſe in a Coach?

J. Allen. I believe it was about Eleven a-Clock.

L. C. J. How much Wine had they?

J. Allen. Two Half Pints of Canary.

L. C. J. What Night was it? What Day of the Month was it?

J. Allen. My Lord, I can't remember what Day of the Month, but it was that Night that Doctor *Clenche* was murder'd.

L. C. J. Did you ſee Mr. *Harriſon* there?

J. Allen. I can't tell that, I never ſaw him, till I ſaw him at Priſon.

Mr. *Harriſon.* Did not you go to Mr. *Maccaffee*'s Houſe?

J. Allen. Yes, I did.

Mr. *Harriſon.* Did not one ſtrike you with a Muff?

J. Allen. Yes, but I can't remember who it was.

Lord Mayor. Look upon that Man, do you know him to be the Perſon?

J. Allen. No, my Lord, I do not know him to be the Perſon.

Mr. *Darnell.* Who ſent you to *Crown-Court?*---*J. Allen.* Mr. *Ruſſell.*

Mr. *Darnell.* For what?

J. Allen. For a Servant Maid; and he bid me tell her, that he had a Deſire to ſpeak with her.

Mr. *Dar.* How long did you tarry at the Houſe?

J. Allen. I did not ſtay at all.

Mr. *Harriſon.* Call Mr. *Carden*, Drawer at the *King*'s *Head* Tavern. [*Who appeared.*

Mr. *Harriſon.* What time did Mr. *Sutton* come to your Houſe? Did you ſee any one ſtand at the Coach Side? and what Cloaths had he on?

Carden. I ſaw one ſtand at the Coach Side, and he had a Hanging Coat, or a Cloak on; it was about the Hour of Eleven, to the beſt of my Knowledge, and I ſaw a Man go into the Coach, and come out again.

Mr. *Coroner.* What time of Night do you ſhut your Doors, eſpecially on *Monday* Nights? and were they ſhut when Mr. *Sutton* called in the Coach?

Carden. We ſhut them commonly about Eleven a-Clock at Night, but on *Monday* Nights uſually later; they were ſhut when Mr. *Sutton* called, and I opened them for him.

L. C. J. Can you ſay that the Priſoner was the Man that drank with Mr. *Sutton?*

Carden. To the beſt of my Knowledge (*looking on the Priſoner*) that is the Man, I can't be poſitive, my Lord.

L. C. J. Well, have you any more Witneſſes?

Mr. *Harriſon.* No, my Lord, unleſs Mr. *Eſſington* be here; he promiſed to be here to give an Account of me. My Lord, there is a Gentleman that is in the *Preſs-Yard*, one Mr. *Butler*, I deſire he may be ſent for, if your Lordſhip pleaſe.

L. C. J. Let him be fetch'd down. [*Which was done.*]

L. C. J. But in the mean time, it behoves you to give an Account of theſe Things. Firſt, Why did you ſay that you were a Parliament-Man? Secondly, Why did you leave your Lodgings, and take other Lodgings in *Paul's-Church-Yard?* Thirdly, Why did you ſay that you had extraordinary Buſineſs? Give ſome Account what your Buſineſs was, and who that Gentleman was, that ſtaid for you in the Street; when Mr. *Humſton* deſired you to ſtay and ſup with him, what hinder'd you from accepting his Invitation? Now we would have you to conſider of theſe Things, and give an Anſwer to them, for it much concerns you ſo to do.

Mr. *Harriſon.* My Lord, firſt, as to the firſt, I do declare, That I never went for a Parliament-Man, nor never ſaid ſo: Secondly, That Night I was to go out of Town, I had left Word at ſeveral Coffee-Houſes, that I was going out of Town upon earneſt Buſineſs, and with above twenty People beſides, that I was going out of Town, and I was about to go to *Baſing-Stoke*, to a Gentleman that owed me Money, one Mr. *Buling*; but I could not get Money to go.

L. C. J. Prove that you were to go into the Country.

Mr. *Harriſon.* My Lord, I can't prove that now, except I could have ſent to *Baſing-Stoke.*

L. C. J. That you ſhould have done before now; why did you not ſtay with Mr. *Humſton*, when he invited you to ſup with him? You might have been better entertained there, than by going among Strangers to play at Cards for a Penny a Corner, at an Ale-houſe.

Mr. *Harriſon.* My Lord, I was unwilling to ſtay, becauſe he had Strangers with him.

L. C. J. What if he had? You are not ſuch a baſhful Man that you could not ſup with Strangers.

Mr. *Harriſon.* My Lord, Mr. *Rowe* was accuſed with me.

L. C. J. What if he was? He was under ſome Suſpicion, and he hath made it appear where he was at the Time the Fact was committed, and now he is diſcharged.

[*Then Mr.* Butler *was brought into Court from* Newgate, *attended by a Keeper.*]

Mr. *Harriſon.* Mr. *Butler*, Pray tell the Court what Mr. *Fairbeard* ſaid to you about me.

Mr. *Butler.* My Lord, Mr. *Fairbeard* aſked me, what I could ſay about what Mr. *Harriſon* had ſaid to me concerning the Murder of Dr. *Clenche?* I told him, I could not tell what to make of his broken and rambling Speeches and Diſcourſes, they being moſt of them ſpoken when he was in his Drink. This is all that I know, my Lord.

L. C. J. This is not a Witneſs for your Turn.

Mr. *Darnell.* Call Mrs. *Anwell.*

[*Who was ſent for from her Lodgings in* Brownlow-Street *in* Holborn, *and appeared, and was ſworn.*]

Mr. *Darnell.* Madam, pray give an Account what Mrs. *Aſhbolt* told you concerning any Man's being in a Coach at *Brownlow-ſtreet* End.

Mrs. *Anwell.* I know nothing of my own Knowledge; but the Night that Doctor *Clenche* was murdered, I ſent Mrs. *Aſhbolt* of an Errand; and at her Return, I blam'd her for ſtaying ſo long; and ſhe told me, That as ſhe was returning home, a Coach ſtopt at *Brownlow-ſtreet* End, with two Men, with Cloaks on, in it, and that one of them bade the Coachman go for Dr. *Clenche*, and deſired him to come to them; and in his going ſeveral times look'd back, as if he ſuſpected the Men would leave the Coach, and ſo ſhe ſtay'd until Dr. *Clenche* came and went into the Coach, and that one of the Men gave the Doctor his Place; and that one of them had a fair Perriwig, and a ſanguine Complexion.

Mr. *Dar.* What Diſcourſe had you with her when you heard that thoſe Men had murdered Dr. *Clenche?*

Mrs. *Anwell.* She told me, That one of thoſe Men had a fair Perriwig, and a ſanguine Complexion, and that one of them had a Cloak on.

L. C. J. Did ſhe ſay, that ſhe obſerved either of their Faces?

Mrs. *Anwell.* Yes, my Lord, ſhe ſaid the one of them had a round Face, and a big Voice.

L. C. J. Did ſhe ſay, ſhe could know him again?

Mrs. *Anwell.* No, my Lord, ſhe did not ſay ſo, but ſhe ſaid, that ſhe could know his Voice again. And after the laſt Seſſions, I told Mrs. *Clenche* of it, and that if ſhe would ſend for the young Woman, ſhe would inform her further of it.

L. C. J. Madam, pray what was the Reaſon that ſhe did not diſcover it ſooner to Mrs. *Clenche?*

Mrs. *Anwell.* Why truly becauſe Mrs. *Aſhbolt*, her Mother, was unwilling ſhe ſhould concern herſelf in ſuch a Matter.

Mr. *Dar.* Call another Witneſs, Mr. *Jones*, Coach-maker.

(*Who was ſworn.*)

Mr. *Harriſon.* Pray, my Lord, take Notice, that now ſhe ſays, that thoſe Gentlemen had Cloaks on, that came in the Coach to *Brownlow-ſtreet* End.------*L. C. J.* Yes, we heard her what ſhe ſaid.

Mr. *Dar.* My Lord, I will ask this Witneſs, Mr. *Jones*, a Queſtion.

Mr. *Dar.* Pray, Sir, tell my Lord and the Jury, what Mrs. *Aſhbolt* did at *Newgate.*

Mr. *Jones.* My Lord, I went with her to *Newgate*, together with Doctor *Clenche* his Coachman, and when ſhe came to *Newgate*, before ſhe ſaw Mr. *Harriſon* (only ſtood at the Chamber Door, and heard him ſpeak), ſhe ſaid, That, to the beſt of her Thoughts, he was the Man that put his Head out of the Coach to look after the Coachman, and ſwore at him, for ſhe knew his Voice. And when ſhe came to ſee him, ſhe ſaid, that ſhe knew his Face, and declared that was the Man that put his Head out of the Coach.

L. C. J. Did he look out of the Coach, Mrs. *Aſhbolt?*

Mrs. *Aſhbolt.* Yes, my Lord, he put his Head out of the Coach, and look'd after the Coachman, to ſee if he went right to Doctor *Clenche*'s Door, and did ſwear at him, becauſe he went no faſter.

L. C. J. How could you diſcern his Face?

Mrs. *Aſhbolt.* By the Light of two Lamps that were near, which did ſhine into the Coach.

L. C. J. Can you take it upon your Oath that the Priſoner is the ſame Perſon?

Mrs. *Aſhbolt.* Yes, my Lord, I can, both by his Voice and Face.

Mr. *Dar.* Now, my Lord, we ſhall ſhew your Lordſhip ſomewhat in Relation to the Credit of thoſe Witneſſes that the Priſoner hath brought here; particularly as to Mr. *Baker*, we ſhall prove that he hath been convicted for a Cheat. And as for *Maccaffee*, he keeps a very diſorderly Houſe, where ill People commonly reſort.

Mr. *Dar.* Cryer, call Mrs. *Martha Whelſtead*, and Mr. *Thomas Cole.*

L. C. J. Mrs. *Jones*, what time did Mr. *Harriſon* come to your Houſe, to his Lodging, that Night that the Murder was committed?

Mrs. *Jones.* I think it was about Eleven a-Clock, or little before Eleven.

L. C. J. What time on the *Monday* did he hire the Lodging of you?

Mrs. *Jones.* It was ſome time after Dinner.

L. C. J. It was before Night, was it not?

Mrs. *Jones.* Yes, my Lord, it was before Night.

Mr. *Dar.* My Lord, I deſire that Mr. *Tanner* may read the Record againſt Mr. *Baker*, whereby it will appear, that he was indicted and convicted at *Hicks*'s-*Hall* for cheating the Pariſh of St. *Giles* in *Middleſex*, when he was Scavenger there, by altering the Figures in the Book, and rating the Sums of Money higher upon divers of the Pariſhioners, than they were in the Pariſh Book, and then collecting and extorting the Money, ſo by him increaſed, from them.

[*Mr.* Tanner *reads the Indictment aforeſaid, by which it did appear to the Court, and to the Jury, that the ſaid Mr.* Baker *was indicted for the Offence aforeſaid, and confeſſed the Indictment, and was fined for it Twenty Shillings.*]

Mr. *Baker.* My Lord, I was wrongfully indicted, and traverſed the Indictment, and was acquitted.

L. C. J. Mr. *Tanner*, give me the Record.

[*Lord Chief Juſtice peruſes the Record.*]

Mr. *Baker*, I have read the material Parts of the Record, and do find

find that you were indicted for that Offence, and that you confeſſed the Indictment, and was fined for it.

Mr. *Baker*. My Lord, I was acquitted of it, and can prove it by Captain *Cannon*, who knows me and my Reputation, and he is in Court.

L. C. J. Mr. *Baker*, the Record teſtifieth the Truth, and cannot err, therefore you have great Confidence to aver againſt it; yet I will hear what Captain *Cannon* ſaith.

Mr. *Baker*. Call Captain *Cannon*. (*Who appeared.*

L. C. J. Captain *Cannon*, do you know this Mr. *Baker*?

Capt. *Cannon*. Yes, my Lord, very well.

Mr. *Darnell*. My Lord, I deſire that Captain *Cannon* may be ſworn.

L. C. J. Mr. *Tanner*, ſwear Captain *Cannon*. (*Who was ſworn.*

L. C. J. Sir, do you know that Mr. *Baker* was indicted for falſifying of the Scavenger's Book when he was Scavenger, and acquitted, or convicted, and what do you know about it?

Capt. *Cannon*. My Lord, I am an Inhabitant of the Pariſh of St. *Giles*'s in the Fields, and ſo I was when Mr. *Baker* was Scavenger, and do well remember, that ſome of the Inhabitants of that Diviſion where he was Scavenger were troubled, and complained that they were charged more than uſually they had been to the Scavenger's Rate; and it was diſcover'd that ſeveral Figures of the Book, by which Mr. *Baker* collected the Money to the Scavenger's Rate, were blotted and altered, and did not agree with the Pariſh Leidger-Book, but the Sums in his Book ſo blotted and altered were razed; whereupon it was ordered, that he ſhould be indicted for it; and it was done accordingly, and he was fined for it, and, to the beſt of my Remembrance, he confeſſed that Indictment.

L. C. J. Captain *Cannon*, Pray tell the Court and the Jury, of what Reputation Mr. *Baker* is now.

Capt. *Cannon*. My Lord, he is now of none of the cleareſt Reputations.

Capt. *James Patrich*, of the ſame Pariſh, being in Court, offered himſelf, and gave the ſame Account of Mr. *Baker* that Captain *Cannon* did.

Mr. *Darnell*. Cryer, Call Mr. *Francis Bramton*, Mrs. *Martha Whelſtead*, and Mr. *Thomas Cole*.

(*And Mrs. Whelſtead and Mr. Cole appeared, and were ſworn.*)

Mr. *Darnell*. Mrs. *Whelſtead*, pray give the Court and Jury an Account what diſorderly Houſe Mr. *Maccaffee* keeps.

Mrs. *Whelſtead*. My Lord, I dwell in *Crown-Court* in *Chancery-Lane*, over-againſt Mr. *Maccaffee*'s Houſe; and he and ſhe are very ill People; and keep a very evil and ſcandalous Houſe; and ſuch as are reputed to be Houſe-breakers, Pick-pockets, and lewd Women, do uſe and frequent the Houſe; and there is commonly at late Hours in the Night, Perſons calling out Murder, and Whore and Rogue, and ſuch ſort of Language, diſturbing their Neighbours; and their Houſe hath been ſeveral times ſearched by ſeveral Conſtables for ſtolen Goods, and for the Perſons that have ſtolen them; and upon ſuch Searches, there have been ſtolen Goods found there: And I have ſeen great Lewdneſs there between Men and Women; and the Neighbours do account it a Houſe of an ill Fame, and do avoid going thither.

Mr. *Tho. Cole*. My Lord, I do know Mr. *Maccaffee* and his Wife; I do dwell over-againſt his Houſe, and they are reputed to keep an ill Houſe, and moſt Perſons that frequent it are reputed to be Perſons of lewd and evil Lives and Converſations; and it is amongſt the Neighbourhood noted for a ſcandalous Houſe, and ſeveral Conſtables have ſeveral times ſearched there for ſtolen Goods.

L. C. J. What have you more to ſay, Mr. *Harriſon*?

Mr. *Harriſon*. I cannot ſay any thing more; you may deal with me according to my Deſerts in this Matter.

L. C. J. You may aſſure yourſelf that we will do you no Wrong; have you any more to ſay? (*He made no reply.*)

Mr. *Darnell*. My Lord, we have another Witneſs come now, who was not here before. Cryer, call Mr. *Charles Whitfield*.

(*Who was ſworn.*)

Mr. *Darnell*. My Lord, this Gentleman can give your Lordſhip an Account what the Priſoner ſaid of his being juſt come out of the Country, upon the fifth Day of *January* laſt. Pray tell my Lord what you know, Sir.

Mr. *Charles Whitfield*. My Lord, upon the fifth Day of *January* laſt, being the Day after Dr. *Clenche* was murdered, I went to *Joe*'s Coffee-houſe in *Saliſbury-court*, and there was Mr. *Harriſon* ſitting by the Fire-ſide. Says I to Mr. *Harriſon*, Where have you been for a long time that I have not ſeen you? Says he, I have been in the Country. Where, ſays I? Says he, About twenty Miles off, in *Kent*; and I want a Laundreſs, and a Lodging. Says I, Do you hear the News, Sir? What News, ſays he? Why, ſaid I, of Dr. *Clenche*'s being murdered: I cannot tell the Occaſion, ſaid I, but he was found dead in a Coach laſt night in *Leadenhall-ſtreet*. Then ſays he, I did love him very well once, but of late he hath been a barbarous Rogue to a Gentlewoman, a Friend of mine, and ſhe is in the Compter now: And Mr. *Harriſon* ſaid it was a juſt Judgment of God upon the Doctor for being ſo great a Villain to the Gentlewoman; therefore I will write to her preſently, and give her an Account of his Death. And, my Lord, the Contents of his Letter were theſe, as near as I can remember.

" *Madam*,

" I Am juſt now going to *Lambeth*; but hearing of Dr. *Clenche*'s Mur-
" der, I do hereby give you an Account of it, and can impute it to
" no leſs than a juſt Judgment of God upon him for his Baſeneſs ſhewed
" to you. And if you think fit to ſend to Madam *Clenche*, it may be,
" ſhe may ſend ſomewhat towards your Relief, ſhe now being a Widow as
" well as you.

MADAM,

I am yours to command,

Henry Harriſon."

My Lord, after this, came into the ſame Coffee-houſe another Perſon, one Mr. *Ravenſcroft*, of whom Mr. *Harriſon* aſked ſome Queſtion about Dr. *Clenche*; who reply'd, That he heard that Dr. *Clenche* was murdered, and that it was committed by a Bully of the Town that belonged to a Gentlewoman in the Compter, who was laid in there upon Dr. *Clenche*'s Account; at which he was much ſtartled: Says he again, There is no Perſon familiar with that Gentlewoman but myſelf; for I know and am concerned in all her Affairs: Perhaps then I may be taken up about it: Or, my Lord, he uſed Words to that Effect.

Mr. *Harriſon*. My Lord, this Woman was not in the Compter upon Dr. *Clenche*'s Account.

L. C. J. No, the Witneſs don't ſay ſo; but that it was the Diſcourſe of the Town that ſhe was, and the Town did ſuppoſe her ſo to be. What did he ſay further, Sir?

Mr. *Whitfield*. My Lord, he ſaid, That he had been in *Kent* about twenty Miles off: and he ſaid, That he wanted a Laundreſs, becauſe he had ſome foul Linen to waſh; which he produced. This was on the *Tueſday*, and the Murder was committed on the *Monday* Night before: And, my Lord, there were two more Gentlemen that heard him as well as I, that he ſaid, That he had been about twenty Miles off in *Kent*, and that he was newly come to Town. Now, my Lord, I could not imagine for what Reaſon this Man ſhould ſay, That he had been out of Town about a Fortnight or three Weeks, when he was in that Houſe but the *Monday* Night before; that is, the Night the Murder was committed.

Mr. *Darnell*. Cryer, call Mr. *Biſhop*.

(*Who appeared and was ſworn.*)

Mr. *Biſhop*. About three Years ago the Priſoner came to my Maſter's Shop to cheapen ſome Linen, and when----

L. C. J. Hold, what are you doing now? Are you going to arraign his whole Life? Away, away, that ought not to be; that is nothing to the Matter. Have you done, Priſoner?

Mr. *Harriſon*. Yes, my Lord, I have done, I refer my Cauſe to your Lordſhip.

L. C. J. Gentlemen of the Jury; The Priſoner at the Bar, *Henry Harriſon*, ſtands indicted for the wilful Murder of Dr. *Andrew Clenche*, who was barbarouſly murdered on the fourth day of *January* laſt: You have heard the Witneſſes that have been ſworn; and upon their Teſtimony, it doth appear, that two Perſons came to *Brownlow-ſtreet* End in a Coach, after Nine a-Clock at Night, and ſent the Coachman to the Doctor's Houſe, under Pretence to get him to a Patient, a Friend of their's, that was ſick. By this Contrivance, they got him into their Coach, which they had brought for that Purpoſe, and then they ordered the Coachman to drive to *Leadenhall-ſtreet*; and when they came about *Holborn-Bars*, one of them aſk'd the Coachman, why he drove ſo ſlow, and bade him drive faſter. When they came to *Leadenhall-ſtreet*, then they bade him drive to the *Pye-Tavern* without *Aldgate*; where one of them bade the Coachman aſk for one *Hunt*; but he not being there, one of them bade the Coachman return back, and gave Sixpence to the Watch to come through the Gate, which was ſhut in the mean time; and when they came to *Leadenhall-Market*, one of them gave the Coachman three Shillings and Sixpence, and ſent him to buy a Couple of Fowls; which the Coachman did buy, and brought them to the Coach; but when he came back, he found the Doctor in the Body of the Coach, leaning againſt the Fore-Seat of the Coach, a Handkerchief being tied about his Neck with a Coal in it, placed upon his Wind-pipe; which Handkerchief and Coal have been produced in Court.

The Queſtion is, Gentlemen, Whether the Priſoner at the Bar be guilty of this baſe and barbarous Murder? To prove which, there hath been a very long Evidence given, ſome Poſitive, ſome Circumſtantial. It has been proved that Dr. *Clenche* had ſome Dealings with a Woman named *Vanwicke*, and had lent her one hundred and twenty Pounds, and had taken a Mortgage for it. This Priſoner, Mr. *Harriſon*, was a great Acquaintance, and very intimate with this Woman; and did concern himſelf in the Management of her Affairs: and becauſe Dr. *Clenche* did refuſe to lend the Woman more Money, therefore he had an Animoſity againſt Dr. *Clenche*. The Money not being paid to the Doctor as he did expect, he did call it in; and therefore this Gentlewoman did oftentimes repair to Dr. *Clenche* to deſire farther Time of Forbearance, becauſe ſhe could not raiſe or procure the Money elſewhere. That about *Michaelmas* laſt, it ſeems, ſhe came to a Coffee-houſe near *Warwick-houſe* in *Holborn*, and there was Mr. *Harriſon*; where they conſulted what to do. And it was agreed, that the Miſtreſs of the Houſe, and Mrs. *Vanwicke*, ſhould go to Dr. *Clenche*'s; but Mr. *Harriſon* ſhould ſtay behind, for it was not thought convenient that he ſhould go, leſt he ſhould provoke the Doctor. When they came to the Doctor, Mrs. *Vanwicke* was very importunate to have more Money; but the Doctor would lend her no more. And when they returned to the Coffee-houſe again, Mr. *Harriſon* enquired what paſſed between the Doctor and Mrs. *Vanwicke*. She told him, that the Doctor would not furniſh her with any more Money, although ſhe had preſſed him to do it, and urged her great Neceſſities, but adviſed her to go to Service. Damn him, ſays *Harriſon*, does he ſay that a Woman of your Quality ſhould go to Service? He is a great Rogue, and deſerves to have his Throat cut; but let me alone, I will manage him.

At another Place there was a Diſcourſe betwixt Mr. *Harriſon* and one Mr. *Johnſon*; and that the Priſoner did then ſpeak very hard and ill Words of Dr. *Clenche*: And that Mr. *Harriſon* came frequently to him; and one time laid his Hand upon his Sword, uſing ſome menacing Words, but what they were he cannot tell: But he likewiſe ſays, That at ſeveral times he did expoſtulate with him, and told him, That he would not do any good with ſuch Diſcourſes as theſe are, *&c.* That the Mortgage Money not being paid, it was thought fit, that there ſhould be a Proſecution made to get Poſſeſſion of the mortgaged Eſtate, and that the Tenants ſhould be forbid to pay their Rents. And Mr. *Harriſon* went to Mrs. *Weſt*, the Tenant, ſome few Days before St. *Thomas*'s Day laſt, and demanded the Rent of her. To which ſhe made Anſwer, That Dr. *Clenche* had forbid the Payment of the Rent to Mrs. *Vanwicke*. Thereupon Mr. *Harriſon* grew very angry, and anſwered, That Dr. *Clenche* was a Rogue and a Villain, and bid her that ſhe ſhould not pay him any Rent. And the Witneſs ſaith further, That the Doctor being preſt to let her have ſome more Money, refuſed to do it, becauſe ſhe would ſpend it all upon *Harriſon*.

Then the Counſel for the King called ſome Witneſſes, who gave you an Account of the Priſoner's ſhifting his Lodgings the Day before the

Murder was done. He takes a Lodging at Mr. *Garway*'s in *Threadneedle-ſtreet*, on the twenty-third Day of *December*, and there he continued till about the firſt of *January*. The ſecond of *January* he was at *Garway*'s Shop; and on the *Sunday* Night he came and fetch'd away his Things. The *Monday* after, being the Day that this barbarous Fact was committed, he ſent a Letter to Mrs. *Garway*, to acquaint her that he was gone out of Town; but he left three Half-Crowns with her Maid to pay for his Lodging. But as to his going out of Town, it was falſe, for he never went into the Country; but took a Lodging at Mr. *Jones*'s in St. *Paul*'s Church-Yard. It's obſervable alſo, that he went for a Parliament-man when he lodged at Mr. *Garway*'s, and had his Footman to attend upon him, *&c.* There it was that he was ſeen to have an ordinary Handkerchief, and to hold it to the Fire; which was taken Notice of by Mrs. *Jackſon*, the Daughter of Mrs. *Garway*, which was not ſuitable, as ſhe thought, to a Parliament-man's Quality, but rather fit for a Seaman; for it was like the Apron in the Maid of the Houſe: which hath been ſhewed in Court, and compared with the Handkerchief that was tied about Dr. *Clenche*'s Neck. She ſaith it is the ſame, or very like that which ſhe did ſee Mr. *Harriſon* hold in his Hand.

Cartwright, the Officer at the Compter, he tells you, that the *Sunday* Night, the Day before the Murder, Mr. *Harriſon* came to *Woodſtreet* Compter, and enquired for Mrs. *Vanwicke*, and that he only was in her Chamber, and no other Body on that Side of the Houſe but Mrs. *Vanwicke*, the Priſoner, and this *Cartwright* the Keeper, who ſtood at the Door, and heard *Harriſon* ſay, That he would have the Blood of that Rogue, and named *Clenche* or *Winch*.

Mr. *Harriſon*. My Lord, he was not in the Room.

L. C. J. No, he was not; but there were none on that Side the Houſe but you, *Cartwright*, and Mrs. *Vanwicke*.

Now, on the *Monday* on which this Fact was committed, he having taken a Lodging at *Jones* his Houſe, he came thither with a Porter, who brought his Portmanteau-Trunk about eight a-Clock at Night; and after he had been there a little while he went away.

And you are told by a Gentleman that lodges at the *Golden-Key* againſt *Fetter-Lane* End; That he had ſome Acquaintance with the Priſoner; that he had lent him a Morning-Gown; and that about nine o'Clock that very Night, he came to his Lodging in a Cloak; and then the Gentleman aſked him for his Gown; and he told him that he had brought it with him. Thereupon the Gentleman invites Mr. *Harriſon* to ſtay and ſup with him. Mr. *Harriſon* ſaid, He could not ſtay, for he was engaged; he muſt be gone, for that a Gentleman ſtaid in the Street for him to go about extraordinary Buſineſs.

The Coachman tells you, That near about that Time two Men in *Fleet-ſtreet*, near *Fetter-lane* End, hired his Coach of him to go to *Brownlow-ſtreet* to Dr. *Clenche*'s; but he can't poſitively ſay, that the Priſoner at the Bar was one of them, but he ſwears, he does verily believe that he was one of them.

Mr. *Harriſon*. He ſaid before your Lordſhip, That he could not remember what I had on.

L. C. J. Well, well, he doth not remember it now; but being hired to go to Dr. *Clenche*'s, he drove to the Street-End, and no further, becauſe the Gate at the lower End was ſhut up, and he could not turn his Coach in the Street; but he was ſent by them to the Doctor's, to deſire the Doctor to come out to them, and they ſat in the Coach in the mean time. The Doctor made Haſte, and went to them immediately, and they drove away to *Leadenhall*, and then to *Aldgate*, and they called at the *Pye-Tavern*, and enquired for one Mr. *Hunt* a Chyrurgeon, as I mentioned to you before: He not being there, they returned to drive through *Aldgate*, gave the Watch Six-pence, and paſſed through the Gate without any Manner of Notice taken; but if the Watch had done their Duty, it might have been better diſcovered. But further, the Coachman tells you, that when he came to *Leadenhall-ſtreet*, they called to him, and directed him to buy one Fowl; and after that he had been gone a little way from the Coach, they called him back, and bade him take ſome more Money and buy two Fowls. So he went and bought the Fowls; but when he came back, the two Gentlemen were gone, and he found the Doctor ſtill in the Coach; and he not ſtirring, he thought he had been in Drink; but upon further Examination, and calling the Watchman with his Candle, it appeared that the Doctor was ſtrangled with a Handkerchief and a Coal.

There is one Mrs. *Elianor Aſhbolt*, who lives in *Brownlow-ſtreet* with her Mother, and had been ſent of an Errand; and between nine and ten of the Clock at Night, ſhe ſaw the Coachman in *Brownlow-ſtreet*, and thought that thoſe Men in the Coach might have put a Trick upon him, by going away without paying him his Fare. And ſhe ſays further, That by the Help of the Lamps ſhe did diſcern the Face of this *Harriſon* in the Coach; he had a Cloak on, with a light Perriwig, and looked out of the Coach, and did ſwear at the Coachman; and by this means ſhe knew him when ſhe ſaw him again, to be the ſame Man, both by his Face and Voice. This Woman, indeed, was not before the Coroner, and ſhe gives you this Reaſon for it, Becauſe her Mother was not willing ſhe ſhould be concerned in ſuch a Matter as this was; and what ſhe could ſay, was not known to Mrs. *Clenche* until after the ſecond Seſſions; And when he was in *Newgate*, ſhe ſaw him there, and declared he was the ſame Man.

There was another Piece of Evidence, *viz.* That of the Boy's, who does not appear; he was examined before the Coroner. There has been Evidence given of ill Practice to take him out of the way, and therefore his Affidavit is read for Evidence: He ſwears he ſaw two Gentlemen come out of the Coach when it ſtood in *Leadenhall-ſtreet*, and that having ſeen the Priſoner in *Newgate* ſince, doth believe him to be one. This, Gentlemen, is the Sum and Subſtance of the Evidence for the King, to prove that the Priſoner was one of thoſe that committed the Murder.

You have heard likewiſe what the Priſoner ſays for himſelf; he does undertake to prove that he was in another Place; (that is) that he ſhould come into *Maccaffee*'s Houſe in *Crown-court*, over-againſt *Serjeant*'s-*Inn*, in *Chancery-lane*; And *Maccaffee*, he tells you, That there were ſome other Company there, and that *Harriſon* came in very cold, and that they went to Cards, and played for one Penny a Corner at Whiſt; and that he did continue there from Nine till Eleven a-Clock; and if he was there then, it is impoſſible he ſhould be guilty of this Fact, for the Fact was done between the ſame Hours.

Maccaffee's Wife tells you the ſame, and they both tell you who were there beſides, and who played together, and are poſitive that the Priſoner was there.

Baker ſays, That he went away about half an Hour after Ten at Night, and left *Harriſon* behind him. To confirm this Evidence, they have called two other Witneſſes, beſides the Drawers at the *King*'s-*Head-Tavern*, *viz.* Mr. *Sutton*, the Chyrurgeon, who lives in *Stone-Cutter*'s-*ſtreet*, and Mr. *Ruſſell*. Mr. *Sutton* ſays, They had been at the *Horſe-Shoe-Tavern* in *Chancery-Lane*, and called for half a Pint of Sack at the *King*'s-*Head-Tavern* when they came by; and as they ſat in the Coach, Mr. *Harriſon* came by accidentally, and one of them looking out of the Coach cries *Harry* or *Harriſon*; and he went to them, and they drank together another half Pint of Sack.

As to their meeting with *Harriſon*, and as to other Paſſages there, *Ruſſell* ſays the ſame: but as to the Time of Night he is not poſitive. And they ſent one of the Drawers to a Houſe in *Crown-Court* to enquire for ſome body there.

The Drawers at the *King*'s-*Head-Tavern* ſay, That Mr. *Sutton* and Mr. *Ruſſell* did call there about that time; and that they drank two half Pints of Wine: and that when they were drinking, a Man came by with a hanging-Coat or Cloak on, and drank with them. And one of the Drawers went to call ſome body in *Crown-Court*; and one of the Company up with his Muff, and gave him a Slap in the Face.

Now this is the Sum and Subſtance of the Evidence that you have heard on the Behalf of the Priſoner, to induce you to believe that he was not the Perſon that was concerned in the Murder of Doctor *Clenche*.

To which Evidence, an Anſwer hath been offered;

Firſt, as to thoſe Witneſſes, *Maccaffee* and his Wife; divers Witneſſes have been produced to prove, that they are People of doubtful Credit; it ſeems they keep an Houſe of ill Fame.

Mr. *Harriſon*. I am glad, my Lord, that I was there.

L. C. J. Well, well, Gentlemen, the People of the Houſe are not of very good Reputation; they keep a naughty and diſorderly Houſe, (if you believe the Witneſſes) you may conſider of their Credit.

And as to Mr. *Baker*; about nine Years ſince he was convicted of an arrant Cheat; which is no leſs than Forgery, for altering the Scavenger's Rate for St. *Giles*'s Pariſh, and therefore the leſs Credit is to be given to his Evidence; for now it appears, that he is a Knave upon Record: and the very Record itſelf was produced againſt him, which is true without doubt, notwithſtanding his Pretence of Innocency. What is ſaid by Mr. *Ruſſell* and Mr. *Sutton*, I muſt leave to your Conſideration; they had been a drinking, and the Drawer ſays, they were at the *King*'s-*Head-Tavern* at Eleven of the Clock at Night. Mr. *Harriſon*, the next Day after the Murder, met a Gentleman at *Joe*'s Coffee-Houſe in *Saliſbury-Court*; and though he had taken a Lodging in *Paul*'s Church-Yard, yet he ſaid, that he was newly come to Town, and had been in *Kent*, and had remained there about three Weeks; and that he wanted a Laundreſs and a Lodging, although he had not been out of Town, and had taken a Lodging but the Day before: And then he told the Witneſs, who diſcourſed with him about the Death of Dr. *Clenche*, That he had formerly loved him, but he ſaid he had been of late a barbarous Rogue to a poor Gentlewoman, a Friend of his; and that the juſt Judgment of God had fallen upon him for ſo doing, and that he would write to her to give her an Account of it, and adviſe her to write to Mrs. *Clenche*, and to tell her, That ſhe was a Widow now as well as Mrs. *Vanwicke*; and he thought by that Means to move Mrs. *Clenche* to pity her, being a Widow as well as herſelf: And that whilſt they were talking thus, one Mr. *Ravenſcroft* tells him, That Dr. *Clenche* was murdered, and that a Bully of the Town, that belonged to a Gentlewoman in the Compter, one Mrs. *Vanwicke*, was ſuſpected. At which Mr. *Harriſon* was much ſtartled, and ſaid, That no one was concerned with that Gentlewoman but himſelf; and for aught he knew, he might be taken up for it. This is that which he ſaid.

Now what ſaid Mr. *Harriſon* further for himſelf? Why, ſays he, this Gentlewoman is not in Priſon at the Proſecution of Dr. *Clenche*, and was not ſo affirmed, but ſo reported; and whether it were ſo or no, is no great matter. Gentlemen, you ought to conſider of the Evidence that you have heard againſt him, and alſo to weigh well the Evidence he hath brought for himſelf.

It is moſt plain, if you believe the Witneſſes, that Mr. *Harriſon* was concerned for this Woman *Vanwicke*, and hath threatned Dr. *Clenche*, called him Rogue and Raſcal, and ſaid, That he deſerved to have his Throat cut; that *Harriſon* went under a Diſguiſe for ſome time before the Murder. You have had an Account of the Handkerchief, what kind of Handkerchief *Harriſon* had, and what Handkerchief was taken about Dr. *Clenche*'s Neck you have ſeen: And you heard what Evidence was given by Mr. *Humſton*; how the Priſoner was with him about Nine a-Clock that Night; and how he refuſed to ſtay and ſup with Mr. *Humſton*. If Mr. *Harriſon* had no earneſt Buſineſs, one would have thought he might have ſtaid with Mr. *Humſton*, better than to have gone to an Alehouſe in *Crown-Court*, and played at Cards at one Penny a-piece a Corner; he might have had better Fare, no doubt.

The Witneſſes for the Priſoner ſay for him, That he came to *Maccaffee*'s Houſe about Nine a-Clock at Night, and ſtaid till Eleven: That is contrary to that Evidence given for the King, *viz.* That he was in the Coach at *Brownlow-ſtreet* End; for if he was at *Maccaffee*'s Houſe all the time they mention, it is impoſſible he ſhould be guilty. All theſe Things are under your ſerious Conſideration. You had beſt go together, and if you are not ſatisfied upon the Evidence you have heard, that he is guilty, then you ought to acquit him; but if you are ſatisfied that he did commit this Murder, then you ought to find him guilty.

Then the Jury withdrew, and the Court adjourned for half an Hour; and when they were returned, the Jury came to give their Verdict; and

and being called over, answered to their Names; and Mr. *Harrison* was brought to the Bar.

Cl. of Arraign. Gentlemen, Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arraign. Who shall say for you?—*Jury.* Our Foreman.

Cl. of Arraign. Henry Harrison, hold up thy Hand. (*Which he did.*

Look upon the Prisoner. How say you? Is he Guilty of the Felony and Murder whereof he stands indicted, or Not Guilty.

Foreman. Guilty of wilful Murder.

Cl. of Arraign. What Goods or Chattels, *&c.*

Foreman. None that we know of.

Major *Richardson.* Look to him, he is found guilty of wilful Murder.

Cl. of Arraign. Then hearken to your Verdict, as the Court hath recorded it.

You say that *Henry Harrison* is Guilty of the Felony and Murder whereof he stands indicted; but that he had no Lands or Tenements, Goods nor Chattels, at the Time of the Felony and Murder committed, nor at any Time since, to your Knowledge: And so you say all?

Jury. Yes.

Then the Prisoner was remanded to *Newgate*, until the last Day of the Sessions; and then he was brought to the Bar, to receive Sentence of Death.

Cl. of Arraign. Henry Harrison, Hold up thy Hand. (*Which he did.*

Henry Harrison, You stand convicted of Felony and Murder, for the Murder of Dr. *Andrew Clenche:* What can you say for yourself, why Judgment should not be given against you, to die according to Law?

Mr. D. Recorder. Mr. *Harrison*, You have been Indicted, Arraigned, and Convicted of Felony and Murder, for the Murder of Dr. *Andrew Clenche:* You have had as long, and fair, and favourable a Trial, as any Person that ever hath been tried at this Bar.

The Jury that has passed upon your Life and Death hath convicted you, and the Court are now ready to do their last Act, which is to pronounce that Sentence that the Law does inflict upon such Crimes as you stand convicted of.

Mr. *Harrison.* I expect no Mercy here, therefore I humbly desire you would intercede to the Queen, that I may have twelve Days allowed me, in order to my better Preparation for Death.

Mr. D. Recorder. Well.

Mr. *Harrison.* I must needs acknowledge, that I was tried before the best of Judges, my Lord Chief Justice *Holt*; but one Thing I think strange, that my Witnesses should be examin'd singly, and not the King's.

Mr. D. Recorder. That is no more than what is usual; the Counsel for the King and Queen requested it, and you did not.

Mr. *Harrison.* I begg'd that I might have timely Notice of my Trial, and I had not: There were seven People in my Company at that Time when this black and bloody Murder was done, and I could not get them to be here.

Mr. D. Recorder. You have had a long Time to get them ready, and you prest on your own Trial, which you should not have done if you had not been ready.

Mr. *Harrison.* I humbly submit.

Then the usual Sentence of Death was pronounc'd against him, and he was remanded to Newgate.

The Examination of Henry Harrison, *this 6th Day of* January, 1691.

THIS Examinant being asked where his Lodgings are, answereth, That he lodgeth at the *Golden-Ball* in *Paul's* Church-Yard, and came to lodge there on *Monday* Night, about Eleven of the Clock, or half an Hour after, but took the Lodgings in the Morning, the Master of the House being one Mr. *Jones*, a Cane-Chair Seller; and before that Time this Examinant lodged at the *Hand* and *Apple* near the *Exchange*, which said Lodgings he left on *Saturday* last in the Morning, and paid for them on *Sunday* Afternoon: And this Examinant saith, that on *Saturday* Night last he lodged at the *White Balcony* in *Old Southampton-Buildings*, the Mistress of the House being one Mrs. *Pitts*, and this Examinant lodged there on *Sunday* Night also. And this Examinant saith, That he was at the *King's-Head* in *Crown-Court* in *Chancery-Lane* upon *Monday* last, from between Seven and Eight of the Clock at Night, and stayed there until Eleven, playing at Cards with the Man and Woman of the House, and other Persons unknown. And being asked where he dined on *Monday*, and how he spent his Time on *Monday* in the Afternoon, he saith, he cannot give an Account. And this Examinant saith, That on *Tuesday* last Mr. *Hartly* of *Old Southampton-Buildings*, discoursing concerning the Murder of Dr. *Clenche*, said, That this Examinant was suspected to be guilty of that Murder. And this Examinant further saith, That he wore the same Cloaths he hath now on upon *Monday* last; and hath worn them a great while, having no other Cloaths to wear.

Capt. & Cognit. 6 *Die* Jan. 1691, *Coram J. Holt.* — *Hen. Harrison.*

He was afterwards Executed, pursuant to the Sentence, and died asserting his Innocence to the last. *See* State Trials, *Vol.* VIII. *p.* 465, 466.

CL. *The Trial of* John Cole, *at the* Old-Bailey, *for the* Murder *of* Andrew Clenche, *Doctor of Physick*, Sept. 2. 1692. 4 W. & M.

Judges present { Mr. Justice *Dolben*, and Mr. Justice *Powel.*

THE Keeper of *Newgate* did, according to Order of the Court, on *Friday* the 2d Day of *September*, bring up the Body of *John Cole* to the Sessions-House in the *Old-Baily*, *London*; who, being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found against him by the Grand Jury for the City of *London*, for the Murther of Dr. *Andrew Clenche.*

Cl. of Arr. JOHN COLE, hold up thy Hand. (*Which he did.*) You stand Indicted by the Name of *John Cole*, of *London*, Labourer, for the Murther of Dr. *Andrew Clenche*, *&c.* and the Indictment is in such Manner as that against Mr. *Henry Harrison.*

How say you, *John Cole*, are you guilty of the Felony and Murther whereof you stand indicted, or not guilty?

John Cole. Not Guilty.

Cl. of Ar. Culpreſt, how will you be tried?

John Cole. By God and my Country.

Cl. of Ar. God send you a good Deliverance.

[*And afterwards the said* John Cole *was brought to the Bar upon his Trial: And those Persons who were returned upon the Jury were called over twice, and their Appearances recorded.*]

Cl. of Ar. You, *John Cole*, These Men that you shall hear called, and personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Then the Jury were call'd, and sworn, and then were counted, and the Twelve sworn were these whose Names follow:

John Clay	*Cuthbert Lee*
Edward Sherlock	*Thomas Watson*
John Ruddyer	*Thomas Milburne*
Benj. Evans	*Thomas Applebury*
George Bestow	*Nicholas Harris*
Archibald Wilson	*Ralph Cates.*

Then Proclamation for Information and Evidence was made as is usual.

Cl. of Ar. John Cole, Hold up your Hand. (*Which he did.*

Gentlemen, You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *John Cole*, late of *London*, Labourer, *&c.* as in the Indictment. Upon this Indictment he hath been Arraigned, and thereunto hath pleaded Not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of this Felony and Murder whereof he stands indicted, or Not Guilty. If you find that he is Guilty, you are to inquire what Goods or Chattels, Lands or Tenements he had at any Time of the Felony and Murder committed, or at any time since. If you find him Not Guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his Goods and Chattels, as if you found him Guilty. If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Cl. of Ar. Cryer, Call *Mary Milward, Joseph Dudley, John Dudley, Jane Warren, Sarah Duely, Anne Gunn, Anne Gesson, Anne Warren, Elizabeth Harper, Mary Edwards, John Gamble, John Sykes, Robert Rebone, Richard Eades, Richard Marryot, Samuel Revet, Henry Milward, Squire Dalley, William Brown, Francis Hobbs.* Who were all sworn.

Cl. of Ar. Set *Mary Milward* up.

Mr. Justice *Dolben.* What have you to say, Woman, against *Cole* the Prisoner, concerning the Murther of Dr. *Clenche?*

Mrs. *Milward.* My Lord, my Husband declared to me, that he and Mr. *Cole* were in the Coach with Dr. *Clenche*, and that they Two kill'd Dr. *Clenche.*

Mr. Just. *Dolben.* That's no Evidence at all, what your Husband told you; that won't be good Evidence, if you don't know somewhat of your own Knowledge.

Mrs. *Milward.* My Lord, I have a great deal more that my Husband told me to declare.

Mr. Just. *Dolben.* That won't do; what if your Husband had told you that I killed Dr. *Clenche*, what then? That will stand for no Evidence in Law: We ought by the Law to have no Man call'd in question, but upon very good Grounds, and good Evidence, upon Oath, and that upon the Verdict of Twelve good Men. Have you any Body that can prove any Thing against *Cole*, or does it all arise barely from your Husband's Report?

Mrs. *Milward.* My Husband declared that he and Mr. *Cole* were to go under a Pretence to rob the Doctor, and so take their Opportunity to kill him; and the first Time they call'd at Dr. *Clenche*'s he was not within, but the second Time they went he was within, and then they did the Murther.

Mr. Just. *Powel.* When dy'd your Husband, Mistress?

Mrs. *Milward.* The 23d of *May* last, Sir.

Mr. Just. *Dolben.* Here hath been two or three Sessions since that Time, why did not you take up *Cole* about it before now?

Mrs. *Milward.* I did not know where to find him.

Mr. Just. *Dolben.* Why then you should have gone to a Magistrate, and told him of it, and taken some Advice about it.

Mrs. *Milward.* I did, as soon as I had found Mr. *Cole.*

Mr.

Mr. Juſt. *Dolben.* Your Buſineſs had been to have diſcovered this to Mrs. *Clenche*, and ſhe ſhould have looked after *Cole*. Is Mrs. *Clenche* here?

Sir *Will. Aſhurſt.* Here is her Brother-in-law.

Mr. Juſt. *Dolben.* Do you proſecute *Cole* upon this Indictment?

Mr. *Wiſe.* No, my Lord, I do not. Mrs. *Milward* is the Proſecutor, and ſhe charged Mr. *Cole* with the Murther of my Brother, Dr. *Clenche*; and ſhe told my Siſter *Clenche*, that Mr. *Milward*, her Huſband, confeſſed and ſaid ſome Time before his Death, that he and Mr. *Cole* murthered Dr. *Clenche* in a Coach: and Mrs. *Milward* ſaid, that ſhe had ſufficient Evidence againſt Mr. *Cole* for it. And my Siſter *Clenche* told Mrs. *Milward*, that Mr. *Harriſon* murthered Dr. *Clenche* in a Coach, together with another Perſon, which my Siſter *Clenche* ſaid ſhe believed was the ſaid Mr. *Milward*, Huſband of the ſaid Mrs. *Milward*; and that ſhe had a Warrant againſt him, the ſaid Mr. *Milward*, upon Suſpicion for it, but could not take him; and that ſhe ſuſpected that there were other Perſons Contrivers or concerned in it, who were ſet down at the *Blue Boar's-Head* Alehouſe near *Clement's*-Inn, by Mr. *Gamble*, a Coachman, out of his Coach, together with the ſaid Mr. *Milward*, in their Return from Dr. *Clenche's* Houſe that Night he was murthered. And, my Lord, by my Siſter *Clenche's* Order, I went with Mrs. *Milward* to all her Witneſſes, and took Notes of their Evidence; and I went with ſeveral of them to my Lord Chief Juſtice *Holt's* Chamber, before whom they gave in their Informations upon Oath about it: And when I had done it, I told Mrs. *Milward* I could find no Evidence that ſhe had againſt Mr. *Cole*, more than that he was at Dr. *Clenche's* Houſe, and at the ſaid *Blue Boar's-Head* Alehouſe, with Mr. *Milward*, and another Perſon, that Night Dr. *Clenche* was murthered, and ſo he might be concerned in the Contrivance of it; whereupon Mrs. *Milward* was diſſatisfied, and ſaid, ſhe was not able to proſecute him for it: ſo my Siſter ſaid to Mrs. *Milward*, that ſhe might, if ſhe would, prefer an Indictment againſt him for it, and that ſhe would pay for it, and other Charges about it, which ſhe did. And Mrs. *Milward* hath a Note of the Names of all her Witneſſes, and may call them.

Sir *Rob. Clayton.* Did you not lie at *Cole's* Houſe, Miſtreſs?

Mrs. *Milward.* Yes, Sir, I did.

Mr. Juſt. *Dolben.* Why did you not take him then?

Mrs. *Milward.* Becauſe he abſconded himſelf, and gave out that he was gone to Sea.

Mr. Juſt. *Dolben.* Was there no Quarrel between *Cole* and you about your Goods?

Mrs. *Milward.* No, my Lord, I had no Quarrel with him.

Mr. Juſt. *Dolben.* Becauſe you did not do it ſooner, have you not been troubled with your Huſband's Ghoſt? Tell the Jury the Story; we have heard on't: but I am afraid they will laugh at you.

Mrs. *Milward.* That was very true, my Lord.

Mr. Juſt. *Dolben.* Well, if you have any thing elſe to ſay that is material, ſpeak; otherwiſe, my Brother and I are of Opinion, that what you have already offered is no Evidence.

Mrs. *Milward.* My Lord, Here is a Coachman or two that can acquaint your Lordſhip of the Matter of Fact better than I can.

Cl. of Ar. Cryer, call *John Gamble*, the Coachman. *(Who ſtood up.]*

Mr. Juſt. *Dolben.* You, Coachman, Do you know the Priſoner?

Mr. *Gamble.* No, my Lord, I do not know him.

Mr. Juſt. *Dolben.* Look upon him, do you know him or no?

Mr. *Gamble.* No truly, my Lord, I do not know him.

Mr. Juſt. *Dolben.* Why, look you, Woman, he does not know him! You, Coachman, the Story is well known; therefore I aſk you again, upon your Oath, if that Priſoner at the Bar be one of the three Perſons that you carried to the *Blue Boar's-Head* on the backſide of St. *Clements*, that Night Dr. *Clenche* was murdered?

Mr. *Gamble.* Indeed, my Lord, I cannot be poſitive whether he be one of them or no: I took up in *Cheapſide* three Men into my Coach, and ſet one of them down at *Gray's-Inn*, and drove the other two to Dr. *Clenche's* Houſe, that Night he was murdered, and he was not at home; and afterwards the Man I had ſet down came in again, and I ſet them all down at the *Blue Boar's-Head* Ale-Houſe near *Clement's-Inn Gate*, about Eight a-Clock at Night.

Cl. of Ar. Set up *William Brown*, Servant at the *Blue-Boar's Head.*

Mr. Juſt. *Dolben.* Hark you, Is this one of the three Men that the Coachman ſet down at your Maſter's Houſe, that Night Dr. *Clenche* was murder'd?

Will. Brown. Yes, my Lord, it is.

Mr. Juſt. *Dolben.* What Time did they come to your Houſe?

Will. Brown. They came about Eight a-Clock at Night, and this Man and the other ſtayed till after Eleven a-Clock: Only *Milward* went out, and returned preſently; and then immediately he went out again, which was before Nine a-Clock, and return'd not until Eleven a-Clock after.

Mr. Juſt. *Dolben.* What Time was Dr. *Clenche* kill'd?

Will. Brown. About Ten a-Clock, or betwixt Ten and Eleven, as I think.

Mr. Juſt. *Dolben.* Who went out firſt, only *Milward?*

Will. Brown. Only Mr. *Milward*, my Lord: But this Man ſtayed all the Time, till Eleven a-Clock at Night; and another, who went by the Name of *Harper*, as I am ſince informed.

Mr. Juſt. *Dolben.* Why then this Man could not be in the Coach when Dr. *Clenche* was murdered, ſo *Harriſon* and *Milward* kill'd the Doctor in all Probability; for he ſays, this Man at the Bar, and another, ſtay'd at his Maſter's Houſe till after Eleven a-Clock.

Will. Brown. My Lord, When *Milward* came back, he brought a Couple of Men with him, in Soldiers Habit, about Eleven of the Clock at Night.

Mrs. *Milward.* My Huſband told me, that Mr. *Cole* and he went out of the Houſe, and left Mr. *Harper* behind.

Mr. Juſt. *Dolben.* But this Man ſwears, that the Priſoner did not go out of the Houſe till Eleven a-Clock at Night, and they were ſet down about Eight of the Clock, and Dr. *Clenche* was found kill'd a little after Ten at Night; and that *Milward* went out, and then came in again about Eleven a-Clock, and brought two Men with him: 'Tis to be feared he had been killing Dr. *Clenche* in that Time; Have you any more to ſay? If this Man ſays true, nothing can be ſaid more.

Mrs. *Milward.* Speak what was done when they came to drink the Pot of Ale, Mr. *Brown.*

Mr. Juſt. *Dolben.* I would fain know, Miſtreſs, who ſet you upon this Buſineſs? Is there not ſome Money promiſed you? It was not the Fear of your Huſband's Ghoſt that put you upon it, I am afraid.

Mrs. *Milward.* I am much wronged, my Lord, I know nothing of any Money offered me.

Mr. Juſt. *Dolben.* What ſay you more?

Will. Brown. My Lord, Mr. *Milward* being at my Maſter's Houſe that Night Dr. *Clenche* was killed, deſired me to make a Fire in the ſame Room the next Morning, and that he would come again then; and I made a Fire accordingly, but he came not then, nor afterwards at any time to my Knowledge; but on a *Sunday* Night about a Fortnight after, came the two Perſons that came with Mr. *Milward* in the Coach to my Maſter's Houſe that Night Dr. *Clenche* was murdered, and my Maſter being above Stairs, I ſent him Word, that the two Men were there who were there that Night that the Doctor was murdered, and they inquired for Mr. *Milward*, ſaying he promiſed to meet them there, and he not being there, before my Maſter could come down, they paid for the Pot of Drink, and went away.

Mr. Juſt. *Dolben.* When they came together to the *Blue-Boar's Head*, they had ſome evil Deſign, no doubt, but if it be true that thoſe two Men ſtaid from eight a-Clock till eleven, then it could not be this Man that murdered Dr. *Clenche*; but hark ye, Fellow, you ſay, there were three Perſons, whereof *Cole* was one, and *Milward* the other, who was the Third?

Will. Brown. I do not know his Name, my Lord, otherwiſe than as I have ſince heard.

Mrs. *Milward.* The other Man's Name was *Harper.*

Mr. Juſt. *Dolben.* You know nothing but what your Huſband told you, and 'tis moſt probable that *Harriſon* and he did the Murder, for that it appears that the Priſoner at the Bar is not the Man that kill'd the Doctor, that's plain. Have you any more?

Mrs. *Milward.* About a Fortnight after the Murder was done, they came to inquire for my Huſband at the *Blue Boar's-Head*, and whilſt the Tapſter went to tell his Maſter, they left their Money for the Drink and went away, and would not be ſeen.

Mr. Juſt. *Dolben.* What if they had run away, what then? If they were at the *Blue Boar* when Dr. *Clenche* was kill'd, they could not kill him.

Mrs. *Milward.* His Maſter ſays, that they were in the Houſe, and out of the Houſe, very often.

Call Mr. *Dalley* the Maſter. [*Who appear'd, and ſtood up.*]

Mr. *Dalley.* My Lord, Two of them were not out of the Houſe all the Night, I am not poſitive that this is the Man that came in with *Milward*, but thoſe two Men that came in with him, never went out at all until after eleven a-Clock at Night, but only *Milward* went out between Eight and Nine, and returned about Eleven a-Clock.

Mr. Juſt. *Dolben.* What do you ſay to this, Woman? Your Huſband told you that the Priſoner was one of the Two; this Witneſs cannot ſay he was one, but ſays poſitively thoſe two Men never went out till Eleven a-Clock, and from St. *Clement Danes* to *Leadenhall-Street* is not to go in and out, they muſt take a great deal of time to go thither and back again. Hark you, Mr. *Dalley*, you ſay that thoſe two Men that *Milward* left, never went out of your Houſe till after Eleven a-Clock; you are ſure on't?

Mr. *Dalley.* No, my Lord, they did not go out.

Mr. *Wiſe.* Mrs. *Milward* hath two Witneſſes that can tell ſomewhat more of the Matter concerning her Huſband's being concerned in the Murder.

Mrs. *Milward.* My Huſband told me, that the Coachman took them up not far from *Chancery Lane* End, and that Mr. *Cole* laid Hands upon the Doctor in the middle of *Holbourn.*

Cl. of Ar. Cryer, Call *John Sikes* the Coachman. [*Who ſtood up.*]

Mr. *Sikes.* My Lord, I took up two Men in *Fleet-Street*, about *Fetter-Lane* End.

Mr. Juſt. *Dolben.* What manner of men were they? What Cloaths had they on?

Mr. *Sikes.* My Lord, one of them had a light-coloured Perriwig on, and the other was in ſad-coloured Cloaths, and lank Hair, but I cannot be poſitive that this is one of them: They aſked me if I knew Dr. *Clenche* of *Brownlow-Street?* I told them, that I did not know the Doctor, but I knew the Street; and they bid me drive thither; and when I came to the Street's End, they ſent me to the Doctor's Houſe, and bid me tell him, that two Gentlemen were at the Street's End in a Coach, who deſired him to go with them to one that was not well; ſo the Doctor came preſently after me, and when he was in the Coach, they bid me drive to *Leadenhall-Street*; and when I came about *Holbourn-Bars* they bid me drive faſter; and when I came to *Leadenhall-Market*, they bid me drive to *Aldgate*, and I drove thro' the Gate to the *Pye* Tavern, and when I had turn'd my Coach, they bid me aſk for one *Hunt* a Chyrurgeon, but he was not there; and then I told them the Gate was ſhut, and one of them put his Hand out of the Coach, and gave the Watchman Sixpence to open the Gate, and then I drove back again to *Leadenhall-Market*, and there they bid me ſtop again, and one of them gave me Half-a-Crown to buy a Fowl; and I went a little way from the Coach, and one of them called me back again, and gave me a Shilling more, and bid me bring a Couple; and he bid me aſk for one *Hunt* a Poulterer; I went all over the Market, but I could find no ſuch Man, ſo at length I bought the Fowls of another Man, and would have had the Man gone with me to my Coach, but he would not; then I came to my Coach-ſide, and found the Door open; and I found the Doctor ſitting at the Bottom of the Coach, with his Head againſt the Cuſhion, and the two Men gone, and one of them ſeemed to be in Drink when I took them up, and I thought him to be that Man fallen aſleep, and that the Doctor and the ſober Man were gone to the Perſon that was not well; ſo then I called the Watch, and found the Doctor dead, and then it was about half an Hour after Ten a-Clock at Night.

Mr. Juſt. *Dolben.* Then I aſk you, was that one of the Men?

Mr. *Sikes.* I cannot ſay it, my Lord; I don't know him.

Mr. Juſt. *Dolben.* What time of Night was it that you took them up at *Fetter-Lane* End?

Mr. *Sikes.*

Mr. *Sikes*. It was about Nine a-Clock, somewhat after.

Mr. J. *Dolben*. Why then, they say, that this Man never stirr'd out of the House from Eight a-Clock till Eleven; this Man can't be concern'd.

Cl. of Arr. Set up *John Dudley*. (*Which was done.*)

Mrs. *Milward*. Mr. *Dudley*, What did my Husband say concerning the Doctor to you in the Country?

Mr. *Dudley*. He came into the Country presently after the Death of the Doctor, and he sent for me, and was very much concerned; I ask'd him what was the Matter with him, and he told me, that he was come out of Town about the Murder of Dr. *Clenche*; I told him, that I hoped he was not concerned in it; he told me, No, but there was a Warrant out against him upon account that he quarrell'd with the Coachman that Night that he carried him to Dr. *Clenche*'s; and he said, that Mr. *Harrison* had sent to him from *Newgate*, and told him, that he would give him Twenty Pounds, if he could make his Trial easy.

Mr. J. *Dolben*. Mistress, this makes it out, that he told you one Story, and to this Witness another, which contradicts your Story fully; he told him, that he came away for Fear, and that he was innocent of the Murder; and since that he told you, that he was guilty. Well, what else did he say to you, Mr. *Dudley*?

Mr. *Dudley*. He was much concerned to enquire after the *Gazettes*, and Letters, if he were in them, about the Doctor's Murder, and to enquire if Mr. *Cole* and Mr. *Harper* were taken up about it.

Mr. J. *Dolben*. You hear what is said against you; what do you say to it, Mr. *Cole*?

Mr. *Cole*. My Lord, I know nothing of it.

Mr. J. *Dolben*. No! I doubt you do; you were one of the Three that was set down on the Backside of St. *Clement*'s Church, at the *Blue-Boar's-Head*, where all Things were consulted.

Mr. *Cole*. My Lord, there was not one Word spoke about killing of Dr. *Clenche* in my Company.

Mr. J. *Dolben*. Were not you acquainted with *Milward*?

Mr. *Cole*. Yes, my Lord.

Mr. J. *Dolben*. Were you not with *Harrison*?

Mr. *Cole*. No, my Lord, I never saw him with my Eyes.

Mr. J. *Dolben*. Well, have you any more to say?

Mrs. *Milw*. Call Mr. *Hobbs*. (*Who stood up.*)

Mr. *Hobbs*. I met Mr. *Milward* in *York-Buildings*, and he ask'd me how I did; and he went from me a little way, and then came to me again, and ask'd me if I would drink: So we went to the *George* in *York-Buildings*, and there we drank a Pot or two; and he ask'd me, if I heard that he was accused about the Murder of Dr. *Clenche*; I told him, No; but he never told me any thing of this Man at the Bar.

Mr. J. *Dolben*. What was *Milward*?

Mr. *Hobbs*. I do not know how he got his Living.

Mr. J. *Dolben*. Have you any Body else, Mistress?

Mrs. *Milw*. No, my Lord, I know no more.

Mr. J. *Dolben*. Gentlemen of the Jury: *Cole*, the Prisoner at the Bar, stands indicted for murthering Dr. *Clenche*; who, as it now appears, was murther'd in a Coach by two Persons that were therein together with the Doctor. The Question now before you is, Whether *Cole* was one of these two?

Gamble the Coachman swears, That the Night Dr. *Clenche* was killed, he took up three Men in *Cheapside*, set one of them down at *Gray's-Inn*, and drove on to Dr. *Clenche*'s House; the Doctor was not at Home; then the third Man came in again to the Coach, and he drove to the *Blue-Boar's-Head*, an Alehouse by *Clement's-Inn*, and set those three Men down there, and 'twas then about Eight of the Clock.

Sikes the Coachman swears, He took up two Men at *Fetter-Lane* End in *Fleet-Street*, and by their Directions drove to *Brownlow-Street*, where the Doctor lived, whom they got into the Coach, and he drove as far as *Aldgate*, and through the Gate, and then came back to *Leadenhall*; was sent by the two Men in the Coach to buy a Fowl; when he returned they were gone, but the Doctor found dead in the Coach; and 'twas now half an Hour past Ten.

The Question now, as I said before, is, Whether *Cole*, the Prisoner at the Bar, was one of these two Men?

The Woman tells you, *Milward* her Husband told her, that he and *Cole* were in the Coach with Dr. *Clenche*, and that they two kill'd Dr. *Clenche*.

She likewise tells you, Her Husband told her, that *Cole* and her Husband went out from the *Blue-Boar's-Head* near *Clement's-Inn*, and left only *Harper* behind.

The Court hath already declared to you, That her Evidence, being only what her Husband told her, is no Evidence in Law to take away a Man's Life, especially when it is single, without any Circumstance to confirm it, as here 'tis. But that is not all; there is a very great Evidence, that what she says her Husband told her, is false.

He told her, she says, that he and *Cole* went from the *Blue-Boar's-Head* and kill'd the Doctor, leaving only *Harper* behind.

The Master of the House, and his Servant (Witnesses which she produceth) both swear, That her Husband went out alone, and left two Men behind, who both staid in the House till *Milward* return'd, which was about Eleven of the Clock. The Master, 'tis true, cannot say that *Cole* is one of the two, but the Servant is very positive he is; and both are positive, that two Men that *Milward* left behind, continued in the House till *Milward* return'd at Eleven of the Clock. These two Men's Depositions do plainly contradict her Story; and if they swear true, *Cole* the Prisoner was not one of the Persons that kill'd the Doctor.

You have all heard, I am sure, that one *Harrison* hath been convicted by a Jury in this Place for the Murder of Dr. *Clenche*: If he was one of the two, then *Milward*, by his own Confession (if his Wife swear true), was the other: But this you cannot take notice of; the Record is not produced, neither hath the Prisoner taken notice of it. The Question is only, Whether *Cole* be guilty of the Murder? which I leave to you upon the Evidence you have heard.

The Jury having considered the Verdict, return'd, That the Prisoner was Not Guilty.

CLI. *The Trial of* Charles *Lord* Mohun, *before the* Lords *at* Westminster, *for the Murder of* William Mountford, Jan. 31, 1692. 4 W. & M.

Tuesday, Jan. 31, 1692.

IN the Court erected in *Westminster-Hall*, for the Trial of the Lord *Mohun* for the Murder of *William Mountford*;

About 12 a-Clock this Day, the Lords came from their own House in their Robes, in Procession in this Manner into the Court:

First, the Lord High Steward's Gentlemen-Attendants, two and two.

Then the Clerks of the House of Lords, with the two Clerks of the Crown in the *King's-Bench* and *Chancery*, two and two.

Then the Masters in *Chancery*, two and two.

Then the Judges, eight of them, two and two.

Then the Peers eldest Sons, and Peers Minors, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then the Yeoman Usher of the House.

Then the Peers according to their Seniority, beginning with the youngest Baron, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then *Garter* King at Arms, and the Gentleman Usher of the Black-Rod; *Garter* on the Right Hand, and Black-Rod on the Left, carrying the White Staff before the Lord High Steward.

Then his Grace the Marquis of *Carmarthen*, Lord High Steward, alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wool-Pack, the two Clerks of the Crown standing before the Clerks Table, and the Clerk of the Crown in *Chancery*, having their Majesties Commission to his Grace the Lord High Steward in his Hand, they both made three Reverences to his Grace, and at the third coming up before the Wool-Pack, they did both kneel down, and the Clerk of the Crown in *Chancery*, on his Knee, presented the Commission to his Grace, who deliver'd it to the Clerk of the Crown in the *King's-Bench*; and then with three Reverences they return'd to the Clerks Table, where the Clerk of the Crown in the *King's-Bench* opening the Commission, commanded Proclamation of Silence to be made in this Manner:

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Clerk of the Crown. Again.——*Serjeant*. Oyez.

Clerk of the Crown. Again.——*Serjeant*. Oyez.

Clerk of the Crown. My Lord High Steward of *England*, his Grace, does straitly charge and command all manner of Persons to keep Silence, and to hear the King and Queen's Majesties Commission to his Grace my Lord High Steward of *England* directed, openly read, upon Pain of Imprisonment.

Which Words the Serjeant at Arms repeated aloud.

Lord High Steward. My Lords, pray be pleased to stand up and be uncovered whilst their Majesties Commission is reading.

Which his Grace himself did, and all the Peers.

Clerk of the Crown reads.

'*WILLIAM* R.

'GUlielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Chariſſimo Consanguineo & Consiliario nostro Thome Marchioni Carmarthen Presidenti Consilii nostri, Salutem. Sciatis, quod cum Carolus Dominus Mohun nuper de Paroch' S. Clement. Dacor. in Comitat' nostro Middlesex coram dilectis & fidelibus nostris Lanceloto Johnson, Arm' Carolo Lee, Milit. Samuele Buck, Andrea Lawrence, Willielmo Allystrey, Thoma Harriott, Theophilo Eyton, Nich. Gryce, Arm's, & aliis Sociis suis Justiciariis nostris ad inquirend. per Sacrament' probor' & legalium Hominum de Comitat' nostro Middlesex predict. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra Libertates quam extra per quos rei Veritas melius sciri poterit & inquiri de quibuscunque Proditionibus Misprisionibus Proditionum Insurrectionibus Rebellionibus Contrafacturis Tonsuris loturis falsis Fabricationibus & aliis Falsitat. Monetæ hujus Regni nostr. Angl. & aliorum Regnorum sive Dominiorum quorumcumque ac de quibuscunque Murdris Feloniis Homicid' Interfectionibus Burglariis Raptibus Mulierum Congregationibus & Conventiculis illicitis Verborum Prolationibus Coadunationibus Misprisionibus Confederationibus falsis Alleganciis Transgressionibus Riotis Routis Retentionibus Escapiis Contempt. Falsitat. Negligentiis Concelamentis manutenent. Oppressionibus Cambiparciis Deceptionibus & aliis Malefactis Offensis & Injuriis quibuscunque. Necnon accessariis eorundem infra Comitat' predict. (tam infra Libertates quam extra) per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. & per quos vel per quem cui vel quibus quand. qualiter & quomodo & de aliis Articulis & Circumstantiis premiss. seu eorum aliquod vel aliquem qualitercunque concernend. plenius veritat. & ad easdem Proditiones & al' premiss. audiend. & terminand. secundum Legem & Consuetudinem Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsum Carolum Dominum Mohun commiss. & perpetrat. per Sacrum proborum & legalium Hominum Comitat' nostri Middlesex predict. indictat. existit. Nos considerantes quod Justitia est Virtus excellens & Altissimo complacens; Volentesque quod predict. Carolus Dominus Mohun de & pro Felonia & Murdro unde ipsa ut prefertur indictat. existi coram Nobis in presenti Parliamento nostro secundum Leges & Consuetudines hujus Regni nostri Angl. Audiatur, Examinetur Sententietur & Adjudicetur, ceteraque omnia quæ in hac parte pertinent debito modo exerceantur & exequantur. Ac

'pro eo quod Officium Seneſchall. Angl. (cujus præſentia in hac 'parte requiritur) ut accepimus jam vacat. Nos de Fidelitate Prudentia 'provida Circumſpectione & Induſtria voſtris plurimum Confidentes, Or-'dinavimus & Conſtituimus vos ex hac Cauſa Seneſchall. Angl. ad 'Officium illud cum omnibus eidem Officio in hac parte debit' & perti-'nend' (hac vice) gerend. occupand. & exercend. & ideo vobis Mandamus 'quod circa premiſſa diligenter intendatis & omnia que in hac parte ad 'Officium Seneſchall. Angl. pertinent & requiruntur (hac vice) Faciatis 'Exerceatis & Exequamini cum effectu. In cujus rei Teſtimonium has 'Literas noſtras fieri fecimus Patentes. Teſtibus Nobis ipſis apud Weſtm. 'tricesimo primo die Januarii Anno Regni noſtr. Quarto.'

Per ipſum Regem propria Manu Signat. CHUTE.

GOD ſave King William *and Queen* Mary.

Then Proclamation was made for all Perſons but the Peers to be uncovered.

After which, their Majeſties Writ of *Certiorari*, directed to the Commiſſioners of *Oyer* and *Terminer* for the County of *Middleſex*, to remove the Indictment found before them againſt the Lord *Mohun*, with the Return thereof, and the Record of the Indictment, were read by the Clerk of the Crown in the *King's-Bench*, thus:

Cl. of the Crown. 'GULIELMUS & Maria, Dei Gratia Angliæ, Scotiæ, 'Franciæ & Hiberniæ Rex & Regina, Fidei Defenſores, '*&c.* Dilectis & Fidelibus noſtris Lanceloto Johnſon, Armigero, Ca-'rolo Lee, Militi, Samueli Buck, Andreæ Lawrence, Willielmo Al-'leſtree, Thomæ Harriott, Theophilo Eyton & Nicholao Grice, Ar-'migeris, Salutem. Vobis Mandamus quod Indictamentum de Felonia '& Murdro unde Carolus Dominus Mohun nuper de Parochia Sancti 'Clementis Dacorum in Comitatu noſtro Middleſex coram Vobis in Co-'mitatu noſtro Middleſex predict. & penes vos jam remanen. indictatus 'exiſtit ut dicitur, cum omnibus illud tangentibus nobis in preſenti Par-'liamento noſtro ſub ſigillis veſtris vel unius veſtrum deliberetis indilate 'una cum hoc brevi. Teſtibus nobis ipſis apud Weſtmonaſterium vice-'ſimo octavo die Januarii Anno Regni noſtri Quarto.

CHUTE.

'Virtute iſtius brevis mihi & aliis directi Indictamentum in eodem 'brevi mentionatum cum omnibus ea tangentibus Domino Regi & Domi-'næ Reginæ in preſenti Parliamento ſub ſigillo meo in iſto brevi contenta 'in quadam Schedula huic brevi annexa mitto prout interim mihi 'precipitur.

Reſponſ.

'Lanceloti Johnſon, Armigeri, unius Juſticiariorum dictorum Domi-'ni Regis & Domine Regine ad inquirendum, *&c.* infra ſcripti.

L A. JOHNSON.

'Middleſex ſſ. Memorandum quod per quandam inquiſitionem captam 'pro Domino Rege & Domina Regina apud Hicks-Hall in S. John-Street 'in Comitatu Middleſex Die Martis (ſcilicet) decimo ſeptimo die Januarii 'Anno Regni Domini & Domine noſtrorum Gulielmi & Mariæ Dei 'Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis & Regine Fidei 'Defenſorum, *&c.* Quarto, coram Lanceloto Johnſon, Arm' Carolo 'Lee, Milite, Samuele Buck, Andrea Lawrence, Willielmo Alleſtree, 'Thoma Harriott, Theophilo Eyton & Nicholao Grice, Armigeris, & 'aliis Sociis ſuis Juſticiariis dictorum Domine Regis & Domine Regine 'ad inquirendum per Sacramentum proborum & legalium Hominum Co-'mitatus Middleſex predicti ac aliis viis modis & mediis quibus melius 'ſciverint aut poterint, tam infra libertates quam extra per quos re veritas 'melius ſciri poterit & inquiri de quibuſcunque proditionibus Miſ-'priſionibus Proditionum Inſurrectionibus Rebellionibus contrafactu-'ris tonſuris falſis Fabricationibus & aliis falſitatibus monetæ hujus 'Regni Angliæ & aliorum Regnorum ſive Dominiorum quorum-'cunque ac de quibuſcunque Murdris Feloniis Homicidis & Inter-'fectionibus & aliis Articulis & Offenſis in Literis patentibus dic-'torum Domini Regis & Domine Reginæ eis & quibuſcunque qua-'tuor vel pluribus eorum inde directis ſpecificatis, necnon acceſſariis 'eorundem infra Comitatum predictum tam infra libertates quam ex-'tra per quoſcunque & qualitercunque habitis factis perpetratis ſive 'commiſſis ac de aliis Articulis & Circumſtantiis premiſſa & eorum aliquod 'vel aliquem qualitercunque concernentibus plenius veritatem & ad eaſ-'dem proditiones & alia premiſſa audiendum & terminandum ſecundum 'legem & conſuetudinem hujus Regni Angliæ aſſignatis per Sacramentum 'Samueli Philipps, Thomæ Head, Georgii Sparkes, Thomæ Lunn, 'Johannis Waterman, Willielmi Keyte, Johannis Uſher, Willielmi 'Pangborne, Arthuri Alliborne, Willielmi Deverell, Jacobi Garriſon, 'Anthonii Hartley, Roberti Rogers, Thomæ Knight & Thomæ Long 'proborum & legalium hominum Comitatus predicti ad tunc & ibidem 'juratorum & oneratorum ad inquirendum pro dicto Domino Rege & 'Domina Regina & pro corpore Comitatus præd. preſentatum exiſtit 'modo & forma prout patet in quodam Indictamento huic Schedule 'annexo. L A. JOHNSON.

'Middleſex ſſ. Juratores pro Domino Rege & Domina Regina ſuper 'Sacramentum ſuum preſentant quod Richardus Hill nuper de Parochia 'Sancti Clementis Dacorum in Comitatu Middleſex Generoſus & Caro-'lus Dominus Mohun nuper de Parochia predicta in Comitatu predicto 'Deum præ oculis ſuis non habentes ſed inſtigatione Diabolica moti & 'ſeducti nono die Decembris Anno Regni Domini & Dominæ noſtrorum 'Gulielmi & Mariæ Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ 'Regis & Reginæ, Fidei Defenſorum, *&c.* Quarto, vi & armis, *&c.* 'apud Parochiam predictam in Comitatu predicto in & ſuper quendam 'Willielmum Mountford Generoſum in pace Die & dictorum Domine 'Regis & Domine Regine nunc ad tunc & ibidem exiſtentem Felonice 'voluntarie & ex malitiis ſuis precogitatis inſultum fecerunt. Et quod 'predictus Richardus Hill cum quodam Gladio (Anglice *a Rapier*) de 'ferro & Chalybe confecto valoris quinque Solidorum quem ipſe idem 'Richardus Hill in manu ſua dextra ad tunc & ibidem extractum habuit & 'tenuit præfatum Willielmum Mountford in & ſuper dextram partem 'corporis (Anglice *the Right-ſide of the Body*) ipſius Willielmi Mountford 'prope dextram Mammillam (Anglice *the Right Pap*) ejuſdem Willielmi 'ad tunc & ibidem Felonice voluntarie & ex malitia ſua procogitata per-'cuſſit & pupugit (Anglice *did ſtrike and thruſt*) dans eidem Willielmo 'Mountford ad tunc & ibidem cum Gladio extracto predicto in & ſuper 'predictam dextram partem corporis ipſius Willielmi Mountford prope 'dictam dextram Mammillam ejuſdem Willielmi unum Vulnus mortale 'latitudinis unius pollicis & profunditatis viginti pollicum, de quo qui-'dem vulnere mortali predictus Willielmus Mountford a predicto nono die 'Decembris Anno ſupra dicto uſque decimum diem ejuſdem Menſis De-'cembris Anno ſupra dicto apud Parochiam prædictam in Comitatu pre-'dicto languebat & languidus vixit, quo quidem decimo die Decembris 'Anno ſupra dicto predictus Willielmus Mountford de vulnere mortali 'predicto apud Parochiam predictam in Comitatu predicto obiit. Et quod 'predictus Carolus Dominus Mohun tempore Felonia & Murdri predict. 'per prefatum Richardum Hill modo & forma predictis Felonice volun-'tarie & ex malitia ſua precogitata factorum & perpetratorum ad tunc & 'ibidem Felonice voluntarie & ex malitia ſua precogitata fuit preſens aux-'ilians abettans confortans aſſiſtens & manutenens prefatum Richardum 'Hill ad predictum Willielmum Mountford in forma predicta Felonice 'voluntarie & ex malitia ſua precogitata interficiendum & murdrandum. 'Et ſic Juratores predicti ſuper Sacramentum ſuum predictum dicunt quod 'predictus Richardus Hill & Carolus Dominus Mohun prefatum Williel-'mum Mountford modo & forma predictis Felonice voluntarie & ex ma-'litiis ſuis precogitatis interfecerunt & murdraverunt contra pacem dicto-'rum Domini Regis & Dominæ Regine nunc, coronam & dignitates 'ſuas, *&c.*'

Then his Grace remov'd from the Wool-Pack to the Chair, which was placed upon an Aſcent juſt before the uppermoſt Step of the Throne, and ſeated himſelf in the Chair.

Cl. of Cr. Serjeant at Arms, make Proclamation.----*Serjeant.* Oyez.

Cl. of Cr. Chief Governor of the *Tower* of *London*, return the Precept to you directed, together with the Body of *Charles* Lord *Mohun* your Priſoner, forthwith into the Court, upon Pain and Peril will fall thereon.

Then the Deputy-Governor of the *Tower* brought the Lord *Mohun* to the Bar, having the Ax carried before him by the Gentleman Gaoler of the *Tower*, who ſtood with it at the Bar, on the Right-Hand of the Priſoner, turning the Edge from him.

The Priſoner at his Approach to the Bar, made three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand, and his Grace and all the Peers returned the Salute to him.

Lord High Stew. My Lords, my Voice will not ſerve to ſpeak at ſuch a Diſtance, ſo as to be heard, and therefore I muſt beg leave of your Lordſhips to come down to the Wool-Pack again.-----*Lords.* Ay, Ay.

Then his Grace came down, and ſeated himſelf on the Wool-Pack.

Lord High Steward. My Lord *Mohun*, I am to let your Lordſhip know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Counſel at the Bar likewiſe know, that both you and the Witneſſes are to direct yourſelves to the Court, in the Style of My Lords, ſpeaking to the Court.

Then there was a little Pauſe, after which his Grace addreſſed himſelf to the Priſoner thus.

Lord High Steward. My Lord, you are brought here before this Supreme Court in order to your Trial.

The Charge againſt you is, for the Murder of one of the King's Subjects, which is a Crime the King will at no time paſs over in the meaneſt Man's Caſe, without making a ſtrict Inquiry into the Offence, and cauſing due Puniſhment to be inflicted on the Offender.

This, my Lord, is charged upon you, not by any ſlight Information, but by the Grand Inqueſt of this County, made up of Gentlemen of good Worth and Conſideration. It is true, that this Inqueſt does not amount to much more than a bare Accuſation; and therefore it ought not to be made any uſe of, ſo as to prejudice your Lordſhip's Trial; but it is that which is the Ground of preſenting this Black Crime before my Lords your Peers, who cannot receive it without ſome Trouble, to find any one of their Body ſuſpected to be guilty of an Action ſo Diſhonourable as this is repreſented to their Lordſhips.

My Lord, you are a very young Man, and therefore it is to be hoped, you cannot ſo early have had your Hands in Blood. And the ſame Reaſon, becauſe you are ſo young, may, perhaps, make you conceive, that you are under ſome greater Diſadvantage in making your Defence, than you would be if your Experience had been longer.

But to remove any Miſapprehenſion you can have of that kind, it is very proper to put your Lordſhip in mind, that you have the good Fortune now, to be tried for this Fact in full Parliament, where no Evidence will be received, but ſuch as muſt be manifeſt and plain, beyond all Contradiction; ſo that you have nothing to fear here, but your own Guilt.

In the next Place, my Lord, you need not be diſcourag'd for want of Counſel, for the Honour of this Court is ſuch, as will take care to inform you of any Advantage that the Law can give you. And you may be farther aſſured, that no Art or Skill in Arguing can take any Place here, either againſt your Innocency, or divert my Lords from doing you exact Juſtice. Nay, I dare preſume to ſay, on the Part of my Lords, that if there be Room for any Abatement of Severity, you may reaſonably expect to find it from their Lordſhips.

Theſe Conſiderations, my Lord, cannot but give you great Conſolation under your unhappy Circumſtances, it being moſt certain, that nothing but your own Crimes can hurt you.

But at the ſame time I muſt tell you, that your Lordſhip is not to flatter yourſelf with an Expectation or Hope, that any Favour will be ſhewed you beyond what Honour and Juſtice can allow: And I hope you have well conſidered, that it is no leſs than your Life, your Honour, and your Eſtate, that you are now to defend, inſomuch, that I cannot doubt but your Lordſhip has recollected and prepared yourſelf for the Defence of what ſo very much concerns you.

I will not therefore detain you any longer than to give you ſome Directions in the Order and Method of your Trial; and thoſe are, that your Lordſhip do give Attention carefully to the Reading of your Indictment. That you give no Interruption to the Counſel or Witneſſes when they ſpeak againſt you; and when the proper time ſhall come for your Witneſſes to be examined, and that you are to be heard in your own Defence, I will give you due notice of it.

Your Lordſhip may alſo be certain, that when it ſhall come to your turn to ſpeak, you ſhall be heard with all the Patience and Favour that the Matter will bear; and at laſt, when all hath been heard that can be ſaid on both Sides, your Lordſhip needs not doubt, but that my Lords will give ſuch a Judgment as will be ſuitable to the Honour, Juſtice and Equity of this great Court. Clerk, read the Indictment to my Lord.

Clerk

Clerk of the Crown. 'CHarles Lord *Mohun*, You stand indicted by 'the Name of *Charles* Lord *Mohun*, of the 'Parish of St. *Clement Danes*, in the County of *Middlesex*, for that 'you, together with one *Richard Hill* of the same Parish and Coun-'ty, Gentleman, who is fled, and withdrawn from Justice, not 'having the Fear of God before your Eyes, but being moved and 'seduced by the Instigation of the Devil, the 9th Day of *December*, 'in the 4th Year of the Reign of our Sovereign Lord and Lady *William* 'and *Mary*, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland*, 'King and Queen, Defenders of the Faith, *&c.* with Force and Arms, '*&c.* at the Parish aforesaid, in the County aforesaid, in and upon one '*William Mountford*, Gent. in the Peace of God, and our said Sovereign 'Lord and Lady the King and Queen, then and there being, feloniously, 'wilfully, and of your Malice afore-thought, did make an Assault. And 'that he the said *Richard Hill*, with a certain Rapier made of Iron and 'Steel, of the Value of 5*s.* which he the said *Richard Hill*, in his Right-'Hand then and there had and held drawn, the said *William Mountford*, 'in and upon the Right-side of the Body of him the said *William Mount-'ford*, near the Right Pap of him the said *William*, then and there 'feloniously, wilfully, and of his Malice afore-thought, did strike and 'thrust, giving unto him the said *William Mountford* then and there, 'with a Sword drawn aforesaid, in and upon the aforesaid Right-side of 'the Body of him the said *William Mountford*, near the said Right Pap 'of the said *William*, one Mortal Wound of the Breadth of one Inch, 'and of the Depth of twenty Inches, of which said Mortal Wound the 'aforesaid *William Mountford* from the aforesaid ninth Day of *Decem-'ber*, in the Year aforesaid, unto the tenth Day of the same 'Month of *December*, in the Year aforesaid, at the Parish aforesaid, 'in the County aforesaid, did languish, and languishing, did live, 'on which said tenth Day of *December* in the Year aforesaid, 'the aforesaid *William Mountford* of the Mortal Wound aforesaid, at the 'Parish aforesaid, in the County aforesaid, died. And that you the said '*Charles* Lord *Mohun*, at the Time of the Felony and Murder aforesaid, 'by the aforesaid *Richard Hill*, in Manner and Form aforesaid, feloniously, 'wilfully, and of his Malice afore-thought, done and committed, then 'and there feloniously, wilfully, and of your Malice afore-thought, were 'present, aiding, abetting, comforting, assisting and maintaining the 'aforesaid *Richard Hill*, the said *William Mountford* in Form aforesaid, 'feloniously, wilfully, and of his Malice afore-thought to kill and mur-'der. And so that you the said *Charles* Lord *Mohun*, and the said '*Richard Hill*, the said *William Mountford* in Manner and Form afore-'said, feloniously, wilfully, and of your Malice afore-thought, did kill 'and murder, against the Peace of our said Sovereign Lord and Lady 'the King and Queen, their Crown and Dignity.'

How say you, *Charles* Lord *Mohun*, Are you Guilty of this Felony and Murder, or not Guilty?

L. *Mohun*. Not Guilty, my Lords.

Clerk of the Crown, How will your Lordship be tried?

L. *Mohun*. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

L. High Steward. Will your Lordships please that the Judges may be covered?——*Lords*. Ay, Ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Clerk of the Crown. If any one will give Evidence on the Behalf of our Sovereign Lord and Lady the King and Queen's Majesties, against *Charles* Lord *Mohun* the Prisoner at the Bar, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

L. High Steward. You Gentlemen that are of the King's Counsel, will you begin?

Mr. Serj. *Thompson*. May it please your Lordships, I am of Counsel for the King and Queen, against my Lord *Mohun* the Prisoner at the Bar, who stands indicted for the Murder of one *William Mountford*.

L. *Mohun*. My Lords---

L. High Steward. My Lord *Mohun*, what does your Lordship say?

L. *Mohun*. Do not your Lordships think it proper, that I should have Pen, Ink and Paper?

Lords. Ay, by all means.

L. High Steward. Yes, give my Lord Pen, Ink and Paper.

Which were carried to him by one of the Clerks.

L. High Steward. Go on, Sir, now.

Mr. Serj. *Thompson*. My Lord *Mohun* stands indicted here before your Lordships, for the Murder of one *William Mountford*, and the Indictment sets forth, that one *Richard Hill*, who is since fled from Justice, did upon the 9th of *December* last, make an Assault upon this same *William Mountford*, and that the said Lord *Mohun*, did likewise make that Assault. This Indictment particularly sets forth, that this *Hill*, by a Sword or Rapier, which he had in his Hand, did give this *William Mountford* a Wound on his Right-side, and that *Mountford* did languish of that Wound till the next Day, which was the 10th of *December*, when he died; and that at the Time of the giving the Wound, my Lord *Mohun* was present, and was aiding, abetting, assisting, and comforting of *Hill*; and thereupon we do say, he is Guilty of this Murder, and for this he stands indicted. It is my Duty to open the Indictment to your Lordships, we shall call our Proofs, and give you the Evidence, and then leave it to your Lordships Judgment.

Mr. Att. Gen. Sir *John Somers*. My Lords, the Indictment has been opened, and by that your Lordships see, the Noble Lord at the Bar stands charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be tried in this Great and Noble Court: and as my Lord has just Reason to put a high Value upon this Privilege, so on the other Hand, their Majesties, who are making Inquisition for the Blood of one of their Subjects, have a full Assurance, that no Compassion for my Lord's Youth, no Consideration for his Quality, or Regard for one of your own Order, will make your Lordships unmindful of the heinous Nature of the Crime, or cause any Variation in the Steadiness of your Justice.

It is true, my Lords, the Difference between the Trial of a Peer and a Commoner is very great, but there is no Difference in the Crime, whether committed by one or the other: It is the same Law by which they must be tried and judged; and that Fact which would be Murder in the meanest Subject, is no less than Murder, if committed by the greatest Peer.

My Lords, it is not insisted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; nor is it so alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill*; but if my Lord the Prisoner was of his Party, if he concurr'd with him in the Thing, if he was present and abetting to the Fact, though he did not strike a Stroke, though he was no more than a Looker-on when the Thing was done; the Law saith, He is a Principal in the Murder.

Whether my Lord's Case will fall within this Rule, is the Point for your Lordships to determine, when the Witnesses are heard.

My Lords, it is my Part to give an Account of the Nature of the Evidence, to the end that your Lordships may more easily go along with the Witnesses, as they are examined, and more readily make your Observations upon what they say.

This I shall do as shortly and as exactly as I can, without pretending to aggravate any thing, which I could never think did become any one in my Station; and I am sure, would be to very little Purpose before such a Judicature as this; for after all, your Lordships will found your Judgments upon the Fact, not as it is represented by us, but as it appears upon the Oaths of the Witnesses.

The Time when the Fact for which my Lord is to be tried was committed, was the 9th Day of *December* last.

The Occasion of it was this:

Captain Hill, the Person mentioned in the Indictment, had for some time before made Addresses of Courtship in the Way of Marriage, to one Mrs. *Bracegirdle*, an Actress in the Play-house; but these Proposals were totally rejected. This put Mr. *Hill* in a very great Rage, and he declared, that Mr. *Mountford* (the Person slain) was the only Man that stood in his way, and with many Execrations expressed his Resolution to be revenged upon him: This he did at several Times, and before several Persons.

The same Day the Fact was committed, in the Morning, my Lord, who is now at the Bar, and Captain *Hill*, went together to hire a Coach to go to *Totteridge*, and directed the Coachman to have six Horses ready, but to be waiting for them in *Drury-Lane* near the *Play-House*, with only two Horses in his Coach, about Nine a-Clock the same Night. My Lord and Captain *Hill* dined together that Day at a Tavern in *Covent-Garden*, and here much of their Discourse was about Mrs. *Bracegirdle*; and both of them did freely declare their Opinion, that Mr. *Mountford* lay with her. But the Principal of their Discourse was in relation to a Design which they had formed for the seizing upon Mrs. *Bracegirdle*, and forcing her into a Coach, and carrying her away somewhere into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that Purpose: Mr. *Hill* did acquaint my Lord, that the Soldiers would be ready by the Time; and my Lord took notice, that the carrying her off would stand Mr. *Hill* in 50*l.* at least. Thereupon (as your Lordships will hear from the Evidence) Mr. *Hill* used this Expression, If the Villain resist, I will stab him; and then my Lord was pleased to say, That he would stand by his Friend.

After they had continued there some time, being about to part, Mr. *Hill* told my Lord, That unless he was at the *Play-House* by Six a-Clock, the Thing could not be effected, and he should be undone: But my Lord promised to be there at the Time.

Accordingly they both met at the *Play-House*; and after they had been behind the Scenes, and informed themselves that Mrs. *Bracegirdle* would not be there that Night, they left the *Play-House*.

But it seems they had got Intelligence, that she was to sup that Night at one Mr. *Page*'s House in *Drury-Lane*; and therefore they planted themselves with their Soldiers near that Place, over-against my Lord *Craven*'s House.

Lord High Steward. They! Who do you mean?

Mr. Attorney General. My Lord, the Prisoner at the Bar, and Mr. *Hill*. After they had continued there for a considerable time (I think till towards Nine a-Clock), they began to have a Jealousy, that they might be under some Misinformation; and therefore ordered the Coachman to drive them into *Howard-street*, the Place where Mrs. *Bracegirdle* lodged; and observing some Persons walking near her Lodging, they said, they doubted they were deceived, and had been betrayed.

But they soon came back again to *Drury-Lane*, and fixed themselves in their former Station. About Ten a-Clock Mrs. *Bracegirdle*, accompanied with Mr. *Page* (at whose House she had been) and with her Mother and (I think) her Brother, going home; when they came to the Place where the Coach stood, with the Door open, and my Lord at the Bar placed in the Coach, and several Cases of Pistols by him, the Soldiers, together with Captain *Hill*, came up to Mrs *Bracegirdle*, seized upon her, and would have forced her into the Coach: Mr. *Hill* endeavoured with Violence to force away Mr. *Page*, who was then leading her, and struck him; but Mrs. *Bracegirdle*'s Mother holding her about the Middle, they could not readily get her into the Coach; and during this Struggle there was an Opportunity given to Mr. *Page* to call for Help; and several Persons coming presently from the Houses near, and the People in the Street beginning to rise upon them, they found it impracticable to effect their Design at that Time.

Thereupon the Soldiers were dismissed, but my Lord and Mr. *Hill* would not be denied the Liberty to wait upon Mrs. *Bracegirdle* to her Lodging; and accordingly, together with Mr. *Page* and her Mother, and other Persons, they went together to Mrs. *Bracegirdle*'s Lodging, at one Mrs. *Browne*'s House in *Howard-street*. Mr. *Mountford*'s House was in *Norfolk-street*, below *Howard-street*. *Howard-street* is a Cross Street, which leads from *Arundel-street*, and through *Norfolk-street* to *Surrey-street*; and so it was not possible for *Mountford* to come to his own House, but whoever should fix themselves in *Howard-street* must have the Opportunity of seeing him.

As they were going along, *Hill* swore he would be reveng'd; but nam'd nobody.

After that Mrs. *Bracegirdle* and the Company were come to her Lodging, she and her Mother and *Page* went into the House: My Lord *Mohun* and

and Mr. *Hill* ſtaid in *Howard-ſtreet*, and there continued for near two Hours together, and for the moſt part of that Time, with their Swords drawn.

Mr. *Mountford*, as it happen'd, did not come Home till late that Night; ſo that their Stay being long, my Lord and Mr. *Hill* thought fit to ſend for Wine, and had one or two Bottles, which they drank in the Street, near Mrs. *Bracegirdle*'s Lodgings.

During this Time, they were heard to ſay (that is, one of them was; but which of them, by reaſon of the Darkneſs we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which a Boy, who was there with them, (but who the Boy was we cannot diſcover) ſaid, Good my Lord, do not do it, alter your Reſolution. I did obſerve before, that Mrs. *Bracegirdle* ſupped that Night at Mr. *Page*'s Houſe, and Mrs. *Page* having heard of the great Outrage and Tumult in the Street, and that her Huſband was gone home with Mrs. *Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither. As ſhe entered into the Houſe, ſhe ſaw my Lord *Mohun* and Captain *Hill* near the Door; and preſently after, before ſhe could have a full Relation of what had happened in *Drury-lane*, Mrs. *Browne*, the Owner of the Houſe where Mrs. *Bracegirdle* lodged, came into the Room, and told them, That my Lord *Mohun* and *Hill* were waiting for Mr. *Mountford*, and that ſhe was apprehenſive it was with no good Intention. Thereupon Mrs. *Page* thought it requiſite to go to Mrs. *Mountford*'s Houſe to give her Notice of it, and to deſire her to find out where her Huſband was, and to caution him not to come Home, unleſs he brought a good Guard with him.

As ſhe went out, ſhe ſaw them both with their Swords drawn, and ſhe acquainted Mrs. *Mountford* with it, who ſent to ſeveral Places in Search of her Huſband; but ſhe was ſo unfortunate, that the Meſſengers could not find him.

Whilſt this was doing, the Watch came into *Howard-ſtreet*, being alarm'd at the Report that two Gentlemen were drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mohun*, why he had his Sword drawn. My Lord was pleaſed to return them this Anſwer, That he was a Peer of the Realm, and bid them touch him if they durſt. They then aſked *Hill*, why his Sword was out, and my Lord made the Excuſe for him, That *Hill* had loſt his Scabbard.

The Watch obſerving the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surrey-ſtreet*, went to inform themſelves, who theſe Perſons ſhould be, that were walking in ſuch a Manner at that time of Night. But they were hardly got into the Houſe before they heard the Cry of Murder.

The Witneſſes will inform your Lordſhips, that as Mr. *Mountford*, about twelve a-Clock, was coming home, my Lord *Mohun* met him, and ſaluted him. Mr. *Mountford* ſaid, My Lord *Mohun*, What does your Lordſhip do here at this time of Night? and my Lord made Anſwer, He ſuppoſed Mr. *Mountford* had been ſent for. No, no, ſays *Mountford*, I came by Chance. My Lord ſaid to him again, I ſuppoſe you have heard about the Lady. Mr. *Mountford* anſwered, I hope my Wife has given your Lordſhip no Offence. No, ſays my Lord *Mohun*, It's Mrs. *Bracegirdle* I mean. To this the Reply of Mr. *Mountford* was, Mrs. *Bracegirdle* is no Concern of mine; but I hope your Lordſhip does not countenance any ill Action of Mr. *Hill*.

Upon this *Hill* came up to them, and ſaid to my Lord, It was not a Time to diſcourſe of thoſe Matters; and as my Lord continued to talk with *Mountford*, *Hill* ſtruck *Mountford* firſt, and, in a manner, at the ſame Inſtant made a Paſs at him, and run him clean through the Body, and this before Mr. *Mountford*'s Sword was drawn. Immediately, upon this, there was a Cry of Murder, and the Watch came with what haſte they could, and took my Lord *Mohun*, but *Hill* was fled; when my Lord was taken, his Sword was not drawn.

As ſoon as my Lord *Mohun* was taken, the firſt Queſtion he aſked was, If *Hill* was apprehended? And when he was told, he was not, he ſaid he was glad of it, and he did not care if he were hang'd for him. And he ſaid, adding at the ſame time, That he was ſorry that Mr. *Hill* had ſo little Money about him, and wiſhed him all that he had in his own Pocket; and he did then alſo own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill*'s Coat on him at that time.

My Lords, this is the Subſtance of the Evidence, and in this Order, with your Lordſhips Leave, we ſhall offer the Proofs to your Lordſhips; I do not doubt, but your Lordſhips will attend to the Evidence with all Care, and will determine upon it according to Juſtice and Honour. I will detain your Lordſhips no longer, but proceed to call the Witneſſes to prove what I have opened.

L. H. Steward. Pray call your Witneſſes together, and let me know who you begin with.

Mr. Att. Gen. My Lords, We do not know what Place is deſigned for the Witneſſes; but if they are to be on the other Side, and this Croud do interpoſe between us and them, it will be impoſſible for us, who are the King's Counſel, to hear what they ſay, or know how to proceed.

L. H. Steward. There muſt be Room made there for the Witneſſes; where are your Witneſſes, Mr. *Attorney?*

Clerk of the Crown. If you pleaſe to name them, Sir, we will call them.

Mr. Att. Gen. Call Mr. *John Hudſon*, and Mr. *George Powel.*

L. H. Steward. I know not how this is ordered, but Way muſt be made there by the Bar, that the Priſoner may ſee the Witneſſes, and they him.

Mr. Att. Gen. Yes, my Lord, by all means.

Mr. Serj. *Tremain.* If your Lordſhips pleaſe, the Witneſſes will be moſt conveniently heard, if they come and ſtand by us.

Mr. Att. Gen. If your Lordſhips pleaſe, it will not be poſſible either for my Lord at the Bar, or for us, to hear what the Witneſſes ſay, unleſs they be brought into this Place to ſtand between us.

L. H. Steward. My Lord Great Chamberlain, be pleaſed to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the Bar.

L. G. Chamberlain. The Witneſſes muſt be brought to this Place.

And accordingly, Way was made for the Witneſſes, as called, to ſtand at the Bar between the Priſoner and the King's Counſel.

L. H. Steward. Give me the Name of him that you begin with.

Mr. Att. Gen. We begin, my Lords, with Mr. *John Hudſon.* [*Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.*]

Cl. of the Cr. Hearken to your Oath, Sir: The Evidence that you ſhall give on the Behalf of our Sovereign Lord and Lady the King and Queen's Majeſties againſt *Charles* Lord *Mohun*, the Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth: So help you God. [*Then he kiſſed the Book.*

Mr. Att. Gen. Mr. *Hudſon*, Do you give my Lords an Account what you know of any Applications of Courtſhip made to Mrs. *Bracegirdle* by Mr. *Hill*, and what became of it; and what you heard *Hill* ſay about her, or about any one elſe relating to that Matter.

Hudſon. My Lord, I had the Honour to be invited to Supper with my Lord *Mohun*, at the *Roſe-Tavern* in *Covent-Garden*, where I found Captain *Hill* with his Lordſhip.

Mr. Att. Gen. When was this, Sir? Tell the time.

Hudſon. This was three Nights before this unfortunate Accident happen'd, there I found Captain *Hill*, and we ſupped together; and after Supper, Captain *Hill* raiſed a Diſcourſe of Mrs. *Bracegirdle* and Mr. *Mountford*; ſays he, I ſhould not doubt the Succeſs of my Amour with Mrs. *Bracegirdle*, if I were not obſtructed by *Mountford*, whom I deſign to be the Death of: This is Truth, upon my Oath. My Lord *Mohun* was in the Company; but I cannot ſay that my Lord made any Reply to the Thing, or took any Notice of it: But this Captain *Hill* did ſay, not only then, but ſeveral times before.

Mr. Att. Gen. Did he ſay it at any other time in your Hearing?

Hudſon. Yes, ſeveral times before.

Mr. Att. Gen. Do you know any thing more of this matter?

Hudſon. No more, than that my Lord *Mohun*, that very Night that Mr. *Mountford* was killed, and Capt. *Hill*, came into the Scene Room of the Play-Houſe, and my Lord *Mohun* had Capt. *Hill*'s Coat on, and Capt. *Hill* had my Lord *Mohun*'s Coat on, and they changed their Cloaths in the Play-Houſe, I ſaw them change their Cloaths; but what their Deſign was, I cannot tell.

Mr. Att. Gen. When was that, Sir?—*Hudſon.* That very Night that the Gentleman that is dead, Mr. *Mountford*, was killed.

Mr. Att. Gen. You ſay, That my Lord *Mohun* was preſent when that Diſcourſe of *Hill* was, about *Mountford* at the Tavern.

Hudſon. Yes; but I cannot ſay my Lord took any Notice of it, for he made no Reply that I heard.

L. H. Steward. Have you done with this Witneſs?

Mr. Att. Gen. Yes, my Lord.

Hudſon. This is all that I know of the Matter.

L. H. Steward. My Lord *Mohun*, have you any thing to ſay to this Witneſs?—L. *Mohun.* No, my Lord.

Mr. Att. Gen. Then our next Witneſs's Name is *George Powell.*

(*Who was ſworn in like manner.*)

Mr. Att. Gen. Mr. *Powell*, You have heard the Queſtions that have been aſk'd Mr. *Hudſon.* Pray will you make Anſwers to them; and give my Lords an Account what you know of this Matter.

Powell. May it pleaſe your Lordſhips, about 5 or 6 Days before Mr. *Mountford* was wounded, I was in Company with Capt. *Hill*, and he began Mrs. *Bracegirdle*'s Health. I told him I would pledge it. Says he, I am ſure there is no Bar between me and Mrs. *Bracegirdle* but *Mountford*; and I am reſolved to be revenged on him, one way or another. About 3 Days afterwards I was at Supper with my Lord *Mohun* and Capt. *Hill*, and another Gentleman, and the ſame Diſcourſe aroſe again, and Capt. *Hill* whiſpered me in the Ear, ſays he, I am reſolved to have the Blood of *Mountford*. I told him I did not think it fit for him to ſpeak ſo behind a Gentleman's Back, and to me, who was his Friend. I ſaid, I would acquaint Mr. *Mountford* what he ſaid, and I did not doubt but he would give him the Satisfaction of a Gentleman for any Injury he did him. I heard no further Diſcourſe at that time, nor do I know more of that Matter, till the Night that Mr. *Mountford* was wounded, when I ſaw him lying upon the Parlour Floor, and afterwards ſaw him laid to Bed, and ſate up all Night with him, and about four a-Clock in the Morning, I aſked Mr. *Mountford* how the Thing happened. He told me Capt. *Hill* killed him baſely; I aſked him if his Sword was drawn; Yes, ſays he, but it was after I had received my Wound, for whilſt my Lord *Mohun* talked to me, *Hill* run me through.

Mr. Att. Gen. At that time, when thoſe Words were ſpoke at Supper, That he deſigned to be the Death of *Mountford*, was my Lord preſent?

Powell. Yes, my Lord *Mohun* was preſent, but he was talking to Colonel *Tredenham.*

Mr. Att. Gen. Did my Lord *Mohun* ſay any thing to what *Hill* ſaid?

Powell. I did not hear him make any Anſwer to it at all.

Mr. Att. Gen. Do you know any thing elſe in relation to this Fact?

Powell. Nothing elſe, but that Capt. *Hill* did give a Letter to be delivered to Mrs. *Bracegirdle*, but I know not whether it was delivered or not, and he often told me, he would marry her with all his Heart.

Mr. Att. Gen. You ſay you had that Diſcourſe with *Mountford*, when he lay a-dying?

Powell. It was about four a-Clock, and he died about One.

Mr. Att. Gen. Was there any thing ſaid about my Lord *Mohun* at that time?—*Powell.* Nothing, but that my Lord *Mohun* was talking to him, whilſt the other run him through.

L. H. Steward. If I underſtand you aright, you ſay nothing againſt my Lord *Mohun*, but his being by one time at Supper when *Hill* ſaid ſome Words about *Mountford*; and then the other thing you ſay is, what *Mountford* told you after he was wounded, That my Lord was talking to him, when *Hill* gave him the Wound?

Powell. Yes, my Lord, That is all that I heard.

L. H. Steward. Has your Lordſhip any thing to ſay to this Witneſs?

L. *Mohun.* No, my Lord.

Mr. Att. Gen. The next Witneſs that we ſhall deſire to call is Mrs. *Knight.* (*Who was ſworn.*

Mrs. *Knight.* I have nothing to ſay to my Lord *Mohun*; but what I have to ſay, is to Mr. *Hill*. About 4 Days before Mr. *Mountford* was killed, Mr. *Hill* came to me, and ſpoke to me about Mrs. *Bracegirdle*: He told me he was ſatisfied ſhe hated him. I told him I did not believe

ſhe

he said, she did love some Body, but he had thought of a Way to be even with that Body. Upon the *Wednesday* Night before Mr. *Mountford* was killed, he came to me as I was coming out of the Dressing-Room; saith he, Mrs. *Knight*, let me speak a Word with you; says he, You are very great with Mrs. *Bracegirdle*, and I desire you to be so kind, as to speak to her for me, and I would beg of you, if you would give me leave, to give her this Letter from me: No, said I, Mr. *Hill*, I beg your Pardon; you say she hateth you, and if she hateth you, she will not love any Body that speaketh for you; and I am not fond of creating myself Enemies in the House, knowing I have some already. What Enemies? saith Mr. *Hill*; *Mountford* do you mean? And then repeating a great Oath, I shall find a Way with him speedily.

L. H. Stew. A Way, with what?

Mrs. *Knight.* A Way with him speedily; *Hill* said it of Mr. *Mountford.*

L. H. Stew. What do you call this Witness for, Mr. *Attorney?* what Use do you make of her Evidence against my Lord *Mohun?*

Mr. *Att. Gen.* My Lord, the Use that we would make of these Witnesses, is to give an Account of the whole Fact, from the Beginning to the End, *Hill*'s Malice, and what was the Occasion of it, his Design in coming there that Night, and what he did, and to leave it to your Lordships, to judge what Influence this will have, how far it will affect my Lord *Mohun.* The next Witness is Mrs. *Sandys.*

L. H. Stew. What is this Woman's Name?

Mr. *Att. Gen.* Mrs. *Elizabeth Sandys.* *(She was sworn.)*

Mr. *Att. Gen.* Mrs. *Sandys*, give my Lords an Account, whether you were present with my Lord *Mohun* and Mr. *Hill* at the Tavern that Day that Mr. *Mountford* was killed, and what passed there.

Sandys. I dined with my Lord *Mohun* and Captain *Hill*, at the *Three Tuns* in *Shandois-street*, and there arose a Discourse about Mrs. *Bracegirdle* and *Hill*, and my Lord *Mohun* asked me, If I thought *Mountford* had lay with her or no. I said I could not tell; presently after, says my Lord *Mohun*, It will cost *Hill* 50 Guineas this Design. Saith Mr. *Hill*, if the Villain offers to resist, I will stab him; saith my Lord *Mohun*, I will stand by my Friend. When this was done, Mr. *Hill* desired Mr. *Brough* to borrow a Case of Pistols of Captain *Leister*, and he said he would not borrow them himself, for he doubted, if he knew of the Design, he would not lend them. When that was done, Captain *Hill* told me, he had a Coach and six Horses in *Witch-Street*, to seize Mrs. *Bracegirdle*, and carry her away into the Country; and my Lord *Mohun* said he would stand by his Friend: And when my Lord *Mohun* went away, *Hill* said to him, My Lord, if you be not there by six a Clock, I am ruined. Saith my Lord *Mohun*, upon my Word and Honour I will be at the Play-House by Six.

L. H. Stew. My Lord *Mohun*, have you any Thing to say to that Witness?

L. Mohun. Yes, my Lord, I desire to have her asked, whether she is a Maid, or a married Woman?

L. H. Stew. You hear the Question; but I do not know what Use my Lord will make of it.

Mr. *Att. G.* You can easily answer, whether you are married or unmarried.

L. H. Stew. That Question is very fair; Are you a married Woman, or a single Woman?

Sandys. I am a single Woman, my Lord.

Mr. *Att. G.* Pray, Mrs. *Sandys*, repeat the Words that my Lord *Mohun* said, when *Hill* said, if the Villain resisted, he would stab him.

Sandys. My Lord *Mohun* said nothing in the World, but that he would stand by his Friend.

L. H. Stew. Have you any further Questions, Mr. Attorney, to ask this Witness?

Mr. *Att. G.* I have nothing more to ask her, my Lord.

L. H. Stew. What say you, my Lord *Mohun*; would you ask her any thing else?

L. Mohun. No, my Lord.

L. H. Stew. Then withdraw. *(Which she did.)*

Mr. *Att. G.* The next Witness we call is Mr. *Rogers.* *(Who was sworn.)*

L. H. Stew. What is this Witness's Name?

Mr. *Att. G.* *Rogers*, my Lord.

L. H. Stew. What is his Christian Name?

Mr. *Att. Gen. John.* If your Lordships please to remember, that the last Witness, Mrs. *Sandys*, said, that Mr. *Hill* desired my Lord *Mohun* not to fail of being at at the Play-House by six a Clock, and that he was undone if he did not come; and my Lord promised upon his Word and Honour that he would come: Now we call this Witness to prove that they met at the Play-House according to the Appointment on the 9th of *December.*

Rogers. My Lord, all that I know of this Matter was, That my Lord *Mohun* and Captain *Hill* were at the Play-House that Night, and that which made me take particular Notice of their being then at the Play-House, though they had been frequently there before together, was that Captain *Hill* had my Lord *Mohun*'s Coat on, and my Lord *Mohun* had Captain *Hill*'s Coat on.

Mr. *Att. G.* Did you observe any Thing else, when they were at the Play-House?

Rogers. Nothing but only some Words that passed between Captain *Hill* and my Lord *Mohun*, when I went to ask them for the Overplus of the Money for coming in, because they came out of the Pit upon the Stage; he said, he would not give it me; but if I brought any of our Masters, he would slit their Noses, or something to that Effect.

Mr. *Att. G.* What were the Words he said when you asked him for Money?

Rogers. I asked them for Money, that they ought to pay more than the rest that were in the Pit, because they came upon the Stage, and they would not give it me; but he said, If I brought any of our Masters, he would slit their Noses, or cut their Faces, or to that Effect.

L. H. Stew. My Lord, will your Lordship ask him any Questions?

L. Mohun. No, my Lord.

L. H. Stew. Call another Witness then.

Mr. *Att. G.* My Lords, with your Lordships Favour, the next Witness that we shall call, is the Coachman, *William Dixon. (Who was sworn.)*

Mr. *Att. Gen.* Mr. *Dixon*, do you remember the Day when Mr. *Mountford* was killed?

Dixon. Yes, Sir.

Mr. *Att. G.* Pray acquaint my Lords, what Persons you carried in your Coach that Day; whether you carried my Lord *Mohun* and Mr. *Hill*, and to what Place, and where you waited for them.

Dixon. If it please your Lordships, Captain *Hill* and my Lord *Mohun* came in a Hackney Coach to my Gate, where I live, and I was just a going to set my Coaches into the Street for Hire: They bargained with me for six Horses, and I was to have thirty Shillings to set them down at *Totteridge*, on this Side *Barnet.* I ask'd them, Whether they would have me bring all the six Horses with the Coach. No, they said, a Pair would serve to the Play-House, and the other four should stand at the Pound's End. So I went accordingly to the Place appointed, over-against the *Horseshoe-Tavern* in *Drury-lane*, and a Footman came, and Mr. *Hill* and he bid me drive down lower. So I drove to my Lord of *Clare*'s Door, or thereabouts; and there was some Soldiers that would have had me go in, and smoak and drink with them; I told them, I did never smoak, and I did not care for drinking any thing at that Time. With that, my Lord *Mohun* and Mr. *Hill* came into the Coach, and, as they bid me, I carried them into *Norfolk-street*, below the Watch-House that stood there; they bid me turn about, and stand there; and then they went to the *White-Horse* Tavern; so I did turn about, and stay'd as they bid me, and they tarried a pretty while before they came again, and then they bid me drive back to the Place from whence I came, and so I drove into *Drury-lane*, and they bid me stop next to my Lord *Craven*'s House, this was about ten a Clock, and it being so late, I went Home, and sent a Postilion down to take Care of the Coach, so that what passed afterwards I cannot tell.

L. H. Stew. What Day or Night was all this you speak of?

Dixon. Truly, my Lord, I cannot tell what Day it was; it was in *December*, as I take it, the 9th; and it was *Friday*, I believe; I do not know justly.

L. H. Stew. Did you hear of the Death of Mr. *Mountford?*

Dixon. Yes, I did.

L. H. Stew. Was it the same Day that you heard Mr. *Mountford* was killed?

Dixon. No, I did not hear it till the next Morning.

Mr. *Att. Gen.* You say, you went with my Lord *Mohun* and Mr. *Hill* into *Norfolk-street*, and there you stayed for them, whilst they went elsewhere?

Dixon. Yes, I did so.

Mr. *Att. G.* Do you know to what Houses they went?

Dixon. They went to the *White-Horse* Tavern, to the hithermost House on this Side the *Strand*, and they went below to a Door on this Side of a House that is not finished yet.

Mr. *Att. Gen.* Did you hear them use any Expressions there?

Dixon. I heard *Hill* say to my Lord *Mohun*, I think there is a Man and a Maid talking, it was at the Corner House; saith *Hill*, We are betrayed; Damn me, saith he, my Lord, let us go and thresh him.

Mr. *Att. Gen.* What did they do then?

Dixon. I did see them do nothing.

Mr. *Att. G.* Whither did you carry them from thence?

Dixon. To the Place from whence they came in *Drury-lane.*

L. H. Stew. Will your Lordship say any thing to this Man?

L. Mohun. I desire he may be asked, Whether he had not Orders to go out of Town with us, as soon as Mrs. *Bracegirdle* was put into the Coach.

Dixon. If it please you, Sir, I had Order thus, That when we were to go out of Town, I must drive down into the *Strand*, and then round about any Way that was readiest and cleares to get to the Pound; that Order I had, and no other Order I had.

L. H. Stew. Who is your next Witness?

Mr. *Att. G.* My Lords, the next Witness we shall call, will give you an Account what was done in *Drury-lane*, upon their endeavouring to carry her away, and for that we have here Mrs. *Bracegirdle* herself.

L. H. Stew. What is this Gentlewoman's Name?

Mr. *Att. G.* Mrs. *Ann Bracegirdle.* *(Then she was sworn.)*

Mr. *Att. G.* Mrs. *Bracegirdle*, Pray give my Lords an Account of the Whole of your Knowledge of the Attempt that was made upon you in *Drury-lane*, and what followed upon it.

Mrs. *Bracegirdle.* My Lord, I was in *Prince*'s-*street* at Supper at Mr. *Page*'s, and at ten a Clock at Night, Mr. *Page* went home with me; and coming down *Drury-lane*, there stood a Coach by my Lord *Craven*'s Door, and the Boot of the Coach was down, and a great many Men stood by it; and just as I came to the Place where the Coach stood, two Soldiers came and pulled me from Mr. *Page*, and four or five more came up to them, and they knocked my Mother down almost, for my Mother and my Brother were with me. My Mother recovered, and came and hung about my Neck, so that they could not get me into the Coach, and Mr. *Page* went to call Company to rescue me. Then Mr. *Hill* came with his Sword drawn, and struck at Mr. *Page* and my Mother; and when they could not get me into the Coach because Company came in, he said he would see me home, and he led me by one Hand, and my Mother by the other. And when we came home, he pulled Mr. *Page* by the Sleeve, and said, Sir, I would speak with you.

Mr. *Att. G.* Pray, Mrs. *Bracegirdle*, did you see any body in the Coach when they pulled you to it?

Mrs. *Bracegirdle.* Yes, my Lord *Mohun* was in the Coach; when they pulled me to the Coach, I saw my Lord *Mohun* in the Coach. And when we came Home, *Hill* pulled Mr. *Page* by the Sleeve, and he said, He would speak with him. As they led me along *Drury-lane*, my Lord *Mohun* came out of the Coach, and followed us, and all the Soldiers followed them; but they were dismissed, and, as I said, when we came to our Lodging, then *Hill* pulled Mr. *Page* by the Sleeve, and said, He would speak with him. Saith Mr. *Page*, Mr. *Hill*, another Time will do, To-morrow will serve; with that, when I was within Doors, Mr. *Page* was pulled into the House, and Mr. *Hill* walked up and down in the Street with his Sword drawn. He had his Sword drawn, when he came along with me.

Mr. *Att. G.* Did you observe him to say any thing whilst he was with you?

Mrs. *Bracegirdle.* As I was going down the Hill, he said, as he led me, He would be revenged.

Mr. *Att. Gen.* Did he say of whom he would be revenged?

Mrs. *Bracegirdle.* He did not name of whom then, but when I was in the House, several Persons went to the Door, and afterwards Mrs. *Browne*

Browne went to the Door, and ſpoke to them, and aſked them, What they ſtaid and walked there for? at laſt, they ſaid, They ſtaid to be revenged of Mr. *Mountford*; and then Mrs. *Browne* came in to me, and told me of it.

L. H. Stew. Who ſaid that?

Mrs. *Bracegirdle.* Mr. *Hill.*

Mr. *Att. G.* Were my Lord *Mohun* and Mr. *Hill* both together when that was ſaid, that they ſtaid to be revenged of Mr. *Mountford?*

Mrs. *Bracegirdle.* Yes, they were. And when Mrs. *Browne* came in and told me, I ſent my Brother, and the Maid, and all the People we could, out of the Houſe to Mrs. *Mountford*, to deſire her to ſend, if ſhe knew where her Huſband was, to tell him of it, and ſhe did. And when they came in a Doors again, I went to the Door, and the Doors were ſhut, and I liſtened to hear if they were there ſtill; and my Lord *Mohun* and Mr. *Hill* were walking up and down the Street; and by and by, the Watch came up to them, and when the Watch came, they ſaid, Gentlemen, Why do you walk with your Swords drawn? Says my Lord *Mohun*, I am a Peer of *England*, touch me if you dare.

L. H. Stew. Repeat that again, for I could not well hear you: Do you ſpeak of what you heard from Mrs. *Browne*, or what you obſerved yourſelf?

Mrs. *Bracegirdle.* My Lord, I was within Doors, but I was liſtening at the Door, and heard this myſelf; they came up to them, and ſaid, Gentlemen, Why do you walk with your Swords drawn?

L. H. Stew. Who aſked that Queſtion?

Mr. *Bracegirdle.* The Watch; and ſays my Lord *Mohun*, I am a Peer of *England*, touch me if you dare. Then the Watch left them, and they went away, and a little after there was a Cry of Murder, and that is all that I know, my Lord.

L. Mohun. My Lord, I deſire this Witneſs may be aſked, How long after this Paſſage that ſhe ſpeaketh of, was it that ſhe heard Murder cried in the Street.

L. H. Stew. You hear the Queſtion, Mrs. *Bracegirdle*; What ſay you to it?

Mrs. *Bracegirdle.* My Lord, I believe it was about a Quarter of an Hour after, to the beſt of my Memory,

L. H. Stew. What do you mean, a Quarter of an Hour after the Watch aſked the Queſtion?

Mrs. *Bracegirdle.* Yes, my Lord.

Then the Earl of Mulgrave *ſtood up.*

L. H. Stew. My Lord *Mulgrave.*

E. of Mulgrave. My Lord, I deſire to aſk this Witneſs a Queſtion. If I heard her aright, I think ſhe ſaid, They threatened to be revenged of Mr. *Mountford*, I deſire to know of her, whether my Lord *Mohun* did threaten him?

Mrs. *Bracegirdle.* I do not know indeed; but when Mrs. *Browne* aſked them what they ſtaid there for? they ſaid, To be revenged of Mr. *Mountford.* I did not hear them myſelf, but Mrs. *Browne* came in and told me ſo.

Mr. *Att. G.* Mrs. *Bracegirdle*, I think, if I did not miſtake, you ſaid, When the Watch came up, they aſked them, Why their Swords were drawn?

Mrs. *Bracegirdle.* Yes, and my Lord *Mohun* made Anſwer, He was a Peer of *England*, and bid them touch him if they durſt, and they went away.

Mr. *Att. G.* My Lord, the next Witneſs that we call ſhall be Mr. *Gawen Page*, at whoſe Houſe Mrs. *Bracegirdle* ſupped that Night. (*He was ſworn.*)

Mr. *Att. G.* Mr. *Page*, I ſuppoſe you remember the Night, when Mrs. *Bracegirdle* ſupped at your Houſe?

Mr. *Page.* Yes, my Lord.

Mr. *Att. G.* I pray give an Account of your whole Knowledge about this Matter, what happen'd that Night.

Mr. *Page.* About Ten a Clock at Night, on *Friday* the Ninth of *December* laſt, going down *Drury lane*, with Mrs. *Bracegirdle*, whom I led, juſt againſt my Lord *Craven*'s Houſe ——

L. H. Stew. Pray, Sir, ſpeak out, and tell us what Time it was.

Mr. *Page.* About Ten a Clock at Night, on *Friday* the Ninth of *December* laſt, going down *Drury-lane*, and leading Mrs. *Bracegirdle*, right againſt my Lord *Craven*'s Door ſtood a Coach, where two Soldiers preſſed in between me and Mrs. *Bracegirdle*, and parted us: I aſked what that was for? But they took hold of Mrs. *Bracegirdle*, and immediately they would have forced her into the Coach; Captain *Hill*, whom I ſaw there with his Sword drawn, made ſeveral Blows at me.

L. H. Stew. Who would have forced her into the Coach?

Mr. *Page.* The Soldiers would.

Mr. *Att. G.* Pray, go on, Sir, what followed after that?

Mr. *Page.* I ſay, Captain *Hill* made ſeveral Blows at me, and cry'd, You Villain, ſtand. I received many of them upon my Cane, but there was none that hurt me; then I got Help, and they were prevented of carrying Mrs. *Bracegirdle* away. My Lord *Mohun* was in the Coach; I ſaw him in the Coach.

Mr. *Att. G.* Did you ſee any Arms in the Coach?

Mr. *Page.* I ſaw no Arms, but I ſaw a Bundle in the Coach; tho' I could not tell what it was; and there was one in the Coach, that I ſaw was my Lord *Mohun.* So when we had got help we went down the Lane to convey her home, and Captain *Hill* was with us, and my Lord *Mohun* followed at a Diſtance. Captain *Hill* ſaid to the Soldiers, *Be gone, I have nothing more to do with you now.* When we came to the Houſe, and Mrs *Bracegirdle* was entring in, Captain *Hill* pulled me by the Sleeve, and ſaid he would ſpeak with me. Said I, To-night is not a fit Time, To-morrow is better, therefore pray ſtay till To-morrow Morning. But ſaid he, *God damn me, you will not go home To-night.*

L. H. Stew. You ſpeak ſo low, that I cannot tell what you ſay; I did not hear that laſt that you ſaid.

Mr. *Page.* My Lord, I ſay, when Captain *Hill* pulled me by the Sleeve, and ſaid he would ſpeak with me, I told him that Night was not a fit Time, To-morrow would do better: Well, ſaith he, *To-morrow then, but, God damn me, you will not go out To-night:* I went in a Doors, and there my Lord *Mohun* and he ſtaid for an Hour and a Half, as I was told; I ſaw them not myſelf: But Mrs. *Browne* came in and ſaid, that they ſaid they waited to be revenged.

Mr. *Att. G.* Whom did they mean, yourſelf that they would be revenged of?

Mr. *Page.* Mrs. *Browne* ſaid, they waited for Mr. *Mountford.*

Mr. *Att. Gen.* Did you continue in that Houſe till after the Murder was committed?

Mr. *Page.* Yes, Sir, I did.

L. H. Stew. How long after you came into the Houſe was the Fact done?

Mr. *Page.* About an Hour and an Half.

L. H. Stew. Did you yourſelf hear or obſerve any thing to be ſaid or done, from the Time you came into the Houſe, to the Time the Fact was committed?

Mr. *Page.* No, my Lord, I was in the Back-Room of the Houſe.

Mr. *Att. Gen.* Pray, Mr. *Page*, did you ſee Mr. *Mountford* after he was wounded?

Mr. *Page.* Yes, I did.

Mr. *Att. Gen.* Then give my Lords an Account of what paſſed at that Viſit.

Mr. *Page.* Upon the Outcry of Murder, I came into the Street, where I found my Lord *Mohun* juſt ſurrendering himſelf to the Conſtable; and immediately I went to Mr. *Mountford*'s Houſe, and I found him lying all along in his Blood upon the Floor; he ſeeing me, deſired me to lift him up, which I did, and thinking he had been dying, I aſk'd him whether he knew me. He ſaid, Yes. Said I to him, Had you Time to draw your Sword in your Defence? He ſaid, *He was barbarouſly run through before he could draw it.*

Mr. *Att. Gen.* Is this all you have to ſay, Sir?

Mr. *Page.* Yes.

L. H. Stew. Will your Lordſhip aſk this Witneſs any Queſtions?

L. Mohun. My Lord, I deſire he may be aſk'd whether my Sword was drawn when I ſurrendered myſelf to the Conſtable.

Mr. *Page.* No, my Lord, your Sword was in the Scabbard when you ſurrendred yourſelf, but I cannot ſay whether your Sword was drawn before, or not.

Mr. *Att. Gen.* The next Witneſs that we deſire to call is Mrs. *Page.*

(She was ſworn.)

L. H. Stew. What is the Name of this Witneſs?

Mr. *Att. Gen.* Mrs. *Mary Page.*—Pray Mrs. *Page*, do you remember the Night when Mrs. *Bracegirdle* ſupped at your Houſe, and Mr. *Mountford* was killed? Acquaint my Lords with all you did obſerve that Night.

Mrs. *Page.* Mrs. *Bracegirdle* ſupped at my Lodging, and my Huſband went home with her, and ſtaying ſomething longer than ordinary, I ſent my Servant to know what was the Reaſon of it: He brought me Word back, that my Huſband had like to have been murdered, and Mrs. *Bracegirdle* carried away. With that I went down myſelf towards Mrs. *Bracegirdle*'s Lodgings, and there I found my Lord *Mohun*, and Mr. *Hill* walking, Mr. *Hill* with his Sword drawn, before Mrs. *Bracegirdle*'s Door, and my Lord *Mohun*'s not. So I went in, into the Houſe; and after I had ſtaid awhile there, Mrs. *Browne* came out to them, and aſked them, Why they ſtaid there? They made Anſwer, they ſtaid for Mr. *Mountford.*

Mr. *Att. Gen.* Who made that Anſwer?

Mrs. *Page.* Mr. *Hill.*

Mr. *Att. Gen.* Who was with Mr. *Hill* at that Time?

Mrs. *Page.* My Lord *Mohun.*

Mr. *Att. Gen.* Was there any body beſides thoſe two that you obſerv'd?

Mrs. *Page.* No, there was nobody elſe that I ſaw.

Mr. *Att. Gen.* Were their Swords drawn?

Mrs. *Page.* Mr. *Hill*'s then was, my Lord *Mohun*'s at that preſent was not: But Mrs. *Bracegirdle* hearing that they waited for Mr. *Mountford*, deſired me to go over to Mrs. *Mountford*'s Houſe, and ſpeak to her to ſend to her Huſband, and deſire him to keep where he was, or come home with a good Guard. Whilſt I was telling Mrs. *Mountford* what I was deſired to tell her—But I ſhould have told your Lordſhips, that when I came out to go to Mrs. *Mountford*, my Lord *Mohun* had then his Sword drawn.

Mr. *Att. Gen.* Were they there when you went out of Mrs. *Bracegirdle*'s Lodgings?

Mrs. *Page.* Yes, they were.

Mr. *Att. Gen.* And are you ſure, that at that Time when you went out of Mrs. *Bracegirdle*'s Houſe, my Lord *Mohun* had his Sword drawn?

Mrs. *Page.* I am ſure of it, that when I went out, my Lord *Mohun* had then his Sword drawn; that was the ſecond Time.

L. H. Stew. Out of whoſe Houſe was that you went?

Mrs. *Page.* Out of Mrs. *Bracegirdle*'s Lodgings.

L. H. Stew. Where were they, when you ſaw his Sword drawn?

Mrs. *Page.* They were walking before Mrs. *Bracegirdle*'s Door, from one End of the Street to the other.

Mr. *Att. Gen.* What Street is that?

Mrs. *Page. Howard-Street.*

Mr. *Att. Gen.* Pray deſcribe to my Lords that Street.

Mrs. *Page.* They that ſtand in that Street, can ſee who goeth down to Mrs. *Mountford*'s Houſe, and who goeth up *Surrey-Street.*

Mr. *Att. Gen.* Well, now go on.

Mrs. *Page.* Whilſt I was deſiring Mrs. *Mountford* to ſend away to her Huſband, I heard Murder cried out; immediately I opened Mr. *Mountford*'s Door, and he came in, and fell with his Arms round about my Neck to ſupport himſelf, I ſuppoſe; and he ſaid, *Hill* had murder'd him. I help'd him as far as the Parlour Door, and there down he fell. I went up the Street, and called out *Murder*, and my Lord *Mohun* came to me, and bid me take Notice he had no Hand in the Murder, for his Sword was not drawn. I told him, I could not tell that, for to my Knowledge he had been in Mr. *Hill*'s Company with his naked Sword juſt before.

Mr. *Att. Gen.* Call Mrs. *Browne.*

L. H. Stew. You have nothing to ſay to that Witneſs, my Lord, have you?

L. Mohun. No, my Lord.

Mr. *Att. Gen.* Is this all you have to ſay, Mrs. *Page?*

Mrs. *Page.* After this, my Lord *Mohun* reſigned himſelf up to the Conſtable; the Conſtable ſtanding by me, I bid him ſecure my Lord *Mohun*, which he did.

L. Mohun. My Lord, I deſire to aſk this Witneſs, whether I ſurrendred myſelf, or made Oppoſition, or offered to run away?

Mrs. *Page.* No, my Lord, the Conſtable laid hold on you.

L. H. Stew. What Anſwer do you make to my Lord's Queſtion?

Mrs. *Page.* I ſay, my Lord, the Conſtable laid hold upon my Lord *Mohun.*

L. Mohun. I deſire to aſk her whether I did not ſurrender myſelf?

Mrs. *Page.*

Mrs. *Page.* Not till I had desired the Constable to secure your Lordship.

L. Mohun. Did I make any opposition, or offer to run away?

Mrs. *Page.* No, for the Constable presently took hold of your Lordship.

L. Mohun. I desire she may be asked whether *Hill* run away.

Mrs. *Page.* That I know not; I suppose he was gone away out of the Street before I came forth.

Mr. *Att. Gen.* Swear Mrs. *Browne.* (*Which was done.*)

Mr. *Att. Gen.* Mrs. *Browne*, you are upon your Oath, pray declare to my Lords what you know happen'd upon that Night that Mr. *Mountford* was kill'd.

Mrs. *Browne.* If it please your Lordships, when Mrs. *Bracegirdle* came Home, I found her crying; I asked her what was the Matter? She said, My Lord *Mohun* and Mr. *Hill* had run her into a Coach, with six or seven Soldiers, and lifted her into the Coach, and she said they were at the Door. Upon which, I went to the Door, and saw my Lord *Mohun* and Mr. *Hill* walking along. Said I, are you the Gentlemen that have used Mrs. *Bracegirdle* in this Manner? My Lord *Mohun* answered; *Madam*, said he, *I protected her; if it had not been for me, the Rabble would have torn her a Pieces; for if we had a mind to carry her away, we had six or seven Pistols charged in the Coach, and could easily have suppressed the Tumult.*

L. H. Stew. I do not hear what the Witness saith, she speaketh so low.

Mrs. *Browne.* My Lord *Mohun* said, they had six or seven Pistols in the Coach, and could easily have suppressed the Rabble, if they would have carried her away; but he had no Design upon her for his own Part, but only to serve his Friend; and that Mr. *Hill*'s Design was to take her out of Town, and keep her a Week, and see if he could persuade her to marry him; and saith Mr. *Hill*, *I shall light on this* Mountford. Why said I to him, What hurt hath Mr. *Mountford* done you? Saith he, *I have been abused, and I will be revenged.*

L. H. Stew. That was *Hill* that said so.

Mrs. *Browne.* Yes. So I went and told Mrs. *Mountford* of it.

Mr. *Att. Gen.* Pray acquaint my Lords what my Lord *Mohun* said to you about this Matter.

Mrs. *Browne.* My Lord *Mohun* said, he protected her, for if it had not been for him, the Mob had torn her in Pieces; but if they had a mind to carry her off, they could easily have suppressed the Mob, for they had six or seven Pistols in the Coach: *But*, saith my Lord, *I had no Design upon her myself, but only to serve my Friend.* So saith Mr. *Hill*, *I shall light upon this* Mountford. Why, said I, what hurt hath Mr. *Mountford* done you? Saith he, *I have been abused, and I will have my Revenge.* So I went and told Mrs. *Mountford* of it. About half an Hour after, or more, Mr. *Mountford* came down, and when he came down, I saw him a little before he came to them, and went to him, and would have fain spoke to him, but he would not stay to let me speak what I had to say to him, but going on, presently he met my Lord *Mohun*. Saith he, *Your humble Servant, my Lord.* Saith my Lord again, *Your Servant, Mr.* Mountford. Saith my Lord, *I have a great Respect for you, Mr.* Mountford, *and would have no Difference between us; but there is a Thing fallen out between Mr.* Hill *and Mrs.* Bracegirdle. Saith Mr. *Mountford, My Lord, has my Wife disobliged your Lordship? if she has, she shall ask your Pardon; but as for Mrs.* Bracegirdle, *she is no Concern of mine; and I hope your Lordship will not vindicate such an ill Man as Mr.* Hill *in such a Matter as this.* Upon that I heard Mr. *Hill* bid Mr. *Mountford* draw, Mr. *Mountford* said, *That I will*; and drew his Sword; but whether he received his Wound before he drew his Sword, or after, I cannot tell.

L. H. Stew. Speak that last again.

Mrs. *Browne.* Mr. *Mountford* and my Lord met; saith Mr. *Mountford*, Your Servant, my Lord; saith my Lord, Your Servant, Mr. *Mountford*, I have a great Respect for you, and would have no Difference be between us; but here has been a thing fallen out between Mrs. *Bracegirdle* and Mr. *Hill:* Saith Mr. *Mountford* presently again, Has my Wife disobliged your Lordship? If she has, she shall ask your Pardon. But Mrs. *Bracegirdle* is no Concern of mine: I know nothing of this Matter, I come here by Accident.

Mr. *Att. Gen.* Who said they came there by Accident?

Mrs. *Browne.* Mr. *Mountford* said, I know nothing of this Matter, I come here by Accident. But, I hope your Lordship will not vindicate *Hill* in such Actions as these are: Upon that, I heard Mr. *Hill* bid Mr. *Mountford* draw; Mr. *Mountford* said he wou'd, and drew his Sword; but whether he received his Wound before or after, I cannot tell; it was in the Night. *Then the Lord* Godolphin *stood up.*

L. H. Stew. My Lord *Godolphin.*

L. Godolphin. My Lord *Steward*, I desire this Witness may be ask'd, Whether my Lord *Mohun*'s Sword was drawn when he talk'd with *Mountford*, because the Counsel opened it before, that the Watch came to them, and saw them with their Swords drawn when they were walking in the Street.

L. H. Stew. Mistress, you heard my Lord's Question: Was my Lord *Mohun*'s Sword drawn whilst he talked with *Mountford*, or no?

Mrs. *Browne.* I do not remember I did see my Lord *Mohun*'s Sword drawn.

Mr. *Att. Gen.* Were they near together?

Mrs. *Browne.* They were near together.

L. Mohun. I desire she may be asked whether I went up the Street to meet Mr. *Mountford*, or he came down to me?

L. H. Stew. You heard the Question, Mistress, what say you?

Mrs. *Browne.* Mr. *Mountford* came down to him.

L. Mohun. I desire she may be asked, whether she did not go to hinder Mr. *Mountford* from coming that way?

Mrs. *Browne.* Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the Hand, and told him I would speak with him, but he did not hear me, but went on.

Mr. *Att. Gen.* You did not tell him upon what account you would have spoke with him?

Mrs. *Browne.* No, I had no time.

L. Mohun. I desire she may be asked, whether Mr. *Mountford*'s Sword was within his Arm, or by his Side.

Mrs. *Browne.* I believe it was by his Side.

L. Mohun. I desire she may be asked one Question more, whether he could not have went home, without coming to Mr. *Hill* and me?

Mrs. *Browne.* He did come out of his Way; his Way was not by my House; he did come down the Street towards them.

L. Mohun. I desire your Lordships to take notice, that he came out of his way to me. I desire to ask her: Did he come as if he was going to his own House, or your's?

Mrs. *Browne.* As if he was coming to mine.

L. Mohun. I desire to ask her, Whether I had any hand in killing Mr. *Mountford*, or went to hold him, or meddled with him?

Mrs. *Browne.* Not that I did see.

L. H. Stew. Have you any more to say to this Witness?

Mr. *Att. Gen.* No, my Lord.

L. H. Stew. Nor your Lordship? —— *L. Mohun.* No, my Lord.

Mr. *Att. Gen.* Then the next Witness we desire to call, is *Richard Row.* (*Who was sworn.*)

Mr. *Att. Gen. Richard Row*, where do you live? — *Row.* In *Surrey-street.*

L. H. Stew. Where doth he live, saith he?

Mr. *Att. Gen.* In *Surrey-Street*, my Lord. Pray how near is that to the Place where Mr. *Mountford* was kill'd?

Row. About ten or twelve Pole.

Mr. *Att. Gen.* Did you observe my Lord *Mohun* and Mr. *Hill* that Night, and where were they?

Row. All that I can say to the Matter in that Case is, I was in my own House about a quarter after Ten a Clock, and I heard a Noise in the Street, and I went out, and saw two Gentlemen and two Lads about the Middle of the Channel; one of the Lads had one of the Gentlemen by the Arm, just by the Channel, and said, *Pray my Lord, good my Lord, don't do it, alter your Resolution.* There was an Answer made, that they would be revenged that Night, or To-morrow.

Mr. *Att. Gen.* Do you know who the Boy was that used that Expression?

Row. No, my Lord, it was very dark.

Mr. *Att. Gen.* Do you not know neither who returned the Answer?

Row. No indeed.

Mr. *Att. Gen.* But you are sure you heard those Words pass?

Row. Yes, indeed, and I went to the Door afterwards, whilst they went to the Upper end of the Street and returned again; and I saw Capt. *Hill*'s Boy following him. My Lord, I knew Capt. *Hill*, though he was not in the Cloaths he formerly used to come to my House in, and the Boy I knew to be his Boy.

Mr. *Att. Gen.* Were those Persons together that you heard speaking so?

Row. Yes, all four together, in a Confusion they seemed to be, for they were pushing to and again, and the Boy had hold of one of the Gentlemen's Arms, when he bid him alter his Resolution.

Mr. *Att. Gen.* Repeat those Words again that you heard him say.

Row. Pray my Lord, good my Lord, do not do it, alter your Resolution.

L. H. Stew. Has your Lordship any thing to ask this Witness?

L. Mohun. No, my Lord.

Row. I spoke of this same afterwards, and so they have brought me here to give Evidence: This is all that I can say. I cannot swear to my Lord *Mohun*, that he was one, I do not know that ever I saw him to my Knowledge in my Life.

E. of *Mulgrave.* My Lord Steward, I desire he may be asked, whether he knoweth who that Boy was that made that Answer?

Row. There was no Answer made by any Boy, but begging and praying, *That my Lord would not do it.*

E. of *Mulgrave.* Do you know who that Boy was?

Row. No, I do not know what Boy it was. But when I heard Mr. *Mountford* was killed, and my Lord *Mohun* was concerned, I told what I had heard and seen, and so they bring me here to evidence it. That is all I can say to the Matter.

Mr. *Att. Gen.* My Lord, we desire next to call some of the Watch, and shall begin with *Merry.* (*Who was sworn.*)

L. H. Stew. What is his Name?

Mr. *Att. Gen. William Merry.* Mr. *Merry*, I think you are Beadle of the Parish. —— *Merry.* Yes, I am.

Mr. *Att. Gen.* Pray acquaint my Lords what you observed that Night Mr. *Mountford* was killed, when you saw my Lord *Mohun* and Mr. *Hill*, the first time; and the second time, when my Lord *Mohun* was taken.

Merry. When I first came down the Street, walking the Rounds between Eleven and Twelve a Clock, as I turned at the Corner out of *Surrey-Street* into *Howard-Street*, I saw my Lord *Mohun* and Capt. *Hill* walking, that is, upon the paved Stones; my Lord was walking towards me, and I asked, Who comes there? Saith my Lord, A Friend. Said I, What is the meaning of your Swords being drawn? Return your Swords, and stand off. With that, he returned his Sword immediately. Saith he, *I am a Peer of the Land; here, will you have my Sword?* and he proffered me his Sword; but the Constable was not there then, and I did not take his Sword; but, said I, God bless your Honour, my Lord, I know not what you are, but I hope you are doing no Harm; No, saith he. With that, the Constable came immediately, and he proffered the same to him; there were two Candles in some Maids or Women's Hands at a Door hard by, and I went to ask them if they knew the Meaning of it; and there being a Neighbour's Man leaning with a Bottle and a Glass against the Wall, whom I knew. I think they told me one of them had a Sweet-heart there; and my Lord said, he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That is all I heard of the Matter.

Mr. *Att. Gen.* Was Mr. *Hill* there? —— *Merry.* Yes, he was.

Mr. *Att. Gen.* Was his Sword drawn?

Merry. Yes, his Sword was drawn, and I asked what made that Gentleman with his Sword drawn? and my Lord *Mohun* said, he had lost his Scabbard; but seeing this Neighbour's Man stand there, I went to the House.

Mr. *Att. Gen.* Were both their Swords drawn at first?

Merry. Both their Swords were drawn when I came first into the Street; but my Lord put up his Sword, and the other continued drawn, by reason, as they said, he had lost his Scabbard. And so seeing, as I said, my Neighbour's Man standing there, we went to that House to enquire if they knew what their Business was; we were not got into the House,

Houſe, I am ſure not a Stone's caſt within the Houſe, but Murder was cried out, and we came back again, and my Maſter being nimbler of Foot than I, becauſe he was a younger Man, came firſt into the Place, and ſeized my Lord before I came; how the Seizing was I do not know.

Mr. *Att. Gen.* Our next Witneſs is *Thomas Fennell.* (*Who was ſworn.*)

Mr. *Att. Gen.* *Fennell*, you was one of the Watch that Night when Mr. *Mountford* was killed.

Fennell. Yes, Sir.

Mr. *Att. Gen.* Give my Lords an Account what you obſerved that Night, in relation to my Lord *Mohun* and Mr. *Hill.*

Fennell. The Conſtable and his Watch going the Rounds, divided themſelves into two Parts; I went down *Surrey-Street* with one Party; the Conſtable he went down *Strand-Lane* with the other Party. We were four or five that came down *Surrey-Street*, and when we came down, my Lord *Mohun* and Captain *Hill*'s Swords were both drawn; my Lord *Mohun* put up his Sword juſt as we came down.

L. H. Stew. Speak out, Man, that my Lords may all hear you.

Fennell. I ſay, the Conſtable and his Party went down *Strand-Lane*, and another Party down *Surrey-Street*, four or five of us, and my Lord *Mohun* and Captain *Hill* had both their Swords drawn: When we came down, my Lord put up his Sword juſt as we came down, but the Conſtable not being come, I went and called him.

Mr. *Att. Gen.* You ſay both their Swords were drawn when you came down?

Fennell. Yes, but my Lord put up his Sword juſt as we came down.

Mr. *Att. Gen.* What time of Night was that?

Fennell. It was between Eleven and Twelve.

Mr. *Att. Gen.* How long before the Murder was committed?

Fennell. A quarter of an Hour.

L. H. Stew. Do you not ſay, they put up their Swords as ſoon as you came down?

Fennell. My Lord *Mohun* put up his Sword, but *Hill* ſaid he had never a Scabbard.

Mr. *Att. Gen.* Did you aſk them why they had their Swords drawn at that time of Night?

Fennell. No, I went to call the Conſtable.

L. H. Stew. Have you any more to aſk of this Witneſs?

Mr. *Att. Gen.* I have not, my Lord.

L. H. Stew. Nor you, my Lord?

L. Mohun. No, my Lord.

L. H. Stew. Pray go on then; whom do you produce next?

Mr. *Att. Gen.* Our next Witneſs is *James Baſſit.* (*Who was ſworn.*)

Mr. *Att. Gen.* Were you one of the Watch that Night Mr. *Mountford* was killed? —— *Baſſit.* Yes.

Mr. *Att. Gen.* Did you ſee my Lord *Mohun* and Capt. *Hill* that Night?

Baſſit. Yes.

Mr. *Att. Gen.* Acquaint my Lords where it was, and in what manner you found them.

Baſſit. In *Howard-Street*; I came along with the Conſtable, and I walked before them that went down *Surrey-Street* with my Lanthorn, and there was my Lord *Mohun* with his Sword drawn, and Captain *Hill* with his the like: We aſked them what they did there? They ſaid they were drinking of a Bottle of Wine: *Hill* ſaid to me, You may knock me down if you pleaſe: Nay, ſaid I, we never uſe to knock any Gentlemen down, unleſs there be occaſion; and then we went into *Norfolk-Street* to the Tavern to examine what they were, and what they were doing; and in the mean time the Murder was done.

Mr. *Att. Gen.* Did you not aſk them why their Swords were drawn?

Baſſit. Yes, I did.

Mr. *Att. Gen.* What did they ſay?

Baſſit. *Hill* made Anſwer, that he had loſt his Scabbard.

Mr. *Att. Gen.* What ſaid my Lord *Mohun?*

Baſſit. My Lord *Mohun* had put up his Sword by that time we came up to him: That is all I can ſay to it.

L. H. Stew. If you have nothing more to aſk him, call another.

L. Mohun. My Lord, I deſire he may be aſked whether he came with the Conſtable when I ſurrendred myſelf?

Baſſit. Yes, and I took hold of your Sleeve, and you ſhook, and quak'd, and trembled, as if you would tear it to pieces.

L. Mohun. I deſire he may be aſked, whether my Sword was in the Scabbard when I ſurrendred myſelf?

Baſſit. Yes, it was, he ſurrendred it.

L. H. Stew. That was after the Murder was done.

Mr. *Att. Gen.* With your Lordſhip's Favour, I deſire he may anſwer my Lord *Mohun*'s firſt Queſtion again, ſo as to be heard by your Lordſhips: What was that you were ſaying when my Lord ſurrendred himſelf?

Baſſit. I took him by the Arm when he ſurrendred himſelf up.

Mr. *Att. Gen.* What then?

Baſſit. Then he quaked, and I had him to the *Round-Houſe.*

L. H. Stew. Hear my Queſtion; You ſay you took him by the Sleeve, when he ſurrendred himſelf; what do you mean by that? is it that he had ſurrendred himſelf before you laid hold on him, or afterwards?

Baſſit. I took hold of his Arm, when he ſurrendred himſelf.

L. H. Stew. But was it before he ſurrendred himſelf to the Conſtable?

Baſſit. No, it was afterwards, my Lord; to have him away.

L. H. Stew. Then you did ſee him ſurrender himſelf to the Conſtable?

Baſſit. Yes, my Lord.

Mr. *Att. Gen.* Then call Mr. *Charles Knowles*; *But he did not appear.*

L. H. Stew. Whom do you call next, Sir?

Mr. *Att. Gen.* My Lords, we call'd Mr. *Charles Knowles*; but they ſay, he is not come; therefore, with your Lordſhips Favour, we will call Mrs. *Brewer.* (*Who was ſworn.*)

Mr. *Att. Gen.* Mrs. *Brewer*, I think, you live at the next Door to Mrs. *Bracegirdle*'s Lodging? —— Mrs. *Brewer.* Yes, I do ſo.

Mr. *Att. Gen.* Pray give my Lords an Account what you ſaw and heard that Night Mr. *Mountford* was kill'd.

Mrs. *Brewer.* I was at Mrs. *Bracegirdle*'s Houſe, and I went to the Door with them; and juſt as I went to the Door, my Lord *Mohun* came up to me; juſt as he came to the Door, Mr. *Mountford* came down the Street, and my Lord went to him, and embraced him, and ſaid, Mr. *Mountford*, Your humble Servant, I am glad to ſee you. Who is this, ſaid Mr. *Mountford*, my Lord *Mohun?* Yes, ſaid my Lord. What makes your Lordſhip here at this time a Night, ſaith Mr. *Mountford?* Saith my Lord again, I ſuppoſe, Mr. *Mountford*, you was ſent for. Sent for, for what, ſaith he? You have heard of the Buſineſs of Mrs. *Bracegirdle*, I ſuppoſe, ſaith my Lord: No, my Lord, ſaith he, I come by Chance.

Mr. *Att. G.* Who ſaid that?—— Mrs. *Brewer.* Mr. *Mountford*, Sir.

Mr. *Att. Gen.* Well, go on, and ſpeak aloud.

Mrs. *Brewer.* My Lord, Mr. *Mountford.*——*And there ſhe heſitated, and ſeemed to be in a Confuſion.*

Mr. *Att. G.* She is not uſed to ſuch publick Examinations: If your Lordſhips will pleaſe to allow her to begin, becauſe ſhe is in ſome Confuſion, ſhe will be the better able to give you what Account ſhe can of this Matter.

L. H. Stew. Let her recollect herſelf, and begin again.

Mrs. *Brewer.* When Mr. *Mountford* came down the Street, I ſtood at the Door, and my Lord *Mohun* was come to the Door, and my Lord *Mohun* went to him and ſaid, Mr. *Mountford*, *your humble ſervant, I am glad to ſee you*, and embraced him. Saith Mr. *Mountford*, *Who is this, my Lord* Mohun? *Yes*, ſaith he, *it is. What maketh your Lordſhip here at this time of Night?* ſaith my Lord *Mohun*, *I ſuppoſe you are ſent for*, Mr. Mountford. *No indeed*, ſaid he, *I came by Chance.* Saith my Lord, *You have heard of the Buſineſs of Mrs.* Bracegirdle. With that, after he had ſaid this, Mr. *Hill* cometh up, and ſaith, *Pray, my Lord, hold your Tongue, this is not a convenient Time to diſcourſe this Buſineſs*, and would have drawn my Lord away. Saith Mr. *Mountford*, *I am very ſorry, my Lord, to ſee that your Lordſhip ſhould aſſiſt Capt.* Hill *in ſo ill an Action as this; pray let me deſire your Lordſhip to forbear.* Upon this, as ſoon as he had ſaid ſo, Mr. *Hill* came up and ſtruck Mr. *Mountford* a Box on the Ear. Saith Mr. *Mountford*, *Damme, what's that for?* And with that, he whipped out his Sword, and made a Paſs at him, and I turned about and cry'd out *Murder, Murder.*

Mr. *Att. G.* But you ſay, you ſaw *Hill* draw his Sword, and make a Paſs at him?

Mrs. *Brewer.* No, his Sword was drawn before; but he, immediately after the Box on the Ear, made a Paſs at him, and I turned about and cry'd *Murder.*

Mr. *Att. G.* Had Mr. *Mountford* his Sword drawn at that Time?

Mrs. *Brewer.* No, he had not.

Mr. *Att. Gen.* Are you ſure he had not?

Mrs. *Brewer.* Yes, I am ſure he had not, for as ſoon as he ſtruck the Blow, he made a Paſs at him.

Mr. *Att. G.* Was my Lord preſent at that Time?

Mrs. *Brewer.* He ſtood juſt by on the Right-hand.

Mr. *Att. G.* How near to them?

Mrs. *Brewer.* They were all cloſe together, as well as I could diſcern.

L. H. Stew. My Lord, have you any mind to aſk this Witneſs any Queſtions? —— *L. Mohun.* No, my Lord.

L. H. Stew. Have you done with her?

Mr. *Att. G.* Yes, my Lord. The next Witneſs we deſire to call is Mr. *Davenport*, the Conſtable. (*Who was ſworn.*)

L. H. Stew. Well, what ſaith this Man?

Davenport. The Ninth of *December* laſt at Night, as I was walking my Rounds between eleven and twelve a Clock, I divided my Watch into two Parts, one was to go down one Street, and the other another, and coming into *Howard-Street*, my Beadle happened to be there before me, and he had ſpied them, as he told me, with their Swords drawn: As ſoon as I came up, my Lord *Mohun* very civilly (his Sword not being then drawn) proffered to ſurrender his Sword to me, and ſaid, he was a Peer of the Realm. I aſked the other Man what he did with his Sword drawn? and he made anſwer, he had loſt his Scabbard in *Drury-lane.* With that I found them very civil, and I heard ſome Women at the Door, and they ſaid, they were Serenading them with a Bottle of Wine. There was a Drawer there that I knew, who formerly lived over-againſt me, and then lived at the *White-horſe* Tavern; ſo I left them (finding them very civil) and went to the *White-horſe* Tavern to examine what the Buſineſs was; they told me, they were there a drinking, and before I had ſpoken three Words almoſt to the Man of the Houſe, the Watch was called, and when we came, Mr. *Hill* had made his Eſcape, and ſo I ſecured my Lord *Mohun.*

Mr. *Att. Gen.* What was the Occaſion of calling the Watch?

Davenport. They cryed out Murder in the Street; ſo I took my Lord *Mohun*, and carry'd him to the *Round-houſe*, where we kept him all Night.

Mr. *Att. Gen.* I think you ſay, when you firſt came my Lord *Mohun*'s Sword was not drawn.

Davenport. It was put up then, but the Beadle ſaid they were both drawn before.

Mr. *Att. G.* You did not ſee them ſo ſoon as your Beadle?

Davenport. No, he was there before me.

Mr. *Att. Gen.* Then acquaint my Lord what was done, after you had ſecured my Lord *Mohun.*

Davenport. After I had taken him, I carried him to the *Round-houſe*, and when we came there, he aſked me, If *Hill* was taken? I ſaid no; and ſaid I, My Lord, this is a bad Misfortune you are happen'd into; and he ſaid, *God Damn me, I am glad he is not taken, but I am ſorry he has no more Money about him; I wiſh he had ſome of mine; and, I do not care a Farthing if I am hang'd for him.*

L. Mohun. My Lord, I deſire he may be aſked whether I offered to fly.

Davenport. No, my Lord, I do not ſay you did, but you know, my Lord, you ſaid this to me.

L. H. Stew. But, Mr. *Davenport*, did not my Lord ſurrender himſelf to you? —— *Davenport.* Yes, my Lord, mighty civilly.

Mr. *Att. Gen.* Did my Lord ſay any thing to you about changing of Coats?

Davenport. He ſaid, they had changed Coats three or four ſeveral times that Day, and at the ſame time he had *Hill*'s Coat upon his Back; and I aſked him, If he knew where *Hill*'s Lodging was? and he told me; and I went to his Lodging with my Watch; and when we came there, we ſearched the Houſe, but did not find him there; but Captain *Hill*'s Boy came in whilſt we were there; ſo with that, I ſecured the Boy, and

searched him, and found Gunpowder and Ball about him; and I have *Hill*'s Sword in the Court, and Mr. *Mountford*'s and my Lord's.

L. Mohun. I desire he may be asked, whether *Mountford*'s Sword was not broke in the Street, or whether he carried it away.

Davenport. I took up a Piece myself, and a Servant Maid took up another in the Street.

L. Mohun. I desire he may be asked, whether Mr. *Mountford*'s Sword, when it was found, was in the Scabbard or not.

Davenport. No, it was not; I saw no Scabbard.

L. H. Stew. My Lord, you ask the Questions so fast, that we do not hear the Answers. Was not your first Question, whether *Mountford*'s Sword was not broken?

L. Mohun. Yes, my Lord.

L. H. Stew. What Answer giveth he to that?

Davenport. I do not know when it was broken; but by the Report of People that were there by, it was said, Mr. *Mountford* made a Pass, and at the first Pass his Sword was broken; and I went with a Lanthorn, and according as they said, I found a Piece of a Sword, and I took it up myself.

L. H. Stew. What is your next Qustion, my Lord?

L. Mohun. I would ask him in what Part of the Street he found the Piece of the broken Sword.

L. H. Stew. You heard the Question, what say you?

Davenport. It was in the Highway in the Street.

L. H. Stew. My Lord *Mohun*, what do you mean by that Question?

L. Mohun. Whether it was in the Middle of the Street towards *Surrey-Street* or *Norfolk-Street*, or near Mrs. *Bracegirdle*'s Lodging, or upon the Pavement?

Davenport. It was over-against the Door where you stood.

L. Mohun. How far might it be from where I stood? I desire he may be asked that.

L. H. Stew. You hear my Lord's Question, answer it.

Davenport. He was walking up and down when I came to take him; and I took the Piece of the Sword up in the Highway; he was walking on the Pavement, the broad Stones.

L. H. Stew. Have you done with that Witness?

Mr. *Att. G.* Yes, my Lord. Is Mr. *Charles Knowles* come?

(He did not appear.)

Mr. *Att. G.* Then we desire to call Mr. *Bancroft* the Chyrurgeon, and Mr. *Hunt*.

L. H. Stew. Who do you examine first?

Mr. *Att. G.* We begin with Mr. *Bancroft*. *(Who was sworn.)*

Mr. *Att. G.* You attended upon Mr. *Mountford*, Mr. *Bancroft*, when he was wounded?

Bancroft. Yes, my Lord.

Mr. *Att. G.* Pray acquaint my Lords what you know of this Matter.

Bancroft. My Lord, upon the Ninth of *December* last at Night, between the Hours of Twelve and One, I was knocked up to go to Mr. *Mountford*, whose Servant came for me, and told me, he was a dying of a Wound he had received. So I came to his House, and found him very desperately wounded; it went in and out by his Back Bone, behind his left Side. I told him what he must expect, that he was a dead Man. I attended him that Night, till about four a Clock, in the Morning, and then I took my Leave of him, and went home: About eight a Clock in the Morning I came thither again, and met Mr. *Hobbs* there, and he was of the same Opinion. He lived till about one, and then he died.

Mr. *Att. G.* What Discourse had you with Mr. *Mountford?*

Mr. *Bancroft.* About ten a Clock, I was sent for by the Constable to come to *Hicks*'s-*Hall*, to be examined there before the Justices; and being then with Mr. *Mountford*, and some Company being there, Mr. *Powell* (as I take it) was one; I said to Mr. *Mountford*, I suppose where I am going, I shall be asked some Questions about what you may have said to me; you are now upon the Brink of Eternity, and pray answer me truly, who gave you this Wound; was it Mr. *Hill*, or my Lord *Mohun?* Said he, *My Lord* Mohun *offered me no Violence, but whilst I was talking with my Lord* Mohun, Hill *struck me with his left Hand, and with his right Hand run me through before I could put my Hand to my Sword.*

Mr. *Att. G.* Did he tell you his Sword was drawn?

Bancroft. He did not say, it was or not, but that *Hill* struck him with his left Hand, and at the same Time, run him through with his right, before he could put his Hand to his Sword.

Mr. *Att. G.* Did he tell you my Lord *Mohun*'s Sword was drawn?

Bancroft. The Words were these as near as I remember, My Lord *Mohun* offered me no Violence, but whilst I was talking with him, *Hill*, with his left Hand struck me, and with his right run me through, before I had time to put my Hand to my Sword.

Mr. *Att. G.* Did he tell you he had his Sword drawn at all afterwards?

Bancroft. No, not a Word of that, that I heard.

L. H. Stew. My Lord *Mohun*, have you any Thing to say to him?

L. Mohun. No, my Lord.

(Then Mr. William Hunt *was sworn.)*

Mr. *Att. G.* Mr. *Hunt*, you have heard what Mr. *Bancroft* was examined to, do you give an Account what you know in relation to this Business.

Hunt. I was sent for to Mr. *Mountford*, when he lay very ill; and I then asked him the Manner of his being hurt, he said, *My Lord* Mohun *spoke to me, but* Hill *run me through before my Sword was drawn.* I asked him, Whether he had Time to draw his Sword? And he said, Hill *was in me, and was through me, before my Sword was out*; and this he repeated again about twelve a Clock, about Half an Hour before he died the next Day.

L. H. Stew. Will you ask him any Thing else, Mr. Attorney?

Mr. *Att. G.* We shall ask him no more Questions, my Lord.

L. H. Stew. Will you ask him any, my Lord *Mohun?*

L. Mohun. No, my Lord.

L. H. Stew. Then have you any more Witnesses?

Mr. *Att. G.* My Lord, I do not hear that Mr. *Knowles* is come yet; and if he be not come, we have no more Witnesses to examine; if he does come, we must beg Leave that we may examine him.

L. H. Stew. You know that the Court cannot stay; for after you have done on both Sides, my Lords are to withdraw, and we are not to sit here in Expectation of your Witnesses.

Mr. *Att. Gen.* My Lord, we do not expect that; if my Lord *Mohun* please to examine any Witnesses on his Part, and it happen that the Witness should come before my Lord has made an End, we hope your Lordships will favour us so far, as that we may examine him.

L. H Stew. My Lord *Mohun*, if you have any Witnesses to be examined, now is your time to call them.

L. Mohun. I desire first, Mr. *Hill*'s Foot-Boy may be called.

L. H. Stew. Name him. *(He came to the Bar.)*

L. Mohun. My Lords, if you please, I desire Mr. *Brereton* may be called first, because I would prove to your Lordships, and shew you I had no Malice to Mr. *Mountford*.

L. H. Stew. I thought you had called that Boy first.

L. Mohun. That was a Mistake, my Lord; this Gentleman, Mr. *Brereton*, I desire may be first examined.

Mr. *Brereton.* My Lord, I know nothing as to this Matter of Fact, for I had not seen my Lord *Mohun* of two or three Days before.

L. H. Stew. What do you examine this Witness to, my Lord?

L. Mohun. To shew that I had no Malice against Mr. *Mountford*, but spoke kindly of him several Times.

Mr. *Brereton.* I had not seen my Lord *Mohun* for two or three Days before this Fact was committed, and therefore can give no Account of what happened then; but the *Friday* before the Play of *Alexander* the Great was acted, and my Lord *Mohun* and I were at the *Play-house*, and he and I went to Supper together, and we were talking of the Play, and he said it was a good Play, and commended several Parts in it, and particularly the Acting; and he commended Mr. *Mountford*'s Acting extreamly: I said, I thought he never acted so well in his Life before; but my Lord spoke particularly very kind Things of Mr. *Mountford*, that he thought him a very good Actor. I answered, as to Comedy he did use to act very well, but I thought he would never make so good a Tragedian as Mr. *Betterton*, or some others. But my Lord before this, had used to commend Mr. *Mountford* and speak kindly of him: And he said, that several of the Players had been very rude to him, more than their Business did require of them; but Mr. *Mountford* had been more civil than any of the rest. Upon this, my Lord *Mohun* was pleased to ask me, Whether I was acquainted with Mr. *Mountford?* I told him, I never was in his Company but once with Mr. *Bludworth*. Saith my Lord, I have a great Mind to drink a Bottle of Wine with him. Said I, I do not think him worth your Acquaintance, but you may do what you will. Several Things more my Lord said, and spoke more kindly of him than of any of the rest of the Players; but there was no Time fix'd for drinking with him. Upon *Tuesday* after, my Lord *Mohun* came to my Lodgings, and told me, Mr. *Mountford* had been very civil to him the Night before at the *Play-house*, when the rest were very rude to him; and he had a mind to drink a Bottle of Wine with him. Saith he, I am going about some Business to *Kensington*, but within a Day or two you shall certainly hear of me, and we will fix a Time for it, and if I do not like his Company, I will never trouble you, nor myself more with it.

L. H. Stew. When was this, Sir?

Brereton. This was the *Tuesday* before; the first Discourse was upon the *Friday* before.

(Then the Boy was examined.)

L. Mohun. Was you along with me and Mr. *Hill*, that Night Mr. *Mountford* was killed?

L. H. Stew. My Lord, you must propose your Questions to me, and I will ask them.

Mr. *Att. Gen.* I desire to know what the Boy's Name is, and who he is.

L. Mohun. His Name is *Thomas Lake*, and he was Mr. *Hill*'s Foot-Boy.

L. H. Stew. What do you ask him, my Lord?

L. Mohun. Pray, my Lord, ask him if he was with Mr. *Hill* and me, that Night that Mr. *Mountford* was killed.

L. H. Stew. You hear the Question, what say you to it?

Boy. Yes, my Lord.

L. H. Stew. I do not hear what you say.

Boy. I was with them, my Lord, and all I heard was, they had a Design to take away the Woman, Mrs. *Bracegirdle*, and they had provided Night-Cloaths and a Coach for her, to go to *Totteridge*, which was the Place where they designed to carry her.

L. H. Stew. I do not hear one Word this Boy saith.

L. Mohun. My Lord, shall I repeat to your Lordship what the Boy saith?

Lords. No, no, no.

L. H. Stew. No, my Lord, you are not to repeat what your own Witness saith.

Boy. They had a Design to carry away the Woman, Mrs. *Bracegirdle.*

L. H. Stew. I do not hear one Word. That Boy can speak out, if he pleaseth: I warrant him, he would make Noise enough if he was in another Place. Speak out, that my Lords may all hear you.

Boy. I cannot speak any louder than I do; I say, they had a Design to carry away the Woman.

L. H. Stew. I may as well be at the other End of the Town, as in this Place, as for hearing what he saith. Some-body should repeat what he saith.

L. Mohun. If your Lordship please to allow it, that one of the Officers of the Court may come down to the Bar, and repeat from his Mouth to the Court what he saith.

Lords. Ay, Ay.

L. H. Stew. Mr. *Walker*, Then do you go and stand by him and tell us what he saith.

Mr. Walker *the Clerk went and stood by the Boy at the Bar, and repeated his Evidence aloud.*

Mr. *Walker.* My Lord, he saith, they had a Design to take away the Woman, and they had Night Cloaths in the Coach for the Woman to put on, and they enquired at the Woman's Lodging where she was, and there they were told, that she was at Mr. *Page*'s at Supper, and her Brother came to the *Horse-shoe* Tavern and drank with them, and he was to go to tell them when she came out, and which Way she was to go Home; and there was a Man that was to give Notice, and they went down before her,

her, and the Coach ſtood almoſt at the lower End of *Drury-lane*, where there were ſome Soldiers to put her in, and the Soldiers went and took hold of her.

L. H. Stew. Is this my Lord *Mohun*'s Witneſs?

Mr. *Walker*. Yes, my Lord; and he ſaith, when they went to take hold of her to put her in, Mr. *Page* ſtruggled with them, and would not let them, and ſhe cried out, and was very much troubled at it.

L. Mohun. My Lord, I deſire he may be aſked, Whether he was in *Howard-ſtreet* when Mr. *Mountford* was wounded, and what paſſed in *Howard-ſtreet* before Mr. *Mountford* was wounded?

Mr. *Walker*. He ſaith, he was in *Howard-ſtreet*, and ſaw Mr. *Mountford* come down in *Norfolk ſtreet* towards them, and turn into *Howard-ſtreet*, but out of his way to his own Houſe; He ſaith, he came down, and there met my Lord *Mohun* and his Maſter, Mr. *Mountford* did; and he came to my Lord *Mohun*, and bowed to him, and ſaid, *He had a Kindneſs for his Lordſhip*. And my Lord *Mohun* replied, *He had a Kindneſs for him*. My Lord *Mohun* ſaid to him, *He hoped he was not come to vindicate any thing of Mrs.* Bracegirdle. Mr. *Mountford* ſaid *Not*, and aſked if his Wife had done any thing to him, and ſaid, *He was very ſorry his Lordſhip ſhould have any thing to do to vindicate Mr.* Hill *in ſuch Rudeneſs*. He ſaith, Captain *Hill* was at the lower End of the Street, and Captain *Hill* heard him ſay ſo, and came up and ſaid to him, *Mr.* Mountford, *if you have any thing to ſay to me, I can vindicate my ſelf, and pray now draw*; and he went into the Street, and Mr. *Mountford* drew, and met him, and made three or four Paſſes, and in the Paſſes, the Sword was broke. He cannot tell which Sword it was that was broke, he ſuppoſeth it hit againſt the Hilt, and ſnapped in two.

L. Mohun. I deſire he may be aſked, where I was when they fought?

Mr. *Walker*. My Lord ſtood upon the flat Stones, he ſaith, by the Houſe Side all the while, and they were in the Middle of the Street.

L. Mohun. My Lord, I deſire he may be aſked, Whether Mr. *Mountford* had his Sword by his Side, and where it was, and whether I meddled with him?

Mr. *Walker*. He ſaith my Lord *Mohun* did not meddle with him, but ſtood upon the flat Stones, nor did offer to draw his Sword, and when Mr. *Mountford* came down, he carried his Sword in his Hand.

L. Mohun. My Lord, I deſire he may be aſked, whether Mr. *Hill* did not ſtay in the Street to aſk Mrs. *Bracegirdle*'s Pardon?

Mr. *Walker*. He ſaith, he deſired to ſee Mrs. *Bracegirdle*, and to beg her Pardon, and as ſoon as he had ſeen her, he would be gone.

L. H. Stew. How can he tell that? Where was he?

Mr. *Walker*. He was juſt by my Lord *Mohun*, and Mr. *Hill* in the Street, and Mr. *Hill* ſaid he would but ſtay, and beg Mrs. *Bracegirdle*'s Pardon for what he had done, and he would go Home.

L. Mohun. I deſire he may be aſked, Whether I offered to fly when his Maſter went away?

L. H. Stew. What is it you aſk, my Lord?

L. Mohun. Whether I offered to run away, or make my Eſcape?

Mr. *Walker*. He ſaith, my Lord did not offer to run away, but ſtood ſtill and ſaid he had done no Hurt, nor drawn his Sword.

L. Mohun. I deſire to aſk him, Whether I could not have run away as well as Mr. *Hill*, if I had had a mind?

Mr. *Walker*. He ſaith, He might have run away as well as his Maſter Mr. *Hill*, but he ſtood ſtill a great while, till the Watch came and took him, and he gave himſelf up.

Mr. *Att. Gen.* My Lord, before the Boy goeth away, I deſire to know of him whether he has not been already examined upon his Oath elſewhere?

Mr. *Walker*. Yes, my Lord, he was examined at *Hicks*'s-*Hall*, and was kept in Priſon two Days.

Mr. *Att. Gen.* Were you examined before the Coroner?

Mr. *Walker*. He ſaith, he was examined before the Coroner.

Mr. *Att. Gen.* Which was the firſt Place he was examined at?

Mr. *Walker*. He ſaith, he was examined at *Hicks*'s-*Hall* firſt.

Mr. *Att. Gen.* When he was examined before the Coroner, did he give the ſame Evidence as he does now?

Mr. *Walker*. He gave the ſame Evidence before the Coroner that he doth now, as near as he can remember.

Mr. *Att. Gen.* When you did make Oath before the Coroner, was it read to you what you ſwore?

Mr. *Walker*. He ſaith, his Evidence was not read to him.

Mr. *Att. Gen.* Did you ſubſcribe the Evidence you gave before the Coroner yourſelf?

Mr. *Walker*. Yes, he did.

Mr. *Att. Gen.* Did not you write your Name yourſelf?

Mr. *Walker*. Yes, he ſaith.

Mr. *Att. Gen.* Did you not know what it was you ſubſcribed your Name to?

Mr. *Walker*. He ſaith, It was not read to him afterwards, he knoweth what it was he gave in.

Mr. *Att. Gen.* Are you ſure it was not read to you?

Mr. *Walker*. He ſaith, he is ſure it was not read to him.

L. H. Stew. Was it not read to him before he ſubſcribed it?

Mr. *Att. Gen.* That I did aſk him, my Lord.

Mr. *Walker*. He doth not remember that it was read to him at all.

L. H. Stew. Can he read himſelf?

Mr. *Att. Gen.* He writes a very good Hand, my Lord.

Mr. *Walker*. He ſaith, They bid him put his Hand to it; and as ſoon as he had put his Hand to it, they put him out, and bid him call another Woman.

Mr. *Att. Gen.* I would have him conſider of it, before he makes Anſwer; becauſe there are ſeveral Perſons preſent here, who were preſent when it was read to him before he ſubſcribed it.

Mr. *Walker*. He cannot remember that it was read to him.

Mr. *Att. Gen.* Do you remember you ſwore at that Time, That when Mr. *Mountford* and Mr. *Hill* were puſhing at one another, my Lord *Mohun* ſaid, He would ſtand by his Friend, and Mr. *Hill* was his Friend.

Mr. *Walker*. He ſaith, my Lord ſaid, He would not go, he would ſtay by his Friend, for Mr. *Hill* was his Friend.

E. of Carliſle. My Lord Steward.

L. H. Stew. My Lord of *Carliſle*.

E. of Carliſle. I deſire that he may be aſked, Whether he was the Boy that ſaid to my Lord *Mohun*, Pray, my Lord, good my Lord, do not do it, alter your Reſolution.

L. H. Stew. Call the Boy again. *(Which was done.)* Was you by when thoſe Words were ſpoken? Pray, my Lord, will you repeat your own Queſtion?

E. of Carliſle. Whether he was the Boy that ſaid to my Lord *Mohun*, Pray, my Lord, good my Lord, do not do it, alter your Reſolution, or defer it to another Day?

Boy. No, my Lord, I did not hear him.

L. H. Stew. Did not you ſay ſo yourſelf?

Boy. I ſaid no ſuch thing, nor heard no ſuch thing ſaid by any body.

L. H. Stew. Do you bring any more Witneſſes, my Lord?

L. Mohun. Yes, my Lord, Mrs. *Elizabeth Walker*, Mrs. *Bracegirdle's* Maid.

Elizabeth Walker. Here, my Lord, I am ſhe.

Mr. *Att. Gen.* My Lord, before my Lord *Mohun* proceedeth to examine any other Witneſs, I have one Thing humbly to offer to your Lordſhips.

[*Then Proclamation was made for Silence.*]

Mr. *Att. Gen.* Of what Conſequence it will be to my Lord *Mohun*, I muſt ſubmit to your Lordſhips when you have heard it; that is, whether it may not be proper now, ſince this Boy has given an Evidence ſo very different from what he gave upon his Oath before the Coroner, to have his Depoſition that he made before the Coroner, read in his Preſence.

L. Mohun. My Lord, I think I ought to conclude and give all my own Evidence before Mr. Attorney maketh his Remarks.

L. H. Stew. Then reſerve that till the laſt, Mr. Attorney.

Mr. *Att. Gen.* My Lord is certainly in the right of it; there ought to be no Obſervations made upon his Evidence, and we ſhall be ſure to keep exactly to the uſual Method in this Matter; but I take it to be the Courſe of Evidence, where there is an Objection to what the Witneſs delivers now, which does ariſe from what the ſame Witneſs has ſworn before, it is proper to make the Objection, as ſoon as he has delivered ſuch Evidence, whilſt the Matter is freſh in your Lordſhips Memories.

L. H. Stew. Mr. Attorney, let the Boy ſtay, he ſhall be called upon afterwards; but let my Lord go on now with the reſt of his Witneſſes.

L. Mohun. Here is *Elizabeth Walker*, my Lord.

L. H. Stew. What is that Woman's Name?

L. Mohun. Elizabeth Walker, did you live with Mrs. *Bracegirdle?*

Elizabeth Walker. Yes, I did, my Lord.

Mr. *Att. Gen.* This Perſon has conceal'd herſelf; we have been endeavouring to find her out all this while, but could not.

L. H. Stew. What do you aſk her, my Lord?

L. Mohun. I deſire ſhe may be aſked, Whether ſhe lived with Mrs. *Bracegirdle*, and what ſhe ſaw and obſerved that Night Mr. *Mountford* was killed.

El. Walker. If it pleaſe you, I lived then with her.

L. H. Stew. I cannot hear what ſhe ſaid; Mr. *Walker*, I think you muſt go thither again; ſpeak out, Woman.

El. Walker. I was her Servant at that time, when Mr. *Mountford* was killed. And, may it pleaſe you, my Lord, that Night, old Mrs. *Bracegirdle* and her Daughter, were invited to Supper, at one Mrs. *Page*'s in *Drury-lane*, and coming Home about Ten or Eleven a Clock out of *Drury-lane*, my Miſtreſs deſired me to go to Mr. *Mountford*, to ſee if Mr. *Mountford* was come home. I went, and they ſaid, he was not come home: She deſired me then to go again, and tell Mrs. *Mountford*, that if he was not come home, ſhe ſhould ſend to ſee where he was, and deſire he would not come home without a good Guard, for my Lord *Mohun* and Captain *Hill* were walking about the Street, and ſhe did not know their Deſign, by reaſon Mr. *Hill* had his Sword drawn in his Hand, out of the Scabbard. I aſked the Reaſon why he had his Sword drawn, and the Anſwer was made; He had loſt the Scabbard in a Skirmiſh in *Drury-lane*; but that I know nothing of. Mrs. *Mountford* ſaid, She would ſend her Maid to ſee where her Huſband was, and I told her, if my Miſtreſs would give me leave, I would go along with her to bear her Company. And when I returned to my Miſtreſs, ſhe did give me leave, and I went along with her to ſeveral Places; but we could not find Mr. *Mountford*; ſo coming home, I went to my Miſtreſs, and I ſaw them two ſtand at the Door, and they ſtaid there above an Hour, and in the mean time our Landlady, Mrs. *Browne* heard the Watch come into the Street, and ſhe ſaid, ſhe would go to the Door, and bid the Watch ſeize them; and ſhe did go out, and I was kept within Doors, and heard her talk to the Watch, but what ſhe ſaid I cannot tell; but preſently the Watch went away and left them. And I ſtood at the Door, and heard Mrs. *Browne* ſay, There cometh Mr. *Mountford*, and ſhe would go ſpeak with him; and with that ſhe went as faſt as ſhe could to meet him, and came to him a good way before he came down to them, and took him by the Arm thus, to ſtay him, and ſhe ſaid Captain *Hill* and my Lord *Mohun* were walking in the Street, and Captain *Hill* had his Sword in his Hand drawn, and ſhe did not know what their Deſign was.

L. H. Stew. Indeed ſhe muſt ſpeak louder, or I cannot tell what ſhe ſaith.

El. Walker. My Lord, I ſay, Mrs. *Browne*, when I was at the Door, ſaid, Yonder cometh Mr. *Mountford*, and ſhe ſaid, ſhe would go and meet him, and away ſhe went as faſt as ſhe could towards him; and when ſhe came up to him, ſhe took him by the Arm thus, and deſired him that he would not come down that Street, but go to his own Houſe, for there were Captain *Hill* and my Lord *Mohun* walking in the Street, and ſhe did not know what their Deſign was, but Captain *Hill* had his Sword drawn in his Hand. If it pleaſe you, my Lord, Mr. *Mountford* did not anſwer her a Word; but preſſed forward to meet my Lord *Mohun* and Captain *Hill*. If it pleaſe you, my Lord, they met one another, and my Lord *Mohun* and Mr. *Mountford* complimented one another very lovingly, and ſaid, They were glad to ſee one another; and Mr. *Mountford* ſaid to my Lord, He had a great Reſpect for his Lordſhip, and my Lord replied to him again, By my Honour, I have the like for you, Mr. *Mountford*; and with that, they embraced one another; I am ſure this is Truth, for I followed Mrs. *Browne* out, and ſtood by when

it was done. Mr. *Mountford* told my Lord, it was a Dishonour to him to keep Company with Captain *Hill*. I will not take my Oath that Captain *Hill* did hear him say so, but he might have heard him, and it may be he did too; and that might occasion the Quarrel; but I will not take my Oath of that: It came just in my Head after this was said, that our Door was open, and I turned my Back to hear and look who was at our Door, and I heard Mrs. *Browne* say, that Captain *Hill* and Mr. *Mountford* were going to Fight: I saw them Fighting, making Passes at one another, I saw them engaged, I never saw Men naked fighting so in my Life.

At which there was a great Laughter.

El. Walker. My Lord, I do not understand these Matters, I tell you as well as I can, they were fighting with naked Swords, Mr. *Mountford*'s Sword was upon Mr. *Hill* hereabouts, and Mr. *Hill*'s Sword was upon Mr. *Mountford* hereabouts; and after they had made two or three Pushes at one another, Mr. *Mountford* said, he was kill'd, and threw down his Sword thus, and I took it up, and there was a good Piece of the Sword broken off. I turned me about thus, towards our own Hatch at our Door, and there stood two or three People, I cannot say who they were, but I gave them the Sword, and I turned my Face towards *Surrey-Street*, and saw Captain *Hill* making his Escape, running up *Surrey-street*; and, if it please you, my Lord, Mr. *Mountford* was the Friend I had most Respect for; and I saw him, as fast as he could, going towards his own House, and my Lord *Mohun* stood in the same Place that he was in, when he and Mr. *Mountford* were embracing one another, and I did not see my Lord *Mohun* stir from that Place; but when they fought, they were engaged in the middle of the pitched Stones, where there was a Place made for the Water to run along the Street like a Channel; and to my Knowledge, I did never see my Lord *Mohun* off of the Paved Stones, on the Side. I cannot say he was never off, when my Eye was turned another way; but to my Knowledge, I never saw him off of those Stones. If it please you, my Lord, the next thing that I saw, was this, After Captain *Hill* run up *Surrey-street*, and Mr. *Mountford* did go home, I saw my Lord *Mohun* walking up to the End of the Street, where the Watch were coming, and when the Watch came, I see him deliver himself up to the Watch; but I think one of the Watch said, he must have his Sword, and he did deliver up himself and his Sword to the Watch. And he bid me take Notice, Bear Witness, said he, I have no Hand in the Death of Mr. *Mountford*. Said I, No, my Lord, I think you have not. The next thing I remember, was Mrs. *Page* came and said Mr. *Mountford* was killed, upon which, said my Lord *Mohun* to her, Bear Witness, I had no Hand in his Death. Said she, You were in his Company, therefore seize him, and carry him to the *Round house*; and the Watch did secure him; and my Lord answered, As he was a Gentleman, he desired to be used like a Gentleman; and they did carry him away to the *Round house*. This is the Thing that I did say, as near as I can remember, to the Justices; but I have been very much abused and distracted amongst them, and therefore to a Word I cannot say; but as near as I can remember, being abused at the rate I have been, this I did then say, and it is the Truth.

L. Mohun. I desire she may be asked, whether she was not examined before the Justices at *Hicks*'s-*Hall*, and whether she was not then Mrs. *Bracegirdle*'s Maid.

L. H. Stew. Truly, my Lord, I have heard very little of what she has said, but I hope my Lords that have been nearer have observed it.

El. Walker. If it please you, if you ask what was done at *Hicks*'s-*Hall*, I will tell you just as it was, what happened there, and so proceed on to tell you how I have been abused.

L. H. Stew. My Lord, what would you have her asked more?

L. Mohun. I desire to ask her, Whether she was not Mrs. *Bracegirdle*'s Servant when she was examined at *Hicks*'s-*Hall*, and whether she swore the same there, as she saith here, and what was done to her since, or what they would have done, and whether they did not try to make her speak what they would, and to put her out?

El. Walker. If it please you, my Lord, that next Morning, there came several of the Players to me, to ask me what I knew of the Death of Mr. *Mountford*, and I told them; but they did not like what I said, and they seemed discontented at me. And when they were to go to *Hicks*'s-*Hall*, they said, they had no need of my Evidence, they could do without me. So Mrs. *Browne* and her Maid they went away, and left me at Home; what they did, or where they staid, I do not know; but about two or three Hours after, a Messenger came and said, my Mistress and I must go to *Hicks*'s-*Hall* to be examined before the Justices; and we went, and when we came there, all were examined, and I was examined in the last Place; where, my Lord, I gave in the same Evidence that I do now, as near as I can speak. I do verily believe it to be the same, but I have had so much Trouble with their abusing me, that I cannot speak to every Word or particular Thing. For my Mistress stood before me, and said, They brought Evidences that confounded themselves; and another said, Hang her a Jade, pull her by the Coat. I turned me to the Justices, and said, I hoped I might speak now I was there; but it may be for fear of my Mistress, I did not then speak all that I have done now, because I have called more since to my Remembrance. And there is one particular Thing that I call to mind now; I remember that in our Parlour, as soon as they came home out of *Drury-lane*, there was a Discourse between my old Mistress, and my Young, that Captain *Hill* waited at the Door to see my Mistress, and that if he might but have Leave to see her, and to beg her Pardon, they would be gone thence to their own Lodging; and I said to my Mistress, If she would give me leave, I would go out to them, and demand Captain *Hill*'s Sword, and then he might come in.

L. Mohun. I desire she may be asked, Whether she was not turned away and threatned?

El. Walker. I am going on to tell my Lord what happened in our House that Night. I told my Mistress, If she would give me leave, I would undertake to get Captain *Hill*'s Sword from him, and then she might let him come in and see her, and beg her Pardon, and I thought it would prevent a greal deal of Danger that might follow else. And my Mistress said, I was a prating Slut; and my young Mistress said, If he begged her Pardon upon his Knees never so, she would never forgive him, nor see him more. My Lord, there was another Discourse in the Street, that Captain *Hill* had made a Vow that he would kill himself that Night, and that my Lord *Mohun*, having a Respect for him, watched to prevent him from doing himself a Mischief. That was discoursed in the Street, but I cannot say it was so of my own Knowledge.

Then another Proclamation for Silence was made.

L. Mohun. I desire she may be asked, whether she was not turned away, and whether she was never threatned.

Eliz. Walker. If it please you, my Lord, that Night that I gave in my Evidence at *Hicks*'s-*Hall*, by their talking, I knew before I went from Home what a Life I should have with my Mistress, for I knew they did not like my Evidence, and I was afraid of coming Home, and went and staid with my Sister; but notwithstanding I went Home about Nine a Clock, and they were very inveterate against me, and I told one of them, I had witnessed the Truth, and nothing but the Truth, and that I would stand by. If it please you, my Lord, the next Morning there was this *Ann Jones* that lay with me that Night, and she told me that in the Morning they threatned, and intended to fetch me to Mrs. *Mountford* to rattle me for what Account I had given in, and she giving me this Item, I got up, and went to dressing my Dinner, and Mrs. *Mountford* sent a Man, that I know by Sight, I think it was one *Roberts*, I believe that was his Name; whereupon he came and asked me where was Mrs. *Bracegirdle*'s Maid; I said, I was she, and then he said Mrs. *Mountford* desired me to come to her. I said, I had given in my Evidence where I ought to do it, and I had nothing to do with her; but it was upon this account, not that I had any Antipathy against Mrs. *Mountford*, but only as *Ann Jones* had given me that Item of a Design to send me to her, to rattle me for the Evidence I had given in, and I did not know what might come of it, or what their Design might be.

Mr. *Att. Gen.* My Lord, I would not interrupt any Witness, but because she speaks of what was said by *Jones*, and Mrs. *Bracegirdle*, I desire they may be by to hear what she saith.

L. Mohun. My Lord, I desire my Witnesses may not be hared.

L. H. Stew. This is not haring of Evidence, my Lord.

L. Mohun. My Lord, I desire I may go on with my Evidence without Interruption.

L. H. Stew. My Lord, this is no Interruption.

Mr. *Att. Gen.* Pray, my Lord, let Mrs. *Mountford* be called in to hear what she saith of her; I desire she may be by.

L. Mohun. My Lord, I have no more to say to her.

Mr. *Att. Gen.* But then, my Lord, before she goeth away, I have two or three Questions to ask her.

L. H. Stew. What do you ask her, Mr. Attorney?

Mr. *Att. Gen.* She saith she was examined at *Hicks*'s-*Hall*, I desire to know if ever she was examined before the Coroner.

Eliz. Walker. If it please you, my Lord, I was not, and I will give you the Reason.

Mr. *Att. Gen.* Ay, pray let us hear it.

Eliz. Walker. Why you have not heard how badly they used me after this.

Mr. *Att. Gen.* But pray, Mistress, answer my Question.

Eliz. Walker. But, my Lord, if it please you, I went to my Sister, and staid with her till Eight or Nine, and my Aunt told me there had been a Porter to enquire for me, to go to the Jury; I was sorry I was not at Home, but I took a Neighbour with me to go to Mrs. *Mountford*'s, to see if the Jury were not gone; and I knowing how they had threatned me, I desired him to leave me at a Victualling-House by *Temple-Bar*, and go and tell them, if the Jury were not gone, I was ready to wait upon them; he went, and I remained at the Victualling-House, and he came again, and told me Mrs. *Mountford* said they had done without me; but he was a little surprized.

Mr. *Att. Gen.* My Lord, she maketh a long Answer to a short Question. I would ask her another Question presently; but by the way, as to this Examination at *Hicks*'s-*Hall*, I would observe that it is a very unusual, and, I think, under Favour, a very unwarrantable Thing for Justices of the Peace, to take upon them, under a Pretence of considering, in order to bail a Person charged with Murder, to enter into a particular Examination of every one of the King's Witnesses, as if they were either a Grand Inquest, charged upon Oath for finding a Bill of Indictment, or Coroners to take an Inquisition of the Murder, both the Grand Jury and the Coroner are upon their Oaths to keep the King's Evidence secret; but this is to make it publick by an indirect way by a Justice of Peace's examining, in order to the Bailing of an Offender. But I would observe this Woman goeth away from her Mistress, and continueth away, and concealeth herself; she was not to be found to be examined before the Coroner, the proper Officer, nor are we able to tell where she has been; I desire some account may be given, in whose Hands she has been all this time.

L. Mohun. My Lord, I desire your Lordship's Opinion, whether this may be permitted, that he should talk thus.

L. H. Stew. What do you say, my Lord?

L. Mohun. My Lord, I desire to know whether he may interrupt me in my Evidence thus: All this Matter is foreign to the Business before your Lordships.

Mr. *Att. Gen.* If you please, I would ask her this one Question.

Lord ——— Under Mr. Attorney's Pardon, I think the Prisoner, or his Witnesses, ought not to be interrupted; but if he have any Remarks upon the Evidence, when they have gone through he may call them again, and ask them any Questions, or make any Remarks upon them.

Mr. *Att. Gen.* My Lord, I would ask her but one Question.

L. H. Stew. What is it, Mr. Attorney?

Mr. *Att. Gen.* If she heard Mrs. *Browne* say to Mr. *Mountford* that she would not have him come forward, because my Lord *Mohun* and Mr. *Hill* were there, and she did not know what their Design was?

Eliz. Walker. If it please you, my Lord, I did hear them, and I was just by them; and there was none but she and I.

Mr. *Att. Gen.* She upon her Oath saith, she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: But, my Lord, I have no more Questions to ask her.

L. H. Stew.

L. H. Stew. Have you any more to aſk this Witneſs, my Lord?

L. Mohun. No, my Lord.

L. H. Stew. Who is your Lordſhip's next? Pray call your Witneſs.

L. Mohun. I deſire *Ann Jones* may be examined (*She came to the Bar.*)

L. H. Stew. What doth your Lordſhip examine her to?

L. Mohun. I deſire ſhe may be aſked what ſhe knoweth of what paſſed that Night Mr. *Mountford* was hurt, and tell the whole Story.

Jones. Firſt, I ſaw Mrs. *Bracegirdle* coming home with her Mother and Mr. *Page*, about ten a Clock at Night, and there were Captain *Hill* and my Lord *Mohun* with them when they came home, but they did not come in with them, but walked in the Street about an Hour and an Half; and after they came in, Mrs. *Browne* ſent to Mrs. *Mountford*, for ſhe ſaid Captain *Hill* had ſome Deſign, and my Lord *Mohun*, upon Mr. *Mountford*, but Mr. *Mountford* not being at home, they ſent to all the Taverns thereabouts, but could not find him; they came home again, and told Mrs. *Mountford* and Mrs. *Bracegirdle*, they could not find him, and there my Lord *Mohun* and Captain *Hill* walked to-and-fro about the Street for an Hour and Half in all; about an Hour after they had been to look for Mr. *Mountford*, or about three Quarters of an Hour, Mr. *Mountford* came down, and I ſaw my Lord *Mohun* and Captain *Hill* at this Door.

L. Mohun. At whoſe Door, I deſire ſhe may be aſked.

Jones. At this Mrs. *Browne*'s Door, and Mr. *Mountford* coming down, my Lord *Mohun* met him, and embraced him, and ſaid, He had a great Honour and Friendſhip for him, and Mr. *Mountford* ſaid, he had a great Honour and Reſpect for his Lordſhip. Saith my Lord *Mohun*, Mr. *Mountford*, I ſuppoſe you are ſent for. No not I, upon my Honour, ſaid he. Upon that he up and told him how they had like to have got Mrs. *Bracegirdle* into a Coach, and carried her away, but were prevented. Saith Mr. *Mountford*, as to Mrs. *Bracegirdle*, I have nothing to do, ſhe is no Concern of mine, if my Wife have offended your Lordſhip, ſhe ſhall beg your Pardon. Said Mr. *Mountford* again, I hope your Lordſhip will not vindicate Mr. *Hill* in any ſuch Action as this. With that Captain *Hill* came up and hit Mr. *Mountford* a Box on the Ear, and bid him draw. And, ſaid Mr. *Mountford*, Damn ye, What is that for? And thereupon he drew; and I tell you what I ſaw, they both came off from the paved Stones into the Middle of the Highway, and made two or three Paſſes at one another; at the ſecond Paſs Mr. *Mountford*'s Sword broke, and he flung down his Sword, and run away, and ſaid he was a dead Man; Mr. *Mountford* went one way, and Mr. *Hill* another.

L. Mohun. I deſire ſhe may be aſked, If I did meddle with Mr. *Mountford* at all, or helped Mr. *Hill* whilſt they fought, and where I ſtood all the while?

L. H. Stew. What ſay you? anſwer all thoſe Queſtions my Lord aſked you.

Jones. If it pleaſe your Lordſhip, he ſtood upon the Cauſey, the paved Stones, in the ſame Place where he was all the time.

L. H. Stew. Did my Lord meddle at all?

Jones. No, I did not ſee my Lord *Mohun* meddle.

L. H. Stew. Was my Lord's Sword drawn?

Jones. I did not ſee it drawn.

L. Mohun. I deſire ſhe may be aſked, Whether I run away, or whether I did not ſurrender myſelf to the Watch.

Jones. If it pleaſe your Lordſhip, I did not ſee my Lord run away; But I did ſee him ſurrender himſelf.

L. Mohun. I deſire ſhe may be aſked, if ſhe was not examined at *Hicks's-hall?* —— *Jones.* Yes, my Lord, I was.

L. Mohun. And whether ſhe did not there declare the ſame upon Oath, that ſhe doth now? —— *Jones.* Yes, my Lord, I did.

L. H. Stew. Have you any thing to ſay to this Witneſs, Mr. Attorney?

Mr. *Att. Gen.* My Lord, I would only aſk her this Queſtion: She ſaith my Lord *Mohun* was upon the Pavement, or Cauſey, as ſhe calleth it, all the while; I deſire to know whether the Scuffle did not begin upon the Pavement?

Jones. Yes, it did upon the Cauſey.

Mr. *Att. Gen.* I deſire to know, whether ſhe ſaw any Blood upon that Cauſey the next day? —— *Jones.* No, I ſaw none.

L. Mohun. I deſire ſhe may be aſked, Whether they did not fight in the Middle of the Street?

Jones. Yes, and pleaſe your Lordſhip, I did ſee them make Paſſes at one another in the Street.

L. Mohun. I deſire ſhe may be aſked, Whether the Sword was not broken there in the Middle of the Street, and whether Mr. *Mountford* did not then cry out, I am killed?

Jones. His Sword was broken in the Middle of the Street; but I did not hear Mr. *Mountford* ſay he was killed, but he flung down his Sword, and run away, and ſaid, I am a dead Man.

L. H. Stew. Have you done with this Witneſs, my Lord?

L. Mohun. Yes, my Lord.

L. H. Stew. Have you any more to ſay to her, Mr. Attorney?

Mr. *Att. Gen.* No, my Lord.

L. H. Stew. Then who is your next Witneſs, my Lord *Mohun?*

L. Mohun. *Edward Warrington*, my Lord. (*Who came to the Bar.*)

L. H. Stew. What ſay you to him, my Lord?

L. Mohun. I deſire to aſk him where he liveth? Whether he be not a Neighbour to Mrs. *Bracegirdle?* and what he ſaw that Night Mr. *Mountford* was killed? I deſire he would give his whole Evidence.

Warrington. I live, if it pleaſe your Honour, over-againſt Mrs. *Bracegirdle*'s Houſe, at the *White-ſwan*, on the other Side of the Way.

L. Mohun. I deſire he would tell all that he ſaw that Night.

Warrington. All that I can ſay, is, About nine or ten a Clock, as near as I can gueſs, I heard a Diſturbance at Mrs. *Browne*'s Door, where Mrs. *Bracegirdle* lodgeth, and looking out, I ſaw there were two Gentlemen talking to old Mrs. *Bracegirdle*, and Mrs. *Bracegirdle* and ſome People went into the Houſe, and when they were gone into the Houſe, I ſaw the two Gentlemen walk about the Street, one's Sword I ſaw was drawn.

L. H. Stew. Whoſe Sword was that was drawn?

Warrington. Captain *Hill*'s, as they ſay; for my part, I did not know either of them; they walked there for the Space of an Hour and a Half, I ſaw them oppoſe no body. But as they came along, I heard them aſk a Gentleman that came towards them, Whether he would not drink a Glaſs of Wine or not?

L. Mohun. My Lord, I deſire he may be aſked, what he ſaw afterwards of fighting?

Warrington. For fighting, I ſaw Mr. *Mountford* come down *Norfolk-ſtreet*, and I ſaw him turn at the Corner with his Sword in his Hand in the Scabbard, to the beſt of my Knowledge, and ſeeing ſome People there, as I ſuppoſe, went towards them, and came up to them; and I ſaw my Lord *Mohun*, to the beſt of my Knowledge, lay his Hand upon his Shoulder, and embraced him, and complimented him; but I cannot be certain what the Words were that paſſed between them.

L. H. Stew. Did you ſee them fight?

Warrington. If it pleaſe your Honour, I did ſee their Swords both drawn, Mr. *Mountford* and he that they ſaid was Captain *Hill*; there were ſome Women about them, ſo that I could not ſo well diſcern when they drew their Swords, or who begun the Quarrel. *Hill*, they ſaid, had no Scabbard to put his Sword in; my Lord *Mohun* ſtood by, and laid his Hand upon Mr. *Mountford*'s Shoulder.

L. H. Stew. Was that before the Fighting, or at the time of the Fighting?

Warrington. It was before their Fighting, at their firſt Meeting.

L. Mohun. I deſire your Lordſhip would pleaſe to aſk him, In what Part of the Street they fought, and whether I was near them then?

Warrington. When firſt I ſaw their Swords drawn, it was upon the flat Stones of the Pavement; and I ſaw Mr. *Hill* come off of the Stones and Mr. *Mountford* with him. Mr. *Hill* was, I think, the firſt, and they came both up together with their Swords drawn in their Hands, they were not a Sword's Length off from one another; and they paſſed at one another, and I run into our Houſe to fetch a Paring-Shovel, with an Intention to part them; but before I could get out of Doors with the Paring-Shovel in my Hands, the one was gone one way, and the other the other way; and I ſaw no body in the Street to aſk any Queſtions of, but my Lord *Mohun* at the Corner, three or four Doors above this Place. And I came out, and aſked which way they were gone? My Lord *Mohun* turned about, and I was a little afraid of him at firſt; but, ſaid he, Here am I, I did not offer to oppoſe or draw my Sword; you all know it; and immediately, if it pleaſe your Honour, the Watch came in, that is all I know.

L. Mohun. I deſire he may be aſked, Whether I did not go towards the Watch, and ſurrender myſelf.

Warrington. I cannot ſay that, but the Watch came in a Minute. My Lord turned about, and ſaid, Here am I, I did not oppoſe or draw my Sword, you all know.

L. Mohun. Pray my Lord, let him be aſked, Whether I did offer to fly? And whether I had not as much time to fly, as Mr. *Hill?*

Warrington. I cannot ſay that, my Lord. I ſuppoſe he might have gone away as well as Mr. *Hill*, for they were both together.

L. Mohun. My Lord, I deſire he may be aſked another Queſtion, Whether, when Mr. *Mountford* came into *Howard-ſtreet*, he did not come out of his way to his own Houſe, to come towards us?

Warrington. My Lord, if it pleaſe your Honour, it was out of his way; but whether he did it on purpoſe, or becauſe he ſaw People there, I cannot tell.

L. Mohun. I deſire he may tell you where Mr. *Mountford*'s Houſe is?

Warrington. Mr. *Mountford*'s Houſe is in *Norfolk-ſtreet*, two Doors in the Corner out of the Croſs Street; and this was done in *Howard-ſtreet*.

L. H. Stew. I would aſk you a ſhort Queſtion, Whether that was the way to his Houſe that he went?

Warrington. No, it was not the way, my Lord; for he turned on the Right-Hand, and he ſhould have kept ſtraight along.

L. Mohun. I deſire he may be asked, Whether he was not ſworn at *Hicks's-hall*, and whether he gave not the ſame Evidence there, that he doth now?

Warrington. I was ſworn there, and did, to the beſt of my Knowledge, give the ſame Evidence I do now.

L. H. Stew. If I underſtand you aright, you ſay both the Swords were drawn of *Mountford* and *Hill?* —— *Warrington.* Yes, my Lord, I did.

L. H. Stew. Can you ſay whether *Mountford*'s Sword was drawn before he was hurt, or not?

Warrington. If it pleaſe you, my Lord, I cannot tell that, I cannot be poſitive whether it was or no, for there were Women about them, I ſay, at firſt, and I could not diſcern the Beginning; and I did not ſtand to ſee them puſh, for as ſoon as I ſaw their Swords drawn, and they come off the Pavement to fight, I run into the Houſe to fetch a Paring-Shovel.

L. Mohun. Now, my Lord, I will call another Witneſs.

L. H. Stew. Mr. Attorney, have you any Queſtions to ask this Witneſs? —— Mr. *Att. Gen.* No, my Lord.

L. Mohun. Then, my Lord, I will call another Witneſs to ſhew you the Reaſon why Mr. *Hill* and I ſtayed in the Street, and what was the Buſineſs we ſtay'd for. I deſire *Ann Knevit* may be examined. (*She came to the Bar.*)

L. H. Stew. What do you ask her, my Lord?

L. Mohun. I would aſk her where ſhe liveth, and what ſhe knoweth of this Buſineſs?

Knevit. My Lord, I live in *Howard-ſtreet*, exactly againſt Mrs. *Bracegirdle*'s Lodging, and my Lord *Mohun*, as he gave his own Name to be, to the Watchmen, and another Man that they called Captain *Hill*; for ſo he gave his Name to be; they came down with Mrs. *Bracegirdle*, both the Mrs. *Bracegirdles*, into the Street, and came to their Door, and old Mrs. *Bracegirdle* put her Daughter in at the Door, and then ſhe ſtood ſtill and talked with the Gentlemen, and aſked them their Buſineſs. They ſaid, They wanted to beg the young Woman's Pardon for what they had done, and then they would be gone. She ſaid ſhe thought they came to rob her. They ſaid, No, they came upon a very honourable Deſign. She ſaid, Then they might have come at a more ſeaſonable time; but ſhe believed they came to rob her.

L. Mohun. What time of Night was it?

Knevit. It wanted a Quarter of Ten, I believe, or it was about Ten, a Quarter over or under; I cannot exactly tell. They ſaid, If ſhe would give them leave but to ſpeak to her, and beg her

Pardon for what they had done, they would go home immediately. She said, She would not, they should not see her any more that Night. Then one of the Gentlemen, I know not which of them it was, said, They would walk a little while in the Street. She did see them walk very quietly, but she made a great Noise herself; and at last she went in, and shut the Door, and the Gentlemen walked quietly up and down; and by and bye they went to the Door again, and desired to be admitted to speak with young Mrs. *Bracegirdle*, that they might beg her Pardon for some Affront that they had put upon her, I suppose; and she still refused them, and would not let them speak with her; and several times they called and knocked at the Door, and still desired but to speak with her, and beg her Pardon, and they would be gone home; but she every time refused it.

L. H. Stew. Woman, I do not hear you; you must speak louder.

L. *Mohun.* My Lord, I desire your Lordships will let one of the Clerks come and take the Evidence, and report it to you.

L. H. Stew. If it be material, another must report it; for I have not heard one Quarter of it.

L. *Mohun.* It is very material, my Lord, to shew the Reason why we stayed there.

Knevit. My Lord, I will repeat it over again, if you please.

L. H. Stew. Then pray speak so loud that I may hear.

Knevit. My Lord *Mohun* is a perfect Stranger to me, I only tell you what I saw and heard. At the first Beginning of all, two Gentlemen and two Women came to a Door over against our Door, and at that House Mrs. *Bracegirdle* and her Daughter lodged; the Gentlemen gave their Names to the Watch afterwards to be my Lord *Mohun* and Captain *Hill*. So when they came there, the old Woman put her Daughter in at the Door; and when she had pulled off her Hood and Scarf, she came to the Door, and asked them their Business; and they told her, They wanted to beg her Daughter's Pardon for what they had done; but she abused the Gentlemen mightily, and gave them very ill Words, and said, She believed they came to rob her Daughter; they said, No, they came upon a very honourable Design; then she said, They should have come honourably at a seasonable Time; they said, It was not an unseasonable Time, for she was out of Doors herself at that Time. So she stood there a little, and then at last she went in-a Doors, and shut the Door, and some of them opened the Door again; and they were walking upon the Causey, and came up to the Door, and still desired the same Thing, to speak with the young Gentlewoman to beg her Pardon for what they had done, and they would go home for that Night. One of them, I think it was Mr. *Hill*, said, He had given her an Affront, and he desired to beg her Pardon; but still they said, He should not be admitted to speak with her. Then one of them, I think it was Mr. *Hill*, desired she would be pleased to come but to the Hatch, that he might see her, and beg her Pardon, and he would not desire to come in; but that would not be permitted. So one of them made Answer, That they would not stir till they did see her, and they would walk there all Night.

L. H. Stew. Cryer, call for Silence; and pray, my Lord Great Chamberlain, take some Order with those People behind there, for they cannot hear themselves what the Witnesses say, and therefore they are resolved we shall not hear them neither. (*Proclamation was made for Silence.*)

L. H. Stew. Now go on, Woman.

Knevit. They said they would stay in the Street all Night, unless they did speak with her: But if she would give them leave to speak with her, they would depart to their own Lodgings immediately; but they were denied to be admitted to speak with her. Whereupon one of them called unto his Boy, to bring him his Cloak; but then he said, He would not have his Cloak, he would walk without it, because they had not both of them Cloaks: By and bye they sent for a Bottle of Wine, and there they drank her Health, and took several Turns; and after they had drunk off the Bottle, or some Part of it, they went to the Door again, and knocked at the Door; and somebody answered from within, for they were not at the Door, What they would have? They said the same thing as before, that they desired only to see her, and beg her Pardon, and they would go home; for it was a very cold Night, and it was not convenient to walk there; but they still refused to let them in. By and bye the Watch came down, and asked, Who was there, and what was their Business? And one of the Gentlemen made Answer, and said, He was a Peer, and his Name was *Mohun*; the other said, His Name was *Hill*. So the Watch went by, and said no more; but somebody made Answer, and said, There was a Gentleman had a Sweet-Heart in that Street, and he wanted to speak with her. Just at that Time, I went up Stairs to warm a Bed in our House, and whilst I was warming the Bed, I heard a little Bustle in the Street; and running to the Window, there I saw a Sword in a Man's Body; I could not tell who the Man was, nor who put the Sword there; but the Man that drew out the Sword run away as hard as he could, and the Man in whose Body the Sword was, went as fast as he could the other Way. And my Lord that gave his Name to the Watch to be *Mohun*, stood on the farther Side of the Street, and said, I have done no Hurt to any body, and I will not stir. And there was a Woman that called out to the Watch to seize him; but who the Woman was, I cannot tell; but he stood still between Mrs. *Bracegirdle*'s Door and the next Neighbour's, one that is called *Nuttall*, I think, and never stirred till the Watch came to him, and the rest went to Mr. *Mountford*; he said there was no Occasion to lay Hands upon him, for he would not stir from them.

L. *Mohun.* I desire to ask her, If Mr. *Mountford* did not say, I am killed, after the Sword was broke?

Knevit. Yes, he did say he was a dead Man.

L. H. Stew. What, after his Sword was broke?

Knevit. After the Sword was drawn out of his Body, his Sword was in his own Hand; I squalled out when I saw the Sword in his Body, and had like to have gone out of the Window; and somebody said to me, when I told them why I cry'd out, Will you break your Neck for that Reason? It may be, it is one of the Watchmen. No, said I, it is not a Watchman.

L. *Mohun.* I desire she may be asked, Where Mr. *Mountford* and Mr. *Hill* fought, whether it was not in the middle of the Street?

Knevit. My Lord, it was exactly in the Middle, as near as I can guess, rather on our Side of the Way, with his Arms spread, and his Sword in the Scabbard.

L. H. Stew. Have you any more to ask this Witness?

L. *Mohun.* No, my Lord.

L. H. Stew. Have you any thing to say to her, *Mr. Attorney?*

Mr. Att. Gen. I would ask her, where she liveth.

Knevit. I live in *Howard-street.*

Mr. Att. Gen. With whom there?——*Knevit.* At one Mrs. *Brewer*'s.

Mr. Att. Gen. What Employment is your Mistress?

Knevit. My Mistress keepeth a Coffee-house.

Mr. Att. Gen. Do you live near Mrs. *Browne*'s?

Knevit. I know not any of that Name there; but I live over-against Mrs. *Bracegirdle*'s Lodgings.

Mr. Att. Gen. Do not you know the People of that House?

Knevit. No, upon my Word, I do not know their Names that keep the House.

Mr. Att. Gen. Let me ask you another Question: You speak of many Messages sent backward and forward, and that they said Mrs. *Bracegirdle* should not be spoken with while my Lord staid there; I desire to know, if you can tell who any of the Persons were that brought those Messages?

Knevit. It was the Man that called himself my Lord *Mohun*, and the other that called himself *Hill*, they spoke themselves.

Mr. Att. Gen. But who was it that came to them so often, to tell them they should not speak with her?

Knevit. It was old Mrs. *Bracegirdle.*

Mr. Att. Gen. You are sure of that?——*Knevit.* Yes, Sir.

Mr. Att. Gen. I would ask you one Question more: When the Watch came up to them, did my Lord tell the Watch his Name was *Mohun*, or only that he was a Peer of *England?*

Knevit. He said first, He was a Peer of the Land, and then he said, his Name was *Mohun*; and the other said, his Name was Capt. *Hill.*

Mr. Att. Gen. You are sure both of them told their Names to the Watch?

Knevit. Yes, I am sure I heard them say so.

L. H. Stew. Have you any more Witnesses to call, my Lord?

L. *Mohun.* No, my Lord; I could call some as to *Sandys*'s Reputation, but I do not think it at all material.

L. H. Stew. Have you any thing, *Mr. Attorney*, to say to the Boy that was set by? Will you have him called again?

Mr. Att. Gen. My Lord, I did propose that the Boy should hear the Information read which he gave in to the Coroner.

L. H. Stew. Will you have him called again?

Mr Att. Gen. Yes, if your Lordships please.

L. H. Stew. Well, then call him again.

(*The Boy came to the Bar, and his Deposition before the Coroner was shewed to him.*)

Mr. Att. Gen. Look upon that Paper, is that your Name or your Writing?——*Boy.* Yes.

Mr. Att. Gen. Was it true you then swore before the Coroner?

Boy. Yes, it was true.

L. H. Stew. Read it. (*It was taken by the Clerk, and read at the Table.*)

Clerk of the Crown reads.

Middlesex. *The Information of* Thomas Leake, *Servant to* Richard Hill, *Gent. taken upon Oath the Twelfth Day of* December, 1692, *before Me.*

'HE saith, That on *Friday* Morning last, about Nine of the Clock, 'twas agreed betwixt my Lord *Mohun* and Capt. *Hill*, to seize Mrs. *Bracegirdle* with some Soldiers, and carry her away in a Coach about nine Miles off; and about Ten of the Clock at Night my Lord *Mohun* and Captain *Hill*, with about six Soldiers, did seize her, and endeavour to put her into a Coach; but she refused to go, and they led her down into *Howard-street* to her Lodging, and then said, they would walk an Hour under Mrs. *Bracegirdle*'s Window, and another under Mrs. *Barry*'s; and about an Hour and an half after, Mr. *Mountford* came down the Street, and Mr. *Mountford* and my Lord *Mohun* saluted each other; and my Lord *Mohun* said, he hoped Mr. *Mountford* was not come to vindicate Mrs. *Bracegirdle*; and Mr. *Mountford* hoped my Lord did not come to vindicate the Rudeness done to Mrs. *Bracegirdle* by Mr. *Hill*; and then Mr. *Hill* said, He was able to vindicate himself, and bid Mr. *Mountford* to draw; and they both pushed at each other with their Swords; and my Lord said, He would stand by his Friend, and Mr. *Hill* was his Friend; and during the Time that Mr. *Hill* and Mr. *Mountford* fought, my Lord *Mohun* did not endeavour to part them. *Thomas Leake.*

Jo. Cooper, Coroner.

Mr. Att. Gen. My Lords, as to this last Witness, I would desire some of the Watch may be asked, because she saith my Lord told them his Name was *Mohun*, and *Hill* told them his Name was *Hill*, whether it was so or not.

L. H. Stew. Who would you call?

Mr. Att. Gen. Merry, my Lord, if you please.---*L. H. Stew.* Call him.

Lord *Mohun.* I desire the Constable may be called. (Merry *did not presently come in.*)

Mr. Att. Gen. My Lord, I think it is not so material, as to desire your Lordships should stay for him. But as to that one Witness that entertained your Lordships so long, Mrs. *Bracegirdle*'s Servant, I desire, that she being here, may give your Lordships an Account what became of this Servant of her's.

Mrs. *Bracegirdle.* My Lord, she went away from me on the *Sunday.*

L. H. Stew. Who did?

Mrs. *Bracegirdle.* My Maid that was then; and I sent to her Aunt's the Week after to seek for her, but she could not be found; where she was, I cannot tell; nor could not hear of her from that Time to this.

L. *Mohun.* I desire she may be asked, Whether she did not discharge her, or pay her her Wages?----------Mrs. *Bracegirdle.* I did not.

L. *Mohun.* Did not you or your Mother?

Mrs. *Bracegirdle.* My Mother, my Lord, did; she was not my Servant, my Mother hired her, my Lord.

L. H. Stew. What doth she say? Were her Wages paid, and she discharged?

Mrs. *Bracegirdle.* They were paid because she would not stay with me, my Lord; I desired her to stay, and she would not; and then she demanded her Wages, and my Mother paid her.

L. *Mohun*. My Lord, I desire you would ask the Maid the Reason why she would not stay.

El. Walker. If it please you, my Lord, the Reason was this. When I came from *Hick*'s-*Hall* Mrs. *Mountford* the next Day sent for me, and I lying with this *Ann Jones* that was here, she told me that I should be sent for, and they would rattle me off for my Evidence that I had given at *Hick*'s-*Hall* for the King; my Lord, I having such an Item from *Ann Jones*, and they being all Players, I was afraid, because Players have a worse Reputation than other People.

Mr. Att. Gen. My Lord, we shall not trouble your Lordships with any more Witnesses.

L. *Mohun*. My Lord, I desire she may be asked if there were not Bailiffs sent to take her, and she threatned to be arrested.

L. H Steward. What say you to that?

El. Walker. If it please you, my Lord, I cannot swear it, but I will tell you as near as I can, how it was; I had not Time to look over my Cloaths, being in Haste when I went, and for fear I should have mistaken any Thing, the next Day I went to look over my Cloaths, whereupon I found I had mistook, and taken one of my Mistress's Aprons, and left one of my own for it, and knowing their great Suspicion and Inveteracy against me, I went the next Day to my Uncle's, a Porter's, and desired him to carry it to them; but when I had delivered it to him, he would not let me stay to speak much, for he said there had been three Bailiffs to take me, and I having no Friends, was much affrighted, and run crying up and down, and did not know where to fly, for fear they might lay me in a Prison; and having no Friends, therefore I was forced to fly, and so I went to a Justice of Peace, and there I gave him an Account of the Business. But he said he must have nothing to do with it, I must go again to proffer my Service to my Mistress; but I was not willing to proffer my Service again to her, so I kept away ever since.

L. H. Steward. If you have done with the Evidence on both Sides; what have you more to say, my Lord?

L. *Mohun*. My Lords, I hope it will be no Disadvantage to me, my not summing up my Evidence like a Lawyer, being a young Man; I think I have made it plainly appear that there never was any former Quarrel or Malice between Mr. *Mountford* and me; I have also made appear the Reason why we staid so long in the Street, which was for Mr. *Hill* to speak with Mrs. *Bracegirdle*, and ask her Pardon, and I staid with him as my Friend, so it plainly appeareth I had no Hand in the Killing of Mr. *Mountford*, and upon the Confidence of my own Innocency, I surrendred myself, and I commit myself to this Honourable House, where I know I shall have all the Justice in the World.

L. H. Steward. Has your Lordship no more to say?

L. *Mohun*. No, my Lord, but I am innocent of the Fact, and leave myself wholly to your Lordships.

* Sir *Thomas Trevor*.

Mr. Sol. Gen. * May it please your Lordships, according to my Duty, I am to repeat the Evidence to your Lordships on the Behalf of the King.

My Lord, the Evidence hath been very long, both that on the Part of the King, and that on the Part of the Prisoner, and I know your Lordships have given Attention to it with very great Diligence. I cannot pretend that my Memory will serve me so well, as to repeat the Circumstances of this so long Evidence; but that which has been material, I shall crave leave shortly to mention to your Lordships.

My Lords, I know a great many Things may slip my Notice and Repetition, but nothing can slip your Lordships Observation: So that tho' I should not lay a due Weight upon the Evidence for the King, yet your Lordships will let nothing pass without giving it its just Consideration, and will give Judgment according to the exactest Justice.

My Lords, the Evidence for the King doth consist first of Facts precedent to the Killing of Mr. *Mountford*, and next what happened at that Time.

As to what preceded this Fact thus committed, there were two or three Witnesses called, and the first of them is Mr. *Hudson*, the next is Mr. *Powell*, and they give you an Account that Mr. *Hill* had made his Applications in the Way of Courtship to Mrs. *Bracegirdle*, but that he had an Apprehension that Mr. *Mountford* was an Obstruction to him in that Matter, and therefore he did declare several Times, that he would be revenged of him. And one Time (which I think was two or three Days before the Fact was done) my Lord *Mohun*, the Prisoner at the Bar, was at Dinner with *Hill*, when *Hill* had this Discourse concerning *Mountford*, and said he would be revenged of him. My Lord *Mohun* was by, they both say, when such Discourse was used by *Hill*, but they cannot tell what Notice he took of it.

My Lords, after this, the Day that this Fact was committed, your Lordships have heard how my Lord *Mohun* and *Hill* hired a Coach and six Horses in order to seize Mrs. *Bracegirdle* and carry her away by Force, and that is proved most fully, both upon my Lord *Mohun* and *Hill*, that they were both concerned in that Design, and actually ingaged in it; there can be no Dispute of that. Accordingly they dined together that Day, and at Dinner there arose a Discourse in relation to Mrs. *Bracegirdle*. And at that Time my Lord *Mohun* said it would cost *Hill* 50*l*. to carry her off. And *Hill* said, if the Villain resisted he would stab him. And my Lord *Mohun* said, He would stand by his Friend. This Declaration was made at Dinner, on the Day this Fact was committed; and then they appointed to meet at the Play-House at six o'Clock in the Evening, expecting Mrs. *Bracegirdle* would be there; and accordingly the Coach was ordered to be ready at that Time in *Drury-lane*.

My Lords, in pursuance of this Design, they both came to the Play-House at Six o'Clock; this is proved by two or three Witnesses. When they came there, they inquired for Mrs. *Bracegirdle*, but she was not there at that Time. And then not finding Mrs. *Bracegirdle* there, your Lordships have an Account from the Coach-man, to what Places he carried them from thence. First to *Drury-lane*, there they staid some Time; and not finding her there, he drove them into *Norfolk-street*, near the Place where she lodged, and there a Man and a Woman being discoursing together, gave them Occasion to say, they thought they were betray'd. And *Hill* said, My Lord, let us go and cut that Fellow's Throat, or Words to that Effect.

Then, my Lords, they drove back from that Place, into *Drury-Lane* again, and ordered the Coach to stop over-against my Lord of *Clare*'s House. There it happened that Mrs. *Bracegirdle* came from Mr. *Page*'s House, where she had supped. At that Time there were present her Mother, her Brother, and Mr. *Page*, and Mr. *Page* led her along. *Hill* came up with seven or eight Soldiers, and forced her out of Mr. *Page*'s Hand, and endeavoured to thrust her into the Coach. In that Coach my Lord *Mohun* was, that is agreed upon on all Hands, the Coach Door was open, and my Lord *Mohun* was there in it with seven or eight Pistols.

It happening they could not carry her off, but the Matter taking Air, People came in to their Assistance, and the Design being prevented, *Hill* would needs go home with her to her Lodging in *Howard-street*, and my Lord came out of the Coach and went along with him. When they were come to the Lodging, the Witnesses tell your Lordships, that at that Time, when Mr. *Page* was going into the House, *Hill* would have had some Discourse with Mr. *Page*, and desired to speak with him, but Mr. *Page* said it was not a convenient Time, but to-morrow would do better, and so went into the House, and the Door was locked.

My Lord *Mohun* and *Hill* continued walking about the Streets for about two Hours before Mr. *Mountford* was killed, and now your Lordships will observe what Transactions there were during the Time that they continued walking in the Streets.

(*Then there was an Interruption for about a Quarter of an Hour, occasion'd by a Lady's falling into Fits in one of the Galleries; but she being removed, and Proclamation made for Silence, the Court proceeded.*)

L. H. Steward. Pray, go on, Sir.

Mr. Sol. Gen. My Lords, I was observing to your Lordships, that Part of the Evidence which related to what happen'd after the Time that Mrs. *Bracegirdle* was in her Lodging. And, my Lord, your Lordships hear from the Witnesses, that my Lord *Mohun* and this *Hill* continued in the Street, where Mrs. *Bracegirdle* lodged, and walked up and down for near two Hours before Mr. *Mountford* came.

During that Time, the Constable and the Watchmen have told your Lordships upon their Oaths, that my Lord *Mohun*'s and Mr. *Hill*'s Swords were both drawn. And the Constable swears expressly, That he ask'd my Lord *Mohun* what he did with his Sword drawn, and that my Lord answered, he was ready to put it up, and told him withal, he was a Peer of the Realm; the Constable then ask'd why the other Gentleman's Sword was drawn, and my Lord *Mohun* made answer that his Scabbard was lost.

But your Lordships observe, that before the Watch came, Mrs. *Browne* (as she herself hath sworn) came out of the House where Mrs. *Bracegirdle* lodged, and desired to know what they did there, and then *Hill* said, he should light upon *Mountford* one Time or other; saith Mrs. *Browne* to him, Why, what hath he done to you? To which he replied, He hath affronted me, and I will be revenged upon him; and this was said in the Presence of my Lord *Mohun*, he being just by.

My Lords, after this, in a very short Time, Mr. *Mountford* came down, and Mrs. *Browne* telleth your Lordships, that they were so much aware of this Matter, that my Lord *Mohun* and *Hill* staid to do *Mountford* a Mischief, that there were Persons sent to Mrs. *Mountford* to give her Notice of it, and she sent Messengers to find out her Husband, to prevent his coming in their Way, but they could not find him.

Upon Mr. *Mountford*'s coming down, Mrs. *Browne* seeing him, steps up towards him, to tell him that my Lord *Mohun* and *Hill* were in the Street with their Swords drawn, and she was afraid they had some ill Design against him; but she sweareth she did not, nor could not tell him this, he was in such Haste; but one of the Witnesses for my Lord contradicts her in this, and says, that she did tell him; but whether the one Witness sweareth true, or the other Witness saith true, must be left to your Lordships Judgment.

But Mr. *Mountford* came down immediately, and as he came down, he met my Lord *Mohun*, and they did salute one another (for I would not injure my Lord in mistaking the Evidence, as near as I can) but your Lordships will observe the Witnesses say, that presently my Lord *Mohun* asked Mr. *Mountford*, whether he was not sent for, and said, I suppose you have heard what happen'd to the Lady this Night, and I hope you do not come to vindicate Mrs. *Bracegirdle*. And Mr. *Mountford* replyed, I hope your Lordship doth not come to vindicate Mr. *Hill* in such an Action.

Thereupon *Hill* stepped up, and struck Mr. *Mountford* a Box on the Ear, and at the same Time, with his Right Hand, passed at him, and run him through, before his Sword was drawn. This two of the Witnesses for the King say Mr. *Mountford* told them upon his Death-Bed, and it was very probably so; because your Lordships observe by all the Evidence, *Hill*'s Sword was ready drawn in his Hand.

(*There being some Noise, Proclamation was made for Silence.*)

Mr. Sol. Gen. My Lords, I was observing that it was immediately, and at the same Time that he struck him, and run him through, and it is very likely it was so, as Mr. *Mountford* said when dying; for several of the Witnesses for the King do swear, that the Box on the Ear was before his Sword was drawn, and *Hill*'s Sword was ready in his Hand. So Mr. *Mountford* said when he was expiring, and what Regard your Lordships will have to the Declaration of a dying Man, we must submit to your Lordships Judgment; and Mrs. *Browne*, who was there and saw the Fact, sweareth the same Thing, that it was done before Mr. *Mountford* could have Time to draw his Sword.

If that be so, it is very plain it was Murder in Mr. *Hill*, and your Lordships will please to observe another Piece of Evidence that came from the Mouth of a Witness, examined for the Noble Lord the Prisoner at the Bar, and that is *Leake* the Boy, he was examined before the Coroner; indeed he was not called now for the King, and your Lordships may see some Reason why he was not; but your Lordships have had his Deposition before the Coroner read, and by that your Lordships may observe, how different his Testimony then was, from what he now giveth. And whether your Lordships will believe what he then said upon his Oath, or what he now saith, is left to your Lordships Consideration.

Consideration. He saith, when he was examined upon his Oath, soon after the Fact, that my Lord *Mohun* was by when *Hill* did wound *Mountford*, and that my Lord *Mohun* said, that he would stand by his Friend, and that *Hill* was his Friend, and that my Lord *Mohun* did stand by, and did not offer to part them. Though he hath something varied from this in his Testimony now, yet he still affirms what he there swore to be true.

But further, my Lords, your Lordships will consider what the Constable swore my Lord *Mohun* said after he was taken, and when he was in Custody at the *Round-house*. Whether he did surrender himself or no, we must leave to your Lordships, upon the Evidence that hath been given on the one Side, and on the other. But when he was in Custody (as I said) my Lord *Mohun* asked whether *Hill* was taken, and being answered No, he said he was glad of that; but he was sorry he had no more Money about him, and wished that he had that Money which he himself had, and that he would be willing to be hanged for him. So great a Kindness he expressed for *Hill*, and said, he had chang'd Coats with him, and then had *Hill's* Coat on his Back.

This, my Lords, is the Substance of the Evidence on the King's Part, and upon the whole of it, it is plain, with humble Submission to your Lordships, that here was a premeditated Malice in *Hill*, by his own Declarations preceding, by what was done at the time of the Fact committed, and by stabbing him before his Sword was drawn.

The Question will be, whether, my Lord *Mohun*, the Prisoner at the Bar, was privy to this Design of *Hill's*, and did so far agree in it, as to keep him Company to assist and encourage him. For if he was privy, and knew of *Hill's* Design, and staid there for that Purpose to give him Assistance in it, with humble Submission to your Lordships Judgment, he will be as much guilty of the Murder, as *Hill* that actually killed him: That therefore will be the Question before your Lordships, for your Judgment upon the Consideration of what has been prov'd in this Case.

My Lords, the Prisoner, my Lord *Mohun*, has called and produced several Witnesses to your Lordships, in Defence of himself. The first Witness was called to this Purpose, to shew that my Lord had no Malice to *Mountford*, but that they were very good Friends but two or three Days before; that he spoke of him with a great deal of Kindness, and desired to drink a Bottle of Wine with him.

Now for this, I would observe to your Lordships, that it is not the Question, whether my Lord *Mohun* had any direct or express Malice against *Mountford*; but if *Hill*, who was so great a Friend of my Lord *Mohun's*, had a Malice against *Mountford*, and my Lord *Mohun* had so great a Kindness for *Hill*, as to accompany and assist him in taking his intended Revenge (whether it was so or no, your Lordships are to judge) it will be as much Murder in Law, as if my Lord had himself had a Hand in it.

For the other Witnesses that have been called for the Prisoner, I must leave the Consideration of what they say to your Lordships. They are not upon their Oaths, but yet they are to be believed so far, as your Lordships shall judge what they say credible, upon consideration of all that you have heard. But for the Boy, who hath contradicted his own Evidence, which he gave upon Oath before the proper Officer, but acknowledgeth what he swore then was true, what Credit is to be given to him, will deserve your Lordships particular Consideration. How he has been prevailed upon to change his Evidence, I cannot tell, nor what Weight it will have with you.

My Lords, I will not spend more of your Lordships Time; I know you very well remember, and will carefully recollect all the Evidence, both for the King and for the Prisoner, and your Lordships will consider that it is a Case of Blood, and if your Lordships think him guilty, tho' he be one of your own Body, you will adjudge him so; if not, you will acquit him; and therefore I leave the Matter to your Lordships just Determination.

L. H. Stew. My Lords, I think now, having heard the Evidence on all Sides, your Lordships will think fit to adjourn to the House of Lords. Is it your Pleasure to adjourn?

Lords. Ay, Ay.

L. H. Stew. This House is adjourned to the House of Lords.

Then the Lords returned to their own House, in the same Order as they came into the Court.

After some Debate amongst themselves in their own House, they adjourned till the next Day, and ordered the Prisoner, Counsel, and Witnesses to attend in the Court.

Die Mercurii Primo Februarii 1692.

The Lords sate all Day in their own House, debating amongst themselves in the Absence of the Judges, who were in the Court, and about eight o' Clock in the Evening, the House of Lords adjourn'd till the Friday *following, the* Thursday *being* Candlemas-Day, *and no Law-Day.*

And the Prisoner, Counsel, and Witnesses were ordered to attend in the Court on Friday *Morning.*

Die Veneris Tertio Februarii 1692.

ABOUT the Hour of Four in the Afternoon, the Lords (who had till then been debating amongst themselves in their own House) came in the same Order as the first Day into the Court of *Westminster-hall*, except only that the Judges were a great Part of the Day waiting for them in the Court.

The Lords being seated on their proper Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamations were made for Silence, and for the bringing the Prisoner to the Bar in usual Manner; and the Prisoner coming to the Bar, and having saluted his Grace the Lord High Steward, and the Peers, and being resaluted by them, the Court proceeded in this Manner.

L. H. Stew. My Lord *Mohun*, My Lords have heard the Evidence on both Sides, for and against you; and upon that Evidence some Questions have arisen in Point of Law, in which some of my Lords are doubtful I am therefore by their Lordships Command to propose to your Lordships, my Lords Chief Justices and the rest of the Judges here, to have your Opinions upon a Case stated by their Lordships; and it is this:

In a Case where a Man shall murder another, Whether all those that are in his Company at the Time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty of Manslaughter?

To this, my Lords expect you, the Judges, should give your Resolutions severally one after another, and therefore it is to begin with you, my Lord Chief Justice.

L. C. J. Holt. My Lord, the Question is pretty long; and I desire, that I may not be mistaken in the Opinion I shall give, that I may have it in Writing, and that I may have a little Time to consider it, because it hath been a Question framed upon very great Consideration and Deliberation: Therefore I would be very well advised before I give an Answer to such a Question, because it is of so great Importance.

L. H. Stew. You must speak out, my Lords; for else I am at such a Distance that I cannot hear a Word you say.

L. C. J. Treby. My Lords, I make the same humble Request: The Question propounded is long, and the Fruit of great Deliberation among your Lordships: I desire therefore my Answer may be such as becometh me to it, and to that Purpose, that I may have a Copy of it, and some Time to consider of it.

L. H. Stew. I have it here in Writing, and will give it you, if that will serve the turn.

The Paper was brought by the Black Rod from his Grace to the Judges.

L. C. J. Holt. My Lord, we desire your Lordships will give us Time to withdraw, and consider of it among ourselves.

L. H. Stew. Your Lordships hear the Motion of my Lord Chief Justice; the Judges desire your Leave to withdraw, and consider of the Question among themselves.

Lords. No, no, no.

Then the Judges sitting upon the Wool-Packs conferred for a little time privately with one another; and then the Earl of *Rochester* stood up.

E. of Rochester. My Lords.

L. H. Stew. My Lord of *Rochester*, What say you?

E. of Rochester. My Lords, the Prisoner doth desire to have a Copy of this Question, it being a Question in Point of Law, that his Counsel may see it.

Lords. Ay, ay, he ought to have it.

A Copy was carried by one of the Clerks to the Bar, and delivered to the Prisoner, and he gave it to Sir *Thomas Powis*, who, with Mr. *Hawles* and Mr. *Price*, before assigned of Counsel for my Lord *Mohun* in Matters of Law, stood by him at the Bar.

L. *Mohun.* My Lords, I desire to know whether my Counsel may speak to this Case before the Judges give their Opinions, it being a Matter of Law, and the Judges superior to my Counsel?

L. H. Stew. My Lord, they may be heard to any Matter of Law that is Law singly, the Counsel of either Side may be heard to any Thing that is a Point of Law only.

L. *Mohun.* My Lord, I conceive this to be so.

L. H. Stew. My Lord, it is agreed to be so: But, my Lords, I must desire your Lordships leave to go down to the Wool-Pack, or I shall not be able to hear what is said.

Lords. Ay, ay.

Then his Grace came down and seated himself on the Wool-Pack.

Sir *T. Powis.* May it please your Lordships, I am of Counsel—

E. of *Devonshire.* My Lords.

L. H. Stew. My Lord *Devonshire.*

E. of *Devonshire.* I think your Lordships have not yet resolved that the Prisoner's Counsel shall be heard before the Judges; therefore I desire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Stew. My Lord, it must be either then, or not at all; and I understand the Resolution of the House to be so.

Lords. Ay, ay.

L. H. Stew. Go on, Sir.

Sir *T. Powis.* May it please your Lordships, I am of Counsel assigned by your Lordships for this Noble Peer that is now a Prisoner at the Bar: The Question your Lordships are pleased to propound is this:

In a Case where a Man shall murder another, Whether all those who are in his Company at the Time of the Murder, are so necessarily involved in the same Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, with humble Submission to your Lordships, I take it there are many Cases where a Person that is present when a Murder is committed by another Man, shall be equally Guilty of that Murder; and there are many Cases where a Person that is present when a Murder is committed by another Man, shall be guilty only of Manslaughter: And there are many Cases where a Person that is present when a Murder is committed by another Man, shall not (with humble Submission) be Guilty of any Crime at all.

For the first, there is no Question but if two Persons or more do meet together with Malice prepensed to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the mortal Wound is only given by one, there is no Question but they are all equally guilty of the Murder with him that gave the Mortal Wound: And it is also as clear, if two Persons meet together to commit an unlawful Act, and during the Execution of that unlawful Act, one of them doth kill another Man, the other will be involved in the Guilt of it.

But, my Lords, if several Persons do meet together to commit an unlawful Act, and the Design of the Act is totally over, so that the Prosecution of it is quite left off——

There being some Noise and Disorder about the Court, Proclamation was commanded to be made, and was made again for Silence.

Sir *T. Powis.* My Lords, I say in the second Instance that I was offering to your Lordships; If two Persons or more meet together to do an unlawful Act, but are either disappointed in it, or have totally desisted from

from it; and afterwards these same Persons having quitted their Design, are together, and a third Person coming into their Company, though there were Malice between one of those Persons and that third Person, and upon Words, or some other Occasion or Accident, there should be Quarrelling and Fighting between those two Persons that bore Malice to one another, and one of them is killed, and he that before had joined in the Design of committing an unlawful Act, be only there in the Company, if he doth neither aid nor abet, nor any ways agree to the doing of the Thing, the Authorities are, it will neither be Murder nor Manslaughter; and of this I would, with your Lordships Favour, put some Instances.

If two Persons agree together (as the Case is put in that which goeth by the Name of my Lord *Dacres'* Case) to enter into another Man's Park and steal his Deer, this is an unlawful Design; and if one of them kill the Keeper, and the other no way at all act in the doing of it, yet it will be Murder in the Person that did go along with that other in that unlawful Act: But the Lord *Dacres'* Case was accompanied with further Circumstances; for there it did appear that the Lord *Dacres'* had agreed before-hand to kill any Person that should oppose them; there was that particular Circumstance in that Case.

But, my Lords, I take it, with Submission, to be very clear, that if two such Persons who made such an Attempt to rob or steal Deer in a Park, should be disappointed, and should leave the Park, and afterwards go to a Tavern, or an Ale-house, or any Place to drink, having quitted that Design, and some Hours afterwards, a Person cometh in that was not expected, or thought of, and a Quarrel ariseth between one of those two Persons who were before together, and the Man that so came in, and he shall be killed, I take it that the other Person who was present will not be guilty of the Murder, unless he aided, or assisted, or acted in it.

My Lords, I would speak to your Lordships in a Case of this Nature with as good Authority as I could, besides my own poor Reason to prove to your Lordships that there may be many Cases where a Person may be present at the Time when another is murdered, and yet he shall be guilty of only Manslaughter, and in some Cases shall be guilty of no Crime at all.

The Case that I shall cite is out of a Treatise of a very Great and very Learned Man; it is the Book that goeth under the Name of Sir *Matthew Hale*'s *Pleas of the Crown*: the Case is this: You will find in that Book under the Title of *Murder*, Fol. 51. If *A.* and *B.* having Malice prepense, meet and fight, and *C.* the Servant of *A.* not acquainted therewith, take Part with *A.* his Master, and kill *B*, this is Murder in *A.* but only Manslaughter in *C.* So here is an Instance where one is guilty of Murder, and the other only guilty of Manslaughter, when both are present at the Time of the Fact committed. The same Law, saith he, it is, if *C.* came in suddenly, and took part with *A.* and killed *B.* In this Case it is Murder in *A.* if there was Malice prepensed between him and *B.* but only Manslaughter in *C.* who came in suddenly, and actually killed *B.*

My Lords, He goeth further, and saith, If one come by chance where one is killed, and doth not abet, he is neither Principal nor Accessory to that Murder or Manslaughter; so that here are Cases where it is Murder in one, and Manslaughter only in the other; and here are Cases where it is Murder in one, and not so much as Manslaughter, or any Crime at all, in the other.

These that I have cited are Cases where one has Malice against another, and he that joineth in the Quarrel doth not know it. But I will put the Case now, That a Person hath Malice against another, and one happeneth to be in his Company that knoweth he hath Malice against that other Person; if those two that had Malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of Murder or Manslaughter. For if the Law should be, that Men are involved in the Guilt of Murder whenever they are present at a Time when one that beareth Malice against another killeth his Enemy, Conversation in the World would be very dangerous: For, my Lords, we know the World is too full of Malice, and there are few Men but have Acquaintance with such as bear Malice to others; but if so be that no Man that is acquainted with one that bears Malice to another, may be in his Company but at the Peril of his Life; if his Enemy come in his way, and he happen to kill him in his Presence, then no Man that is ever so innocent can be safe.

For I would put this Case to your Lordships: I am walking with a Friend, or an Acquaintance, that I know hath Malice against another, and that other Man cometh in the way, and they fight, and my Friend killeth that other Man, and I am no way aiding or assisting in it; if that should involve me in the Crime, surely the Law of *England* would be the most unreasonable and dangerous Law to live under in the World. No doubt but in such a Case the Person that is so present is unfortunate, but he is innocent, is not guilty.

For to make one guilty of Murder where Murder is committed, it must be either that he doth aid or abet, or some way assist in the killing of the Man, or he must have before that time agreed and confederated with the Person that killed him, that he would join therein at that Time, and he must be there for that End and Purpose: For if he never engaged or agreed to the Killing of him, nor was there for that Purpose, nor at the Time did any way act, or join, or assist, in the doing of it; in those Cases he is certainly not guilty.

My Lords, I dare not apply any of these Things to the present Case, because I suppose your Lordships only propounded this as a Question of Law, and not of Fact; your Lordships are the great Judges both of the one and the other: But what in the Argument or Resolution of this Case, your Lordships will find agreeable to the present Case of my Lord now before you, I submit to your Lordships Judgment.

Mr. *Hawles.* My Lords, I will not repeat what has been offered; the Distinction is certainly true that has been made, that there are Cases and Instances in Law where a Man may be guilty of Murder, when he is present where Murder is committed, and he may be guilty of Manslaughter only, where another is guilty of Murder; and a Man may be present where Murder is committed, and be innocent both of the one and the other. But this I do venture to say, That there is no Authority in our Law, that saith a Person present, when a Murder is committed, must be guilty either of Murder or Manslaughter; it must be according to the Circumstances of the Thing, either that he intended to aid or assist in the Killing, when he was there by agreement before-hand, or must actually aid or assist by some Action or Encouragement.

But, with Submission, the Authority of Law is very plain upon this Question proposed by your Lordships, That one Person may be guilty of Manslaughter, and another of Murder at the same time. The Case that hath been put out of my Lord *Hales*, was, upon his Account, Authority sufficient to quote, if we would only rely on him: But, my Lords, with Submission, the Authority goeth a little higher yet; *Stamford* putteth the Question before the Justices; *A.* that is, the Master, fighteth with *B.* and *C.* the Servant taketh Part with his Master, and killeth *B.* *A.* is guilty of Murder, and *C.* only of Manslaughter.

And that Authority is followed afterwards in the Case of *Salisbury*, in *Plowd. Com.* Fol. 100. *B.* with the Resolution of all the Judges in that Case, That one Man may be found guilty of Murder, and another of Manslaughter, as to the same Fact; and *Stamford* doth expressly say, as my Lord Chief Justice *Hales* quotes it out of him, that if a Man be present, but do not abet or assist, or contribute to the Thing, he is totally innocent, and neither Principal nor Accessory to the Murder or Manslaughter.

My Lords, We do not find that our Law hath any way prohibited a Man to keep Company with one that loveth another a Spleen; sure there should be some Warning given about it, if that was the Law in such a Case. The Law goeth no farther than to caution a Man, that he take care he doth not break the Law himself, that he doth not transgress the Bounds set him by the Law.

And it were a very hard Case upon a private Person, if it should be otherwise; for no Law compelleth a private Person to part two that are fighting; if he doth attempt it, he doth it at his own Peril, as in that Case of *A.* the Master fighting with *B.* and *C* the Servant taking part with his Master to part them, if *B.* be killed, *C.* is guilty of Manslaughter, though his Design was only to part them, because the Law putteth it not upon a private Person to do it; if it did, the Law would protect him for what he did in Obedience to it.

The Law is otherwise in the Case of a Magistrate, or a Constable, who endeavoureth to part any Persons fighting, and to keep the Peace; if he happen so to kill a Man, he is totally innocent; but a private Person shall answer for it.

My Lords, I will not trouble your Lordships further; I hope it is plain, that Malice is absolutely necessary to make a Man guilty of Murder, and there is no such thing in this Case stated by your Lordships; and therefore I submit the Matter to your Judgment.

Mr. *Price.* My Lords, I am of Counsel for this noble and young Lord, the Prisoner at the Bar: I shall not trouble your Lordships so far as to make any Repetition of what has been said by those Gentlemen that went before me.

But there was a Case in *Plowden* that was cited by Mr. *Hawles*, by the Name of *Salisbury*'s Case; and I would crave leave to cite the Case that is next precedent; it is in that Book, *Fol.* 98. There, my Lords, was an Indictment for Murder against several, and, among the rest, against two, one for giving the Wound, and the Stroke, and the other for being present, and aiding the other; and they tell you how he was an Aider and an Abettor because he was present, and put the Man upon whom the Assault was made in Terror, which Terror was the Occasion that he could not defend his Life; and made him full as much a Principal as the other that gave him his Death's Wound. And there, my Lords, he citeth another ancient Record, which is *Quarto Libro Assisarum Placito* 25. of an Appeal of Murder by a Woman for the Death of her Husband against Sixteen; four whereof were Principals, and the other Accessories, where the Words are *Presence*, *Force* and *Aid*.

How that will come up to this Case now before your Lordships, I am not to trouble you with the Consideration of, you who have heard the Evidence are best able to judge of it

My Lords, by the same Reason and Rule that one Man may be found guilty of Murder, and another of Manslaughter; one may be found guilty, and the other not guilty. As for Example, if *A.* commandeth *B.* to kill *C.* and afterwards it repenteth him of this Command, and he countermandeth it; yet notwithstanding *B.* doth kill *C.* now *B.* that killed *C.* is guilty of Murder; but *A.* that countermanded it, is not guilty as Accessory; for his malicious Intent did not continue till the murdering Stroke was given, and to make Murder, there must be a continuing Malice till the mortal Wound given. Cases to this Purpose many might be cited; but for a full Authority there is my Lord *Coke* in his Pleas of the Crown, *Fol.* 51.

My Lords, I have no more to say, but that by the same Rule, that one may be found guilty of Murder, and another of Manslaughter for the same Fact, by the same Rule, (as Circumstances may be,) the one may be found guilty of Murder, and the other not guilty at all.

L. H. Stew. Have you any more to say that are of Counsel for the Prisoner?

Sir *Tho. Powys.* No, my Lord, I have nothing further to offer to your Lordships.

L. H. Stew. Have those who are of Counsel for the King any thing to reply to this that is said by the Counsel for the Prisoner?

Mr. Att. Gen. May it please your Lordships, the Question that is proposed, is this:

In a Case where a Man shall murder another, Whether those who are in his Company at the Time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, that which, with all Submission, we would offer to your Lordships is this: We are intrusted by their Majesties, to prosecute for the Death of one of their Subjects; there hath been a Case stated to your Lordships by the Evidence which hath been given before you; That which is mentioned in this Paper has nothing certain in it; we are to imagine a Case, and suppose Facts, and then to argue what will be the Law upon those Facts supposed. When your Lordships are pleased to let us know what it is which your Lordships take to be the Fact of the Case before you, we shall be ready to speak to the Law upon that Case, as it

it becomes us, and as it is our Duty to do; but till the Fact be ſo ſtated by your Lordſhips, and declared to be that which your Lordſhips take to be the Fact of my Lord *Mohun*'s Caſe, we think it not conſiſtent with our Duty to enter into a Debate upon Suppoſals, or upon other Caſes than that which is in Judgment before your Lordſhips.

L. H. Stew. Will your Lordſhips then pleaſe that the Judges give their Opinion?

Mr. Sol. Gen. My Lords, not to trouble your Lordſhips with any Repetition of what hath been ſaid, it is my Opinion, as Mr. *Attorney General* has declared his, That, as this Caſe is ſtated, we are bound not to give any Anſwer to it, unleſs your Lordſhips will pleaſe to tell us what the Caſe is upon the Evidence that hath been given before you.

Mr. Serj. *Thompſon.* My Lords, I deſire to be heard one Word in this Caſe. I take it for granted, that your Lordſhips here are Judges both of Fact and Law in this Caſe, and you are ſo entirely Judges of it, that Nobody can interpoſe in giving their Opinions in relation to your Judgments, what the Fact is, and from the Fact the Law ariſeth. We, that are of Counſel for the King, muſt needs prejudice him as to the Evidence of the Fact that we have given, except we argue that which is the Fact of this particular Caſe, and the Law ariſing thereupon together; which is not neceſſary here, where your Lordſhips are Judges of both; and ſince you are better Judges of them than any one elſe can be, therefore we do not think it our Duty to argue upon a Caſe put *ad dextra*, and *obiter*; and hope your Lordſhips will excuſe us from anſwering what hath been ſaid by the Counſel for the Priſoner; tho' I think it might be eaſily anſwered in every Point; but I ſhall not enter upon the debating of it. For your Lordſhips ſee what Caution we ought to have in relation to our Duty to the Government, which your Lordſhips will always expect we ſhould perform as exactly as we can. When the Fact that hath been proved in this Caſe is ſtated, your Lordſhips then are the proper Judges what it amounteth to in point of Law, or if your Lordſhips deſire that Counſel ſhould argue it, we ſhall be ready to do it.

L. H. Stew. Then my Lords the Judges, what ſay you to it? My Lords here expect your Opinion in this Caſe.

L. C. J. Holt. If your Lordſhips pleaſe, I will repeat the Queſtion; which is this:

In a Caſe where a Man ſhall murder another, Whether thoſe who are in his Company are ſo neceſſarily involved in the ſaid Crime, that they may not be ſeparated from the Crime of the ſaid Perſon, ſo as in ſome Caſes to be found guilty only of Manſlaughter?

My Lords, I ſhall not inlarge upon the Matter, but humbly offer my Opinion to your Lordſhips as generally as the Queſtion. I am of Opinion, that the Crime of thoſe who are in the Company at the Time of the Murder committed, may be ſo ſeparated from the Crime of the Perſon that committeth the Murder, as in ſome Caſes they are only to be found guilty of Manſlaughter. I ſuppoſe your Lordſhips do not expect that I ſhould argue the Caſe, or explain my Opinion upon ſo general a Queſtion, by particular Inſtances, or run into a Conſideration of the different Caſes that may be put upon it, therefore I only deliver this as my Opinion.

L. C. J. Treby. May it pleaſe your Lordſhips, I am of the ſame Opinion; I think the Import of your Lordſhips Queſtion is, Whether there may be a Caſe in which it is poſſible that one Perſon, who is in the Company of another at the Time that he committed Murder, may be guilty of Manſlaughter; and, my Lords, I think a Caſe may fall out, and may be ſo circumſtanced, as that it may be poſſible, that he who did accompany the Murderer, may be guilty only of Manſlaughter. Your Lordſhips only expect our Opinion, and therefore I will not go about to argue it.

Mr. *J. Nevil.* My Lords, I ſhall not ſpend your Time to repeat the Queſtion, it hath been ſo often repeated; but I am of the ſame Opinion with my Lords Chief Juſtices: I muſt concur with them in it, that there may poſſibly be ſuch a Caſe, as that when Murder is committed where others are in Company, he that doth the Thing will be guilty of Murder, and thoſe that were in Company, guilty but of Manſlaughter. There may be ſuch a Caſe.

Earl of *Carliſle.* My Lords, to ſave your Lordſhips Time, unleſs the reſt of the Judges differ from thoſe that have ſpoken their Opinion, I think you need not trouble them to ſpeak to it ſeverally.

Mr. *B. Turton.* We are all of the ſame Opinion, my Lords; we cannot differ in Opinion upon ſuch a Caſe.

Earl of *Monmouth.* My Lords, I humbly beg your Lordſhips leave to propoſe a Queſtion to my Lords the Judges for their Opinions.

Lords. Ay, ay.

L. H. Stew. What is your Queſtion, my Lord of *Monmouth?*

Earl of *Monmouth.* My Lords, the Queſtion is this:

A, *conſcious of an Animoſity between* B *and* C, A *accompanieth* B *where* C *happeneth to come, and* B *killeth him; whether* A, *without any Malice to* C, *or any actual Hand in his Death, be guilty of Murder?*

L. H. Stew. Pray, my Lord, be pleaſed to hand up your Paper, that my Lords the Judges may ſee it.

Earl of *Mulgrave.* My Lords.——

L. H. Stew. What ſaith your Lordſhip, my Lord of *Mulgrave?*

Earl of *Mulgrave.* I only deſire, that the Priſoner at the Bar, if he hath a mind to it, may have his Counſel ſpeak to this Queſtion, before the Judges anſwer it, as was done in the other Caſe.

L. *Mohun.* I deſire, my Lords, my Counſel may have the Queſtion in Writing.

L. H. Stew. Make my Lord a Copy of it.

One Copy was delivered by the Clerk to the Priſoner, and by him to his Counſel, and another to the King's Counſel; and the Original was delivered to the Judges.

L. *Mohun.* Is it your Lordſhips Pleaſure that my Counſel may be heard to this Queſtion?

Lords. Ay, ay.

Sir *T. Powis.* My Lords, the Queſtion that this noble Peer hath been pleaſed to propoſe, is this:

A, *conſcious of an Animoſity between* B *and* C, A *accompanieth* B *where* C *happeneth to come, and* B *killeth him; whether* A, *without any Malice to* C, *or any actual Hand in his Death, be guilty of Murder?*

My Lords, with humble Submiſſion to your Lordſhips, I take it in this Caſe the Law is very clear, That as this Caſe is put, he that was in Company when the Murder was committed, under theſe Circumſtances, is not guilty of any Crime: But without queſtion he is not guilty of Murder.

My Lords, Malice is ſo abſolutely neceſſary to Murder, either expreſs, or that which the Law calleth Malice implied, that there can be no Caſe where Murder can be committed without it; no Indictment can ever be good, unleſs *Ex malitia ſua precogitata* be alledged in it; becauſe this is abſolutely eſſential to Murder.

But, my Lord, if ſo be a Man that is preſent, not deſigning, or foreſeeing that unhappy Accident that doth fall out between his Friend with whom he is in company, and another Perſon that came accidentally to them, tho' Malice was between thoſe two, God forbid he ſhould be guilty, if he did neither foreſee it, nor any way acted in it.

He that is preſent muſt be involved in the Crime, either by ſome way aiding, abetting, or contributing to the Death of the Man, or there muſt be ſome precedent Combination and Agreement to do that Act which at that time was done; and that muſt be plainly and clearly proved: For his acting, his ſtanding by innocently and harmleſly, is ſo great an Evidence of his not concurring, that it muſt be a mighty Proof of Malice that muſt convict that Man of a preceding Agreement to do the Fact; and if it doth not appear plainly and manifeſtly, that he agreed before-hand, or acted then, and abetted and contributed to the Thing; I ſay, unleſs this be clear and manifeſt, it is no Queſtion but in Law he is innocent of the Murder.

For in ſuch a Caſe it is plain he never had prepenſed Malice expreſs, nor is there any Evidence of that which the Law calleth Malice implied; which is when a Man killeth another without Provocation, that is, when he that doth the Act had no Provocation, or killeth an Officer in the Proſecution of his Office, That the Law calleth Malice implied. But then that is never but in the Perſon that did the Act, and not in the Perſons who were preſent at that time, unleſs before-hand they had agreed to do that Act; and therefore they cannot be guilty of Murder.

And this, my Lords, is what I humbly offer to your Lordſhips Conſideration, in relation to the Caſe put by that Noble Lord.

Mr. *Hawles.* Will your Lordſhips pleaſe to favour me with a Word on the ſame ſide with Sir *Tho. Powys*, and I ſhall be very ſhort in the matter.

The King's Counſel did complain that the laſt Caſe was not fully ſtated, and therefore they could not ſpeak to it; my Lords, with Submiſſion, this Caſe is fully ſtated: there was nothing in the other Caſe ſaid of Malice between him that was murdered, and him that killed him; but here it is ſaid, That the Perſon preſent was not conſcious of any Malice, nor had any manner of hand in the doing of it: And then, with Submiſſion, my Lords, upon the Queſtion, Whether he was not guilty of Murder? If this was a ſpecial Verdict found by twelve Men, and referred to the Judges, I do not at all doubt but their Judgment would be, That he was not guilty. For tho' in a Special Verdict, where Malice is not found, the Priſoner would be acquitted; yet if it be expreſly found in the Verdict that he did not know of any Malice between them, then, with Submiſſion, there would be no Colour to find him guilty of any thing.

A Lord interrupted him, and ſaid, The Caſe was put of one conſcious of the Malice.

Mr. *Hawles.* My Lords, I beg your Pardon, I confeſs it is ſo, I did miſtake it; but, with Submiſſion, that will not much alter the matter. If he was conſcious, that will not make him guilty; for that Conſciouſneſs of his is no matter of Crime: if he did not act any thing, or agree to do any thing before-hand, but only was in Company with the Perſon that had Malice againſt another, that will not make him guilty of any Crime whatſoever.

Mr. *Price.* My Lords, I ſhall ſpeak but one Word to it; I obſerve the great Streſs of the Caſe lieth upon the Word being conſcious of the Malice between *B* and *C*. Now as to that, with Submiſſion, I conceive, and am of Opinion, that as this Caſe is, *A* is not guilty of Murder, and for Authority, I ſhall rely upon the Caſes in *Stamford*'s *Pleas of the Crown, Fol.* 40. and my Lord *Coke*'s *Pleas of the Crown, Fol.* 51. The Caſe is this, If a Man happen to be in Company where Murder is committed, or Felony, and he cometh not there on purpoſe, or by confederacy to do it, in that Caſe, tho' Murder be committed, and he doth not endeavour to part them, this is no Murder in him, for he is puniſhable by Fine and Impriſonment, if not an Infant; but if he was an Infant, he is not puniſhable at all, for he is not Conuſant of the Law in ſuch a Caſe. But in this Caſe, except Malice prepenſed, expreſs, or implied, be proved, without doing any thing or abetting, he is not guilty of Murder.

L. H. Stew. Gentlemen, you that are of the King's Counſel, have you any thing to ſay to this Queſtion?

Mr. Att. Gen. My Lords, here is a Caſe put which I hear from the Counſel on the other ſide, is certainly enough ſtated. My Lords, if this be ſtated to us, as that which is agreed to be the Fact of the preſent Caſe, we are ready to ſpeak to it; but if this be not taken by your Lordſhips to be my Lord *Mohun*'s Caſe, and as ſuch ſtated to us, then we muſt humbly beg to be excuſed, I know your Lordſhips will be tender in this Matter, and as well pleaſed that we hold to that which we conceive to be our Duty in reference to that Station in which we ſerve the King, as with any Forwardneſs in us to anſwer Queſtions: And therefore we beg your Lordſhips Excuſe for ſaying nothing more to it.

Earl of *Monmouth.* My Lords, I did not propoſe it as a Caſe ſtated and agreed by your Lordſhips, it is only a Caſe particularly ſtated for my own Satisfaction.

Earl of *Mulgrave.* My Lords-----

L. H. Stew. My Lord of *Mulgrave.*

Earl of *Mulgrave.* If your Grace pleaſe, let the King's Counſel know, that they are not to aſk you the Queſtion, Whether the Lords are agreed what the Caſe is? They are to anſwer ſuch Queſtions as are propoſed, and not to aſk any ſuch Queſtion,

Mr. Att. Gen. My Lords, with that noble Lord's Pardon, I did not aſk any Queſtion; all that I ſaid was, That when a Caſe is agreed to, and ſtated by your Lordſhips to be the preſent Caſe, we would be ready

to ſpeak to it, and till we receive that Intimation from your Grace, we ſhall think ourſelves excuſed from giving any Anſwer to other Queſtions.

L. H. Steward. My Lords, I think we muſt go on, and if any Lord has any more Queſtions to propoſe, he may propoſe them.

E. of *Nottingham.* My Lords ——

L. H. Steward. My Lord of *Nottingham.*

E. of *Nottingham.* Your Lordſhips will not certainly require of the King's Counſel to anſwer any Queſtions that they think improper for them to ſpeak to; but when a Queſtion hath been propoſed by any noble Lord, to which the Counſel for the Priſoner hath been heard, and the King's Counſel think not fit to ſpeak to it, there is nothing more requiſite, but that in the Preſence of the Priſoner (as the Law requireth it ſhould be) you do demand the Opinion of the Judges.

L. H. Steward. What ſay you to it, my Lord Chief-Juſtice?

L. C. J. Holt. If your Lordſhips pleaſe, I will repeat the Queſtion.

A, *conſcious of an Animoſity between* B *and* C, A *accompanieth* B *where* C *happeneth to come, and* B *killeth him*; *Whether* A, *without any Malice to* C, *or any actual Hand in his Death, be guilty of Murder?*

And, my Lords, as this Caſe is ſtated, I do conceive, that *A* is not guilty of the Murder, for it appeareth the Meeting was caſual, and there was no Deſign in *A* againſt *C*, and therefore though *A* did know of the Malice between *B* and *C*, yet it was not unlawful for *A* to keep Company with *B*, but he might go with him any where, if it was not upon a Deſign againſt *C*.

Therefore I take it as this Caſe is put, that *C* came accidentally into the Company where *A* and *B* were, and then, without any Deſign in *A*, *B* killeth *C*. This is not Murder, indeed no Offence in *A*.

L. C. J. Treby. If it pleaſe your Lordſhips, as this Caſe is put, I think it is not an Offence of Murder or Man-ſlaughter in *A*; it dependeth upon the Words, as the laſt Queſtion did. For the former Queſtion was put generally, Whether there might not be a Caſe found or framed, wherein one might be guilty of Murder, and the other of Man-ſlaughter? So here it dependeth upon the Word [*Happeneth*], which I take to ſignify, (as my Lord doth) a caſual coming into, or being in the Company.

Now, my Lords, when *B* had communicated to *A* this malicious Purpoſe to kill *C*, it ſtood uncertain, whether he to whom *B* had communicated it did conſent; if he had any way declared his Conſent, that he would go to ſuch a Place, and ſtay there with *B* for ſuch a Purpoſe, then it had been Murder in both; but if he merely was ſilent, and only kept *B* Company, perhaps with an Intent to diſſuade him from it, or poſſibly without any Conſideration at all, and then the Perſon intended to be killed accidentally came by, and is killed by *B*, *A* doing nothing towards it: In that Caſe, it is neither Murder nor Man-ſlaughter in *A*.

Mr. *J. Nevil.* My Lords, as this Caſe is, it ſeemeth to be mere accidental the coming of *C* into their Company, for it is ſaid, *Happeneth to come*; and ſo though *A* did know that there was an Animoſity between *B* and *C*, yet declaring no Intent of going with *B* to that Purpoſe, but coming with *B* into a Place where *C* accidentally came or happen'd to be, between whom and *B* there is a Quarrel, and *C* is killed; I do not take it at all that *A* is concerned, but merely as any other Perſon that accidentally was there, and in that Caſe he cannot be guilty of Murder or Man-ſlaughter, or any other Crime.

E. of *Devonſhire.* My Lords——

L. H. Steward. My Lord *Devonſhire.*

E. of *Devon.* If the reſt are of the ſame Opinion, you need not give hem any farther Trouble, I think.

Judges. We are of the ſame Opinion.

E. of *Scarborough.* My Lords——

L. H. Steward. My Lord of *Scarborough.*

E. of *Scarborough.* I humbly beg your Lordſhips Leave, that I may offer a Queſtion to your Lordſhips, to be propoſed to the Judges, and the Queſtion is this:

Whether if A *heard* B *threaten to kill* C, *and ſome Days after* A *ſhall be with* B *upon ſome other Deſign, where* C *ſhall paſs by, or come in the Place where* A *and* B *are, and* C *ſhall be killed by* B; A *ſtanding by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on* A's *Part againſt* C; *whether* A *will be guilty of the Murder of* C?

L. H. Steward. Pray, my Lord, give your Paper to the Clerk.

(*Which was done.*)

L. H. Steward. My Lord *Mohun*, doth your Lordſhip deſire that your Counſel may have a Copy of this Queſtion, and be heard to it?

L. *Mohun.* Yes, my Lord, if you pleaſe.

Then a Copy was given to him for his Counſel, and another to the King's Counſel, and a third the Judges had.

Sir *Tho. Powys.* Will your Lordſhips pleaſe to favour me with a few Words, and I ſhall trouble your Lordſhips very little, becauſe I have ſaid that already to your Lordſhips which will be an Anſwer to a good Part of this Caſe: The Caſe is this:

Whether if A *heard* B *threaten to kill* C, *and ſome Days after* A *ſhall be with* B *upon ſome other Deſign, where* C *ſhall paſs by, or come in the Place where* A *and* B *are, and* C *ſhall be killed by* B; A *ſtanding by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on* A's *Part againſt* C; *whether* A *will be guilty of the Murder of* C?

My Lord, with humble Submiſſion, we do take it, that the Law in this Caſe is likewiſe very clear, that *A* is not guilty of Murder: For as this Caſe is put, there doth not appear (nay, the contrary doth appear) that he had any manner of Malice to this Man that was killed, nor any Hand in the Killing of him: And, as I ſaid before to your Lordſhips, (and I hope the Judges will verify us in that, and your Lordſhips will be of the ſame Opinion) there can be no Caſe wherein a Man ſhall be guilty of Murder, but where there is Malice againſt the Perſon ſo murdered, or ſome way abetting and aſſiſting in the Killing of him, or what the Law calleth *Implied Malice.*

But in this Caſe that is now put, there is neither expreſs Malice, but the contrary appearing, nor any implied Malice, which is by Conſtruction of Law; the Perſon that was by, and heard *B* threaten *C* before, yet doth no way aid or aſſiſt to the Killing of him; and therefore I think, with Submiſſion, the Law, and all our Law-Books, and Reaſon itſelf, are clear for the acquitting of *A* in this Caſe.

Mr. *Hawles.* My Lords, I think the Reſolutions that have been given in the Caſes before, will warrant us in our Opinions in this, that *A* is not guilty of Murder in this Caſe: For I think it was ſaid by the Judges, That notwithſtanding a Man knew another had a Deſign upon a third Perſon, yet it was lawful to keep Company with him, if he did not join with him in the Deſign. Now here it doth appear, that *A* keepeth *B* Company, but not upon that Deſign, for he had no Malice to *C*, nor had any Hand in his Death, and *C* cometh in by accident into the Company or Place where they are: With Submiſſion, my Lords, *A* is totally not guilty, for there was no Malice in him; and though he was there, he was there upon his lawful Occaſions; and if they two fight, the beſt Courſe he can take is to ſtand ſtill and do nothing; and therefore he cannot be guilty of Murder or Man-ſlaughter.

Mr. *Price.* My Lords, I have but this Word to ſay, His being there was lawful; *C* cometh there but by accident, and when they two do fight, his not parting of them doth not make him guilty of the other's Death; here is no Malice, therefore he is not guilty of Murder, and he hath done nothing towards the Fact, therefore he is not guilty of Man-ſlaughter.

L. H. Steward. Will you ſay any Thing to this Queſtion, you that are of the King's Counſel?

Mr. Att. Gen. My Lords, we are ready to ſpeak to the preſent Caſe, when we receive Intimation from your Lordſhips, that what is put is the preſent Caſe.

Mr. Serj. *Thompſon.* My Lords, if they put a Caſe of Fact to be argued as a Caſe of Law, and from time to time alledge Facts which are not in the Caſe before us, we cannot ſpeak to them.

Mr. Att. Gen. My Lords, we are ready to argue the Caſe of the Priſoner at the Bar when it is ſtated; but till then, we humbly beg your Pardon: We think we are not bound to ſpeak to other Caſes.

L. H. Steward. My Lord Chief-Juſtice, What ſay you to it?

L. C. J. Holt. If your Lordſhips pleaſe, I will put the Queſtion:

Whether if A *heard* B *threaten to kill* C, *and ſome Days after* A *ſhall be with* B *upon ſome other Deſign where* C *ſhall paſs by, or come in the Place where* A *and* B *are, and* C *ſhall be killed by* B; A *ſtanding by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on* A's *Part againſt* C; *whether* A *will be guilty of the Murder of* C?

My Lords, I am of Opinion that *A* in this Caſe will not be guilty of Murder or Man-ſlaughter: For it doth not appear by the ſtating of the Caſe, that *A* did conſent to the Deſign, or in any wiſe contribute to the Fact.

L. H. Steward. My Lord Chief-Juſtice *Treby.*

L. C. J. Treby. My Lords, I take this Queſtion to be the ſame in Subſtance as to the Point in Law with the laſt; and am of Opinion that *A* is not guilty of Murder or Man-ſlaughter.

Mr. *J. Nevil.* I am of the ſame Opinion.

L. H. Steward. If all the reſt of you are of the ſame Opinion, you may ſpare yourſelves the Trouble of delivering it particularly.

Judges. We are all of the ſame Opinion.

[*Then there was a little Pauſe; and afterwards the Earl of* Kingſton *ſtood up.*]

E. of *King.* My Lords, I deſire for my own private Satisfaction to know,

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happeneth to be killed, (when the Perſon who knew of that Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual Hand in his Death?

L. H. Steward. My Lord, I muſt crave your Excuſe, there is another Queſtion to precede this.

E. of *Devon.* My Lords, I had a Queſtion to aſk; but it being much to the ſame Purpoſe with the two laſt, I think it better to wave it, for there hath been given an Anſwer to it already.

L. H. Steward. Then, my Lord of *Kingſton*, will you be pleaſed to deliver up your Paper to the Table? [*Which was done.*

L. H. Steward. My Lord *Mohun*, Do you deſire your Counſel may have a Copy of this Queſtion?—E. of *Mulgrave.* My Lords——

L. H. Steward. My Lord of *Mulgrave.*

E. of *Mulgrave.* I deſire your Grace will hear the Queſtion. Pray let it be read, that we may know what it is.

L. H. Steward. Read it.

Cl. of Crown. Readeth.

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man who happeneth to be killed, (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual Hand in his Death?

E. of *Mulgrave.* My Lords——

L. H. Steward. My Lord of *Mulgrave.*

E. of *Mulgrave.* I think, my Lords, in a Caſe of this Nature we cannot be too exact: I humbly conceive that is not a proper Queſtion to be put, therefore I move that we may adjourn to conſider of it, whether it ſhall be put or not, if that Lord do inſiſt upon it.

L. H. Steward. My Lord of *Kingſton*, Doth your Lordſhip inſiſt on this Queſtion being put?

E. of *King.* Yes, my Lords, I do, and I muſt inſiſt upon it; for I think I cannot give my private Opinion in this Caſe without Satisfaction in it.

Lords. Then Adjourn, Adjourn.

L. H. Steward. This Court is adjourned into the Houſe of Lords.

Then the Lords went back to their own Houſe in the ſame Order, and debated this Matter amongſt themſelves for about an Hour.

Between ſix and ſeven in the Evening the Lords returned into the Court in the ſame Order, and being ſeated on their Benches, and his Grace in the Chair before the Throne, they proceeded thus:

Firſt, Proclamation was made for Silence.

L. H. Steward. My Lord *Chief-Juſtice* and you the Judges——

L. *Cornwallis.* My Lords——

L. H. Steward. My Lord *Cornwallis.*

L. *Cornwallis.* My Lord, Before your Grace giveth any Directions, I think you ſhould call the Priſoner.

L. H. Steward. Is not the Priſoner at the Bar?

L. *Cornwallis.*

L. *Cornwallis.* No, my Lord.

L. H. Stew. Call for the Priſoner.

[*Then Proclamation was made for the Governor of the* Tower *to bring forth the Priſoner, and he was brought as before.*]

L. H. Stew. I am to let you that are of Counſel for the King and the Priſoner know, That if any Queſtion be put by any of my Lords, which any of you ſhall not think fit to give an Anſwer to, my Lords will take it for granted, either on the one Part or on the other, that the Reaſon is, becauſe it is not neceſſary to give any Anſwer; and then they will proceed to have the Anſwer of you, my Lords the Judges. And now for myſelf, I muſt deſire your Lordſhips will give me leave to come down again to the Wool-pack.

Lords. Aye, aye.

(Then his Grace came down, and ſeated himſelf on the Wool-pack.)

L. H. Stew. My Lord of *Kingſton*, Will you pleaſe to propoſe your Queſtion?

Earl of *Kingſton.* My Lord, my Queſtion is this, which I deſire the Judges Opinion in for my own Satisfaction:

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happeneth to be killed (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord *Mohun*, Do you deſire your Counſel may have a Copy of that Queſtion?

L. *Mohun.* Yes, if your Lordſhips pleaſe.

L. H. Stew. Read it aloud, and deliver a Copy to my Lord.

(The Queſtion was read by the Clerk of the Crown, and one Copy of it delivered to the Priſoner's Counſel, and another to the King's Counſel, and a third to the Judges.)

L. *Mohun.* Is it your Lordſhips Pleaſure, that my Counſel be heard to this Caſe?

Lords. Ay, ay.

Sir *T. Powis.* The Caſe that is put, my Lords, is this:

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happeneth to be killed (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, though he had no actual Hand in his Death?

My Lords, I ſhall not inſiſt upon the ſame Privilege that the King's Counſel did even now do, to decline ſpeaking to any Caſe that your Lordſhips ſhall put, But I hope your Lordſhips will permit me to ſay, That I do not admit this to be the Caſe of my Lord *Mohun*, and I hope that my ſpeaking to it ſhall not be taken as any Admiſſion that this is his Caſe. But as this Caſe is put with that Allowance, that I ſpeak to it not as his Caſe, I do take it, that this Perſon thus preſent at the Killing of the third Man, is not Guilty of Murder.

My Lords, there are but two Circumſtances in the Caſe that can draw him into any Danger:

The *Firſt* is, That he knew another Perſon had a Deſign to make an Aſſault upon a third Man. And

The *Second* is, That he who had the Knowledge of this Deſign, was alſo preſent when upon that Aſſault that third Perſon happened to be killed.

But, my Lords, I do take it, that in this Caſe neither of theſe Ingredients will make this Man Guilty of Murder.

As to the *Firſt*, The knowing that a Man has a Deſign to make an Aſſault upon a third Perſon, That taken by itſelf is no Crime. It frequently happeneth, that a Man heareth what others threaten, that they will aſſault and beat ſuch an one; I may know that another doth ſo deſign, and that he will watch his Opportunity for the doing of it; and yet my mere Knowledge, my mere knowing of it, doth not make me Guilty of any Crime, tho' I do not endeavour to prevent it.

I confeſs, it doth become a good Man upon ſuch Knowledge to do all that he can to prevent ſuch Beginning of Miſchief; but if he doth not prevent it, that is no Crime.

The *Second Matter* is, That tho' he did know of this Deſign, he was alſo ſo unfortunate as not to prevent it; nay more, he was preſent when the Aſſault was made, and that Aſſault is attended with the Death of the Party aſſaulted; but he never acted in it, never abetted it. Take all this together, and yet he is not Guilty of Murder, nay, perhaps not of any Crime, at moſt only of a Miſdemeanour.

For it is no more than this: I knew another Perſon did intend to aſſault a third Man; I was preſent when he did aſſault him, but did not prevent it either before he made it, tho' I knew he deſigned it, nor whilſt he was making the Aſſault upon which the Man is killed. That is all that this Thing doth amount to; and no Man can ſay, with humble Submiſſion, That this can involve me in the Crime of Murder.

It is true, if I command *A* to beat *C*, and he according to my Command doth fall upon him, and ſo beat him that he dieth; this maketh me Guilty of his Death, becauſe what is done by that Command of mine is my doing; therefore tho' I only commanded him to beat him, yet he dying upon that Beating, which was made purſuant to my Command, I that gave the Command muſt anſwer for it, and am Guilty of all that followeth thereupon.

But if I only know that another Perſon deſigneth to do ſuch a Thing, and am neither commanding, aiding nor aſſiſting in the doing of it, but only preſent at the Time, but did not interpoſe to prevent it; that doth not make me ſuch an Agent in this Matter, as that I ſhould be any ways Guilty of his Death, if it doth enſue. I take it, this Caſe cometh to no more than this; there is no Malice precedent, no Sort of abetting, aiding or aſſiſting, but a bare declining to prevent the Aſſault, and that will not amount to any Thing that is Capital: If it be any Offence, it can only be conſtrued as a Miſdemeanour, but neither Murder nor Manſlaughter.

Mr. *Hawles.* If your Lordſhips pleaſe to ſpare me one Word on the ſame Side: It is no Manner of Crime for a Man to know, that another doth deſign to lie in wait to murder a third Perſon, much leſs to aſſault him.

There is but one Caſe that I know of in Law, where the Knowledge of an ill Deſign, without Diſcovery and Endeavour to prevent it, is an Offence, and that is in the Caſe of High-Treaſon; and yet even there the bare Knowledge doth not make a Man Guilty of Treaſon: And it was a hard Caſe if it ſhould; for it is not in the Power of any innocent Man to ſay, that he ſhall not know of an ill Deſign, either of Murder or High-Treaſon.

It is true, in the Caſe of Treaſon, if I conceal it, it is a Crime; but it is not Treaſon, but only Miſpriſion of Treaſon; which is Forfeiture of Lands, and perpetual Confinement in Priſon during my Life: But it doth not extend to any other Matter; for tho' I know, and do conceal it, that is no Manner of Crime at all, tho' that is farther than this Caſe putteth it; for it only goeth to the Knowing, and not to the Concealing.

And, my Lords, with Submiſſion, this would be likewiſe a hard Caſe, if the Law was otherwiſe: For ſometimes a Man may apprehend he knoweth of a Deſign, when there is no ſuch Thing deſigned. Your Lordſhips know, where a certain Gentleman ſaid he would kill any Man that did oppoſe him, when he neither deſigned it, nor executed any ſuch Purpoſe: And in ſuch a Caſe, tho' it had been well done of the Perſon that heard of the Deſign, to have gone and informed the third Perſon (and if he had, I believe your Lordſhips would have had no Occaſion of a Trial at this Time, for it might have been determined another Way); yet his not doing it is not a Crime.

Then further, my Lords, a Perſon's being preſent at ſuch a Time is his Misfortune, but not at all his Fault; he can no more help the Action, than he could the ill Deſign, or his own Knowledge of that Deſign. It is a complicated Misfortune, both to know it, and be preſent at the Execution of it; but without having any Hand in it, it can be no Offence: For indeed, it is as to him no more than a Man's being preſent that did not know of ſuch a Deſign. And if this was a Special Verdict, upon an Indictment for Murder, I doubt not but my Lords the Judges would give their Judgment, that the Defendant was Not Guilty.

Mr. *Price.* I have only this Word to add, my Lords: I do take it, That the bare Privity of this Deſign, with the bare perſonal Preſence of him that was ſo privy when this Act is committed by another Man, will not amount to make him Principal; and ſo he will not be Guilty of Murder: For we find, that to make a Man Principal in Murder, there muſt be aiding and abetting, and only being preſent will not do it. Now the aiding and abetting muſt be, either by commanding or aſſiſting, or putting the Perſon aſſaulted in Terror or Fear; or he muſt be there ready, and deſigning to aſſiſt in Caſe of Oppoſition. Theſe are Facts that the Law requireth to the making a Man Principal in Murder: And bare Privity, with a Mind to aſſault, and bare Preſence when upon the Aſſault the Man is killed, will not amount to make a Man Principal, and conſequently Guilty of Murder.

L. H. Stew. Mr. Attorney, Do you think fit to ſay any thing to what the Counſel for the Priſoner have alledged?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Nor any other of the King's Counſel?

Mr. Sol. Gen. No, my Lord.

L. H. Stew. Are ye all of that Mind?

Mr. Serj. *Tremain.* I am of that Mind, my Lord.

Mr. Serj. *Thompſon.* And ſo am I.

L. H. Stew. Then, my *Lord Chief-Juſtice*, what ſay you to it?

L. C. J. Holt. If your Lordſhips pleaſe, I will repeat the Queſtion:

Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happeneth to be killed (when the Perſon who knew of the Deſign is preſent) be guilty in Law of the ſame Crime with the Party who had the Deſign, and killed him, tho' he had no actual Hand in his Death?

My Lords, I am of Opinion, this is no Murder nor Manſlaughter; he that knew of the Deſign of aſſaulting, only happened to be preſent when the Aſſault was made, and the Party killed; but if he did not contribute to his Death, he is not Guilty of Murder. This Queſtion is much to the ſame Effect with the Queſtion that was put before: But if the Perſon that knew of this Deſign did adviſe it, or agree to it, or lay in wait for it, or reſolved to meet the third Perſon that was killed, with him that killed him, it would be Murder; But as this Caſe is put, it is neither Murder nor Manſlaughter.

L. C. J. Treby. My Lords, I am humbly of the ſame Opinion, as this Caſe is put. The Perſon to whom this Matter of the Deſign to lie in wait to aſſault another is communicated, is only paſſive; he only receiveth the Notice of it, and doth nothing towards the Fact. But if by going to the Place, directing, perſuading, promiſing Aſſiſtance, or encouraging, he had diſcovered his Conſent, or had lain in wait himſelf, then he had been Guilty: But if he did nothing, but only receive this Notice, and then the Perſon aſſaulted happened to come by, and is killed in his Preſence, this is but an Accident, and doth not involve him in the Murder. And I think, in Effect, it is the ſame with the ſecond Queſtion that was propoſed. There it was put, of one that had an Animoſity againſt another; here it is put, of one that lay in wait to aſſault him: There it was put, of accompanying him to the Place where the Party was killed; here it is, of his being killed in his Preſence: So that the Reſolution muſt be the ſame in this Caſe that was given in that.

Mr. J. *Nevill.* My Lords, I ſhall not ſpend any of your Lordſhips Time: I am of the ſame Opinion with my Lords that ſpoke before, and for the Reaſons that they have given.

L. H. Stew. If they are all of the ſame Opinion, I ſuppoſe your Lordſhips will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the ſame Opinion.

L. H. Stew. I am now to know of your Lordſhips, Whether there be any of you that have any more Queſtions to aſk?

E. of *Nottingham.* My Lord——

L. H. Stew. My Lord of *Nottingham*.

E. of *Nottingham.* The Queſtion that I have to propoſe to your Lordſhip is the ſame that hath been already offered to you, but with ſome little Variation; for I do find, my Lords the Judges do interpret this Perſon's being killed in the Preſence of another, to be upon an accidental Meeting. I would propoſe to your Lordſhips, that the Judges may anſwer what the Law would be, when a Perſon, knowing of the Deſign of another

ther to lie in wait to assault a third Man, accompanied him at that Time that the Design is to be executed, Whether it be the same Crime in the one as the other?

L. H. Stew. If your Lordship have your Question in Writing, pray deliver it in.

E. of *Nottingham.* I will immediately, my Lord.

[*Then he did put it in Writing.*]

L. H. Stew. Will your Lordship please that it may be handed to the Table? [*Which was done.*]

L. H. Stew. Read it.

Cl. of Cr. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that Time in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord *Mohun*, Do you desire a Copy of this?

L. *Mohun.* Yes, if your Lordships please.

L. H. Stew. Carry my Lord one.

[*Then Copies were delivered as before.*]

L. H. Stew. Well, Sir, what say you to that Question?

Sir *Tho. Powys.* The Case that is now propounded is this:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that Time in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

My Lords, (I shall not, though I am of Counsel for this noble Lord) decline or refuse speaking to this Question; still, my Lords, with that Saving which I know your Lordships will allow me, that I am very far from admitting that this, which goeth much farther than the last Case, is the Case of my Lord *Mohun.* Whether your Lordships will permit the King's Counsel, who have declined speaking to any of the Cases hitherto, as not being, as they pretend, my Lord's Case, now to speak to this which we do much less admit to be so, than they did the others, will be in your Lordships Pleasure to determine, but I shall not decline to speak to it, with that Saving.

And truly, my Lords, with humble Submission, I do take it, that as this Case is put, the Party who accompanied the other in such Manner as in this Case it is stated, is not guilty of Murder. I know it was intended by that Noble Lord who proposed the Question, that it should be admitted, that beyond all Doubt the Fact was so as here it is stated; and then the Question is, What the Law will be where the Fact is thus admitted and agreed to on all Sides: And if there was such a Case, (for, my Lords, I speak to this as a Case at large) if there was such a Case where the Fact is beyond all Question made out to be so as it is here stated; yet I take it that in a Case of Life, which is the Case now before your Lordships, the Party will not be guilty of Murder.

My Lords, here is a further Circumstance added in this Case than what hath as yet been inserted into any of the other Cases; that is, That the Party knoweth of the Design of him that he accompanieth to assault a third Man, and doth accompany him in his Design, and then is present when the Design is executed; yet all these together, will not, as I humbly conceive, with Submission to your Lordships Judgment, make this to be Murder, because it doth not appear in this Case that he did accompany him with an Intention to execute this Matter, or to aid and assist him in the doing of it: There is no such Circumstance in the Case, and 'tis that which must be the Thing that will draw him in to be guilty of Murder.

For if two Men (to put a Case, which I hope I may do, with your Lordships Pardon, to explain myself) should be travelling upon the Way, and one of the Persons should acquaint the other, that at such an Inn, there is a Servant that he is resolved to beat, and this Person that has this Matter imparted to him, doth accompany the other in the Journey (which I take it answereth the Knowing the Design, and Accompanying him in the Design), and when they come to the Inn, the Thing is executed in the Presence of the Party that knew of such a Design, and it doth fall out that Death doth ensue upon it, unless he that did accompany him did some way or other act, contribute, or assist in the doing of it, it doth still remain a thing whereof he had only Privity and Knowledge, which he had done well, especially (in regard of the Consequence of it) to have prevented; and he is highly blameable, that he would accompany a Man who had such a Design to do an unlawful Act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be Murder in him; for I must insist upon that in Point of Law, that to make any thing Murder, there must be prepensed Malice in the Person that is to be found guilty of it, or some precedent Agreement to do it, or some Act of Aiding or Assisting of the Person who doth it; but as this Case is, here is nothing of Malice doth appear, or that the Person who accompanied the other in his Design had any sort of Malice against the Person assaulted. And it doth not appear that he did any way assist in the doing of it. He was present at the Time when the other executed the Design he had imparted to him, but he never joined in it, nor had any Malice precedent, nor did assist or do any Act at that Time; and therefore I take it in this Case, which (as I said) I am very far from admitting to be my Lord *Mohun*'s Case, that the Party who accompanied the other is Not Guilty.

Mr. *Hawles.* My Lords, Though we who are of Counsel for this Noble Lord, the Prisoner, do not think this Case, that is put, to be his Case, for, with Submission, if the Indictment be looked upon, your Lordship will find—

L. H. Stew. Sir, I must stop you there, you are not to tell my Lords what your Opinion is as to the Fact, for of that my Lords are the Judges; you are to take the Case fairly, as a Case put, and you are to inform my Lords what the Law, in your Opinion, would be upon such Case. It is not before you, but before my Lords only, to consider whether this be applicable to my Lord *Mohun*'s Case or not.

Mr. *Hawles.* If your Lordship please, I shall observe your Directions in that Matter, and with humble Submission, this is not Murder in him who accompanieth the other, as this Case is put; for in every Case of Murder the Indictment must be either, that he actually killed him, or aided and assisted him that did kill him. But, with Submission, there is neither of these in this Case.

He did know of the Design, there is no Crime; he did accompany him in it, that is, he bore him Company at that Time; he went with him to the Place where he executed his Design, but he did nothing when he came there to further, promote, or encourage the Execution of it; and therefore it can never make him Principal, nor Accessory to the Murder.

Mr. *Price.* I shall only say this, my Lords, that I take it, that the bare going with him in this Design, without doing any Act, doth not involve him in the Confederacy, as Aiding and Abetting. Something must be done or said; either he must assist or advise, or otherwise he cannot be Principal, and consequently cannot be guilty of this Murder.

L. H. Stew. Mr. *Attorney*, have you any thing to say to this?

Mr. Att. Gen. My Lords, we that are of the King's Counsel do not desire to be heard to this Case neither.

L. H. Stew. I do not hear you, Sir, what you say.

Mr. Att. Gen. My Lord, we do not desire to speak to it.

L. H. Stew. Then, my Lord Chief Justice.

L. C. J. Holt. This is the Question:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen, that the third Person be killed at that Time in the Presence of him who knew that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had that Design, and killed him, though he had no actual Hand in his Death?

My Lords, as for this last, I desire to make some Observations upon the Words, *Had no actual Hand.* By these Words, I suppose, is meant, he did not draw his Sword, or lay any Hand upon the Person slain, or give any actual Assistance to the other Person at that time when the Third Person is slain, but was only in Company, and a Looker-on.

E. of *Nottingham.* My Meaning in those Words is, That with his Hand he gave no Stroke.

L. C. J. Holt. That, my Lords, I take to be the Meaning, he did not give an actual Stroke, nor held the Person whilst the other killed him, nor used any Violence.

Now, I am of Opinion, my Lords, that this is Murder in the Person that did accompany the other in the Design. For he being acquainted with the Design, and knowing of the Intention of the Party to commit Murder, or do an unlawful Act, upon which Death might ensue, accompanying him in that Design, he shews an Approbation of it, and gives him greater Courage to put it in Execution; which is an Aiding, Abetting, Assisting, and Comforting, which are the Words used in such Indictments, and so my humble Opinion is, it is Murder in that Person that accompanied the other, as well as in him that did the Fact.

L. C. J. Treby My Lords, as this Case is, I think the accompanying of him in that Design (which are the effectual Words upon which the Question turneth) is Murder.

Here is, first of all, the Party that designeth the Assault, and he doth, pursuant to that Design, make this Assault, and thereupon doth kill the Third Man; this undoubtedly is Murder in him, for here was Malice prepensed, an Intent of Bodily Hurt to the Party, and in Pursuance of this Intent, Death ensueth; this is unquestionably Murder in him.

Then the Question is, what Crime it is in him to whom this is made known, and who accompanied the other in that Design, knowing of it? I take this to be a Consent to the Design, and to the Execution of it. It is more than knowing and not revealing of it, though that was his Duty to have done (and so the Counsel for the Noble Lord did admit, that it was a Misdemeanor in him not to hinder such a Breach of the Peace).

But here, I say, is more than that: He goeth with him to the Place, and accompanieth him in order to the executing the Design, and this is an Aiding and Abetting of it. If a Man say to another, I intend to assault and beat such a one; come along with me, stand by me, and see it done; and the other consenteth, and accordingly goeth along with him, and accompanieth him while he beats and kills the Man; this is an Approving, Encouraging, and Emboldening of him in his mischievous Purpose, and shews such concurring Malice in that other Person, as renders him guilty of the same Crime with him that with his Hand and Weapon beat and killed the Man.

Mr. *J. Nevil.* My Lords, as this Case is, and as I take the Law to be, this is Murder. It is a Case of one's lying in wait, and another Person doth accompany him in the Design, he that did design the lying in wait having told it to him, and then he is present at the Execution. I take it as Law, if the Party is killed, he that is present, and cometh with the other upon that Design, shall be taken to come to assist or abet the other, or defend him if any thing of Opposition should happen, and that I take to be Murder.

L. H. Stew. Are you all of the same Opinion?

Judges. We are all of that Opinion, it is Murder in both in that Case.

E. of *Devon.* My Lords——

L. H. Stew. My Lord Steward.

E. of *Devon.* My Lords, I desire they may all give their Reasons, as well as their Opinions, as this Case is.

Mr. *J. Gregory.* My Lords, I am humbly of the same Opinion with my Lords Chief Justices that spoke before me, that this is Murder, and my Reason is this: First, He knew of the Design, which was an unlawful Design; then he accompanied him, as this Case is put, not only to the Place, but in the Design, which differs the Case from his being present by Accident; for by his going along with him he doth encourage him to do that, which perhaps singly the other would not venture upon; and going and being present when the Design is executed, upon which the Man is slain, I take it he is as much guilty as the Person that struck the Stroke, in Point of Law.

Mr. *J. Eyres.* My Lords, I am humbly of the same Opinion; I take it to be Murder in him that knew the Design, and did accompany the other in it, though he did nothing at all towards the killing of the Man.

For, my Lords, it is the Intention of the Party that diversifieth the Act. If he came there with an ill Intention, and to assist him if need did require, as it is plain he did if he did accompany him in the Design, which is a strong Evidence of the Intention: And,

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And, my Lords, Nature hath allowed no Man a Casement into another's Heart, and therefore we can judge of no Man's Intention, but by Circumstances of the Fact appearing without; and then, I say, if the Fact be so apparently from the Circumstances of it, that he knew of the Design, and accompanied him in it, it is a strong Evidence that he came to assist him; and though he doth nothing actually in the Matter, yet being present to assist him if Occasion did require, it is plain he did aid and abet him in the Action, and so it is as much Murder in him, as in the other that gave the Stroke.

Mr. *B. Turton.* My Lords, I am humbly of the same Opinion; the thing that differeth this from the former Case is, That this Person was in the Design with the other; for that, my Lords, I take to be accompanying him in the Design in order to the Execution of it, for bare Privity and Knowledge of the Design would not do it; but if he be with him at the Time, and accompany in order to the Execution, that maketh him as much criminal, as he that did actually occasion the Death of the Person, for he was present in the Company, and ready to assist him in the evil Design, which I conceive is as much Murder as the other.

Mr. *B. Powell.* My Lords, I am of Opinion, as this Case is now put, That this is Murder in both, and my Reason is this: Where one Person is privy to a Design of Felony, or committing some Personal Violence, as this Case is, and is not only privy to it, but goeth along with him, and accompanieth him in putting this Design in Execution, though he may not think it will extend so far as Death, but doth only intend Beating, and hath no Personal Hand, or doth otherwise contribute; but by his being with the other Person when he executeth his Design of assaulting, and the Party beaten dieth, they are both guilty of Murder.

L. *Mohun.* My Lords, Will your Lordships give leave, that my Counsel may answer some things that the Judges have said?

L. H. Steward. No, my Lord, you must not Reply after the Judges have given their Opinions. Have any of your Lordships any more Questions to propose?—L. *Cornwallis.* My Lords, I have one.

L. H. Steward. My Lord *Cornwallis.*

L. *Cornwallis.* My Lords, I am very sorry to have Occasion to ask any Questions in this Case, but I humbly desire a Question may be answered by the Judges, which is this:

If a Person be by, named William, *when* Thomas *said he would stab* John, *upon which* William *said, He would stand by his Friend, and afterwards* Thomas *doth actually murder* John, *and* William *is present at the same Murder: Whether the Law will make* William *equally guilty with* Thomas, *or what Crime* William *is guilty of?*

L. H. Steward. Pray deliver in your Paper, my Lord.

It was deliver'd in, and read by the Clerk of the Crown, and Copies given of it as before.

L. H. Steward. What say you to this Question, Gentlemen?

Sir *T. Powys.* May it please your Lordships, this Question runneth thus:

If a Person be by, named William, *when* Thomas *said he would stab* John; *upon which* William *said, he would stand by his Friend; and afterwards* Thomas *doth actually murder* John, *and* William *is present at the same Murder: Whether the Law will make* William *equally guilty with* Thomas; *or what Crime* William *is guilty of?*

My Lords, I do not question but many Cases may be put which will be plainly Murder, and if this Case should be attended with Facts equal to the State of this Case, I believe it will amount to Murder. But upon this Difference the Resolution of it will depend, and every Case must stand upon its own Circumstances.

If a Person do generally say, I am fully resolved I will stab such a Man, and say so without Condition or Limitation, that he will do it; and another doth declare his Intention to assist and aid him, by saying, I will stand by you in it, and afterwards the thing is executed in his Presence who so concurred; I do take it, that that is an Evidence that he is equally guilty with the other.

But, on the other hand, if a Man say, I will stab such a one if he oppose me in such a Design, and so maketh his Resolution conditional, and the Person that is present doth say, I will stand by you in it, that is in your doing it, if you are opposed in such a particular Matter; my Lords, with Submission, if he is not opposed in that particular Thing or Design upon which he did say he would stab him, but if he doth afterwards, upon some other Occasion different from the former, and not relating to what he was talking of before, or upon some other Provocation, stab him, and the other Person happeneth only to be present, I take it, that the Words which he spoke with a Limitation to a particular Matter, will not make him liable to the Guilt of the Murder that is committed upon quite another Account.

The Words, *Standing by him*, are capable of two Senses; but I would not, in so serious a Matter as this, offer to put a jocular Sense upon them, as if it was meant he would stand by and not meddle; but I take it, that such a Case as this will turn upon the Manner of the Man's engaging himself; if he engaged to stand by him in a particular Matter, and the other doth stab the threatned Person afterwards, not upon that particular Occasion, but upon another Account, and he happeneth only to be by, these Words will not draw him in, tho' they should be well proved to be spoken, so as to involve him in the Guilt of that Murder.

For the Law is favourable to a Man in the Case of Life, and will judge according to the Intention of the Party; and he having not abetted or contributed to the Fact, his Words shall not be carried to his Prejudice, farther than his Intention, or farther than the concomitant Circumstances of the Matter will make them plainly import.

This Case is put generally, and without Restraint; and there is no Question but many Cases may be put that will undoubtedly be Murder; but every Case must, as I said, stand and fall by its own Circumstances.

Mr. *Hawles.* My Lords, I think the Case, as it is put single, and upon these Circumstances, would be Murder; and my Reason is this, The Person that saith he will stand by a Man, who saith he will kill or stab another, is as much guilty as that Man himself, and will be thought as malicious; but if it should happen that between the Words pronounced, and the Murder committed, that the Person that saith he will stand by his Friend, cometh to have a Friendship and Kindness for the Party that is threatned to be killed, and upon meeting him caresses him extremely, and there being no Malice continuing (as there must be to the Time of the Stroke given, to make Murder), but he happened to be killed by that other, suddenly in his Presence, those Words will not make him guilty of Murder; but as the Case is put, I think it is Murder.

Mr. *Price.* My Lords, I shall not take upon me to trouble your Lordships with making a Case, but as this Case is put without any Condition, or other Circumstance annexed to it, I think it will be Murder.

L. H. Steward. There will be no need to ask the King's Counsel upon this Question whether they will speak to it, because the Counsel for the Prisoner agree it to be Murder; Therefore if your Lordships please, we may now proceed to ask the Judges Opinions: And first, What say you, my Lord *Chief Justice?*

L. C. J. Holt. My Lords, the Question is this:

If a Person be by, named William, *when* Thomas *said he would stab* John, *upon which* William *said he would stand by his Friend, and afterwards* Thomas *doth actually murder* John, *and* William *is present at the same Murder; Whether the Law will make* William *guilty with* Thomas; *or what Crime* William *is guilty of?*

My Lords, I am of Opinion that this is a great Evidence of Murder in *William*, that was thus actually by. I cannot say it is Murder, as the Case is put; but upon such an Evidence, Fact is to be left to the Conscience of a Jury in the Case of a Commoner, or the Conscience of the Peers in the Case of a Peer.

For when *William* said he would stand by his Friend, who said he would stab *John*, That is plainly a Consent, or at least such an Expression, from which a Consent to the Stabbing of him may be inferred.

Then afterwards it seemeth *Thomas* actually murdereth *John*, and *William* was present. Now if *William* was designedly present with the other that committed the Murder, then it is plain it will be Murder in *William*; but if there be no Evidence to prove upon what Account he was present, it may be presumed he was present in pursuance of his former Agreement, so that it may be Murder, or not Murder, as Circumstances may happen upon the Evidence: If he was present in pursuance of his Promise, then no doubt it is Murder; but if he did not meet in pursuance of that Agreement, it may not be Murder. But this is all Matter of Evidence, and that rests upon the Consciences of those that are to try the Prisoner.

L. C. J. Treby. My Lords, I am of Opinion that this is Evidence, and great Evidence of Murder; the Fact consisteth of two Parts.

First, Here was a deliberate Expression of his Intention, that he would stand by his Friend *Thomas*, when his Friend *Thomas* had said before he would stab *John*, and this I take properly to be interpreted, and understood as a Promise of Abetting him in the Murder he would commit; for, I presume, standing by him in this Case to be meant in a grave Sense, signifying that he would befriend, and, if there should be Occasion, defend and support *Thomas* in what he resolv'd to do.

Secondly, He was present at the Stabbing, which was before designed and spoken of. Now I think his being present when that Resolution of his Friend was executed, coupled with his preceding Declaration of his Intention, is a strong Evidence of Murder.

Mr. *J. Nevil.* My Lords, the Question I take to be, Whether the Law of *England* saith *William* is guilty of this Murder? Truly, my Lords, I must say as my Lords have said before, that as this Case is, This is a very strong Evidence of Murder: For when he doth say, That he will murder such a Man, and the other saith, he will stand by him, in the common Acceptation of those Words, it is taken, that he doth then agree with him in that Design, which he declareth to be to stab *John.*

But then it seemeth to me truly, that this Case is not put full, how long it was afterwards that the Fact was done, and what Circumstances attended it; for if any Circumstance happened afterwards that did amount to a Countermand of this Promise, or any thing interposed to interrupt it, that this Agreement was not performed, perhaps the Case might not be Murder, but still it is Evidence so far as your Lordships may judge upon the Circumstances that attend it, whether it be Murder or no. But to declare a further Opinion, as this Case is put, truly I cannot.

Mr. *J. Gregory.* My Lords, I do upon this Case humbly conceive, there is a little Difference from the former, only there it is put positively, but here as Evidence. Now, my Lords, I do humbly conceive that in common Discourse, I will stand by my Friend, is, I will assist my Friend. If my Friend should say, I will kill such a Man, or I will do any other Act, and I say I will stand by him, I think the Import of the Words is, I will assist him in it.

My Lords, As to the latter Part, as this Case is put, for I can go no further, it doth not appear, whether when the Man was killed, he came by Accident, or in pursuance of his Agreement, knowing of the Design. Now that is but Matter of Evidence; if he came by Accident it will not be Murder, but if he came with Design, no doubt it is Murder in one as well as in the other.

E. of *Mulgrave.* My Lords——

L. H. Steward. My Lord of *Mulgrave.*

E. of *Mulgrave.* If any of my Lords desire that the rest of the Judges should give their Opinion, it is fit they should be heard; but if no Lord doth desire it, and they say they are of the same Opinion without any more to do, because it may save a great deal of Time; I desire your Grace may only ask them, Whether they agree in their Opinions with those that went before?

L. *Cornwallis.* My Lords, I humbly desire the Judges may all speak.

Lords. Go on then.

Mr. *J. Eyres.* My Lords, I humbly conceive this is a Question of Fact, and not of Law, and it is a very strong Evidence, if a Man hear another say he will stab such a Man, and he saith he will stand by his Friend, and accompanieth him at the Time when the Fact is done, it is a strong Evidence, that he came with a murderous Intent with his Friend; and doth as much manifest his Intention to commit Murder, as if he had actually given the Wound; and a great Evidence to involve him in the Crime, as much as the Person that gave the Stroke.

Mr. *B. Turton.* My Lords, I am of the same Opinion with my Lords and my Brothers that have spoken before me; my Lords, I confess I do

not think it cometh up ſo cloſe to the Matter as the Queſtion that was put laſt before; for this, as my Brother *Eyres* ſaith, is rather a Queſtion of Fact and Evidence, than Law. But certainly a very ſtrong Evidence it is of the Intention of that Party that was preſent when the other ſaid he would ſtab the third Perſon, and his going away preſently, and accompanying him when the Stab was given, and Murder done, I ſay his Preſence after this Determination is a very great Evidence, that it was done in Purſuance of that Agreement: It is a Matter of Fact which your Lordſhips will determine, according as the Circumſtances appear before you, which may vary the Reſolution one way or other.

Mr. *B. Powell.* My Lords, I am of Opinion as this Caſe is put, that it may be Murder or not Murder, according to the concomitant Circumſtances. If a Man ſay, I will ſtab ſuch a one, and another ſay he will ſtand by him, and afterwards when he is with his Friend, the Man is ſtabbed, if that is at ſome Diſtance of Time from the Words ſpeaking, and the Meeting be accidental, or other Facts happen that may alter the Caſe, it may receive another Determination. But if after this is ſaid, there be any immediate going to look after this Man, or they be near the way where this Man is to come, and then he is killed; this is a mighty ſtrong Evidence that ſomething was done in Purſuance of this Reſolution, and that the one went along with the other to countenance him in the Action.

L. H. Stew. Have any of my Lords any other Queſtions to propoſe?

Lords. No.

Earl of *Mulgrave.* My Lords, If there had been any other Queſtions propoſed by any other Lords, I would have ſtaid till they had all been over; but I ſee their Lordſhips are at an End with their Queſtions: I have one which I think is nearer the Caſe than any has been yet, and of more Importance to the Matter in Hand, and more fit for the Counſel to inform you in, and for your Lordſhips to aſk, and the Judges to anſwer. The Queſtion is this:

If A *accompanieth* B *in an unlawful Action, in which* C *is not concerned, and* C *happeneth to come in the Way of* B, *after the firſt Action is fully over, and happened to be killed by* B, *without the Aſſiſtance of* A; *Whether* A *is guilty of that Man's Murder?*

This Queſtion was handed to the Table, read by the Clerk, and Copies given as before.

L. H. Stew. What ſay you to it, Gentlemen, who are of Counſel for the Priſoner?

Sir *T. Powys.* May it pleaſe your Lordſhips, I will not trouble your Lordſhips with the repeating of the Caſe again, becauſe my Copy is agreeable with what was read at the Table: Nor ſhall I trouble your Lordſhips with many Words upon this Caſe, becauſe I take it, the Law is very plain.

If two Perſons accompany each other to do an unlawful Act, and in the Execution of that unlawful Act, one of them doth go beyond what was firſt deſigned, and a third Man is killed whilſt they are in Execution of that Act, tho' the one did the Fact, and the other did not immediately contribute thereto, yet he being joined with him in the unlawful Action, upon which this doth enſue, he is anſwerable for all the ill Conſequences of it; the Law herein is clear according to the Caſe that was put at firſt of two Perſons going together to rob a Park and ſteal Deer.

But if that unlawful Action be executed, or the two Perſons who joined in the Deſign have totally deſiſted from it, or are diſappointed in it, if afterwards when they are together upon ſome other Occaſion, it happeneth that one of them killeth another Man, but his Friend no way aided him or aſſiſted him in the doing of it, your Lordſhips and the Law will ſeparate theſe Perſons who were at firſt joined together for another Purpoſe; and will diſtinguiſh between them in this new Matter that is ſubſequent to the former Agreement, tho' they were in Company together.

Becauſe in the firſt Caſe, he that is joined in an ill Action muſt look to himſelf, and be anſwerable for all that followeth thereon: In the ſecond Caſe, he is in no Fault at all, it is only his Misfortune to be in ill Company if he had no Hand in the Fact. This the Law is very plain in, and therefore I ſhall not trouble your Lordſhips further with ſpeaking to it.

Mr. *Hawles.* My Lords, I would only add one ſhort Word: There is but this one Difference between an Acceſſory and a Principal; The Principal is always preſent, the Acceſſory is always abſent; and I would only put you one Caſe of an Acceſſory in Felony out of my Lord *Coke*; he ſaith, It muſt be the ſame numerical Thing in which they are joined, and therefore, if *A* bid *B* rob the Vintner's Boy of Plate as he cometh to a Gentleman's Chamber to bring Wine, but *B* doth not purſue the Inſtructions, but breaketh into the Vintner's Houſe, and ſtealeth the Plate there; this is a different Matter, it is not the ſame Thing wherein *A* and *B* agreed at firſt, and *A* is no way concerned in it.

The ſame Law is, if *A* and *B* agree to kill *C*, and *B* killeth *D*; tho' *A* be preſent, it will not be Murder in *A*; for the Agreement was for the killing of *C*, and not of *D*.

My Lords, as this Caſe is put, they did agree in the unlawful Act, but that Matter was over, and there is no Agreement as to the other Matter, nor is that purſuant to the Matter agreed upon; and therefore the Preſence of the Party that agreed to the unlawful Act doth not make him guilty of Murder, unleſs he agree to that too.

Mr. *Price.* My Lords, I have but one Word on the ſame Side. I take it, that when a Man is doing an unlawful Act, there is an inſeparable Incident that doth attend it, which is Malice implyed. And this is ſo inſeparable, that when his ill Deſign is at an End, his Malice is at an End too, and hath no Being, and therefore if he entereth upon an ill Deſign afterwards, tho' another be preſent that was joined with him in the former ill Deſign, yet his Malice who was ſo joined, being coupled with the ill Deſign that is over, muſt be gone too; and there is no Malice in his being barely preſent. And therefore for that Reaſon, he that was aiding and aſſiſting before, cannot be principal in ſuch a ſudden Act as this new one is, and conſequently cannot be guilty of Murder, or of Manſlaughter.

L. H. Stew. Mr. Attorney, Do you or any of the King's Counſel think fit to ſay any thing to this Queſtion?

Mr. Att. Gen. My Lords, we that are of the King's Counſel do not think we have any Occaſion to be heard to this Queſtion.

L. H. Stew. Then, my Lords the Judges, what ſay you to it?

L. C. J. Holt. If your Lordſhips pleaſe, I will again repeat the Queſtion; it is this:

If A *accompanieth* B *in an unlawful Action, in which* C *is not concerned, and* C *happeneth to come in the way of* B, *after the firſt Action* (*that is, the unlawful Action, I ſuppoſe*) *is fully over, and happeneth to be killed by* B, *without the Aſſiſtance of* A; *whether* A *is guilty of that Man's Murder?*

And I do humbly conceive with great Clearneſs, That *A* is not guilty at all. For here is no Relation to the firſt unlawful Act that he was engaged in, but that is all over and determined; and then *C* cometh in the Preſence of *B*, who killeth him, and of *A* who had no Knowledge of any Malice between them, or any Deſign of his Death. This is merely accidental, and doth not depend upon the firſt unlawful Action; and therefore *A* is not guilty.

L. C. J. Treby. My, Lords, I think there can be no Difference of Opinions in this Caſe: For it is plain there was an unlawful Action in which they did agree, (as a Riot or Aſſault to beat or wound a Man or the like) and if Death had enſued, they both had been guilty of Murder, as well he that looked on, as he that gave the mortal Wound. But then the Queſtion added further, That the Action to which they agreed was fully over, and there only happeneth to be a Continuance of their Preſence together; and there being an old Grudge between one of the Parties and a third Man, and the Party who had that old Grudge, meeting with his Enemy, executeth it then upon him, and murdereth him; this doth in no Sort affect the other that was preſent, and had joined in the former unlawful Action that was over. In the former, he did join and concur, and therefore if Death had enſued, they had been both guilty: In the latter, he did not join and concur; and therefore though Murder did happen in his Preſence and Company, he is not guilty, but only the Party that actually killed is.

Mr. *J. Nevill.* My Lords, I am of the ſame Opinion.

L. H. Stew. If you are all of the ſame Opinion, I think you need ſay no more.

Judges. We are all of the ſame Opinion, my Lords.

L. H. S. My Lords, all the Judges are of the ſame Opinion; and now I think it is your Lordſhips Reſolution to adjourn to the Houſe.

Lords. Ay, ay.

L. H. Stew. This Court is Adjourned to the Houſe of Lords.

And then the Lords returned to their Houſe in the ſame Order, and there preſently Adjourned till the next Morning.

Die Sabbati Quarto Februarii 1692.

ABout four of the Clock in the Afternoon, the Lords came from their Houſe in the former Order into the Court in *Weſtminſter-Hall:* and being ſeated on their Benches, and his Grace the Lord High-Steward in the Chair before the Throne, Proclamation was made for Silence; and the Judgment of the Peers was demanded, and delivered in this Manner.

L. H. Stew. My Lords, Your Lordſhips have now heard all the Evidence both againſt the Priſoner and for him: The next Thing is your Lordſhips Judgment, and for that the Method is this, Your Lordſhips Opinions are to be delivered in the Abſence of the Priſoner. The Queſtion that your Lordſhips are to deliver your Opinion about will be this:

Whether my Lord Mohun *be guilty of the Murder of* William Mountford, *whereof he ſtands indicted, or Not guilty?*

The Order of delivering your Opinions muſt be, to begin with the youngeſt Baron, and ſo upwards; and therefore I muſt deſire your Lordſhips to allow me to take your Judgments diſtinctly, and that I may write them down.-----*Lords.* Ay, ay.

L. H. Stew. My Lord *Lemſter*, Is my Lord *Mohun* guilty of the Murder whereof he ſtandeth indicted, or not guilty?

The Lord Lemſter *ſtood up in his Place uncovered, and laying his Right-hand on his Breaſt, pronounced his Judgment thus:*

L. *Lemſter.* Not guilty upon my Honour.

The ſame Queſtion was ſeverally asked of all the Lords, who in the ſame Form delivered their Opinions as followeth:

L. *Capel.* Guilty upon my Honour.
L. *Aſhburnham.* Not guilty upon my Honour.
L. *Cholmondley.* Not guilty upon my Honour.
L. *Godolphin.* Not guilty upon my Honour.
L. *Oſborne.* Not guilty upon my Honour.
L. *Arundel of Trerice.* Not guilty upon my Honour.
L. *Crew.* Not guilty upon my Honour.
L. *Cornwallis.* Not guilty upon my Honour.
L. *Granville.* Not guilty upon my Honour.
L. *Berkley of Stratton.* Not guilty upon my Honour.
L. *Lexington.* Not guilty upon my Honour.
L. *Lucas.* Not guilty upon my Honour.
L. *Clifford of Lansborough.* Guilty upon my Honour.
L. *Colpeper.* Guilty upon my Honour.
L. *Vaughan.* Not guilty upon my Honour.
L. *Jermyn.* Not guilty upon my Honour.
L. *Leigh.* Not guilty upon my Honour.
L. *Lovelace.* Not guilty upon my Honour.
L. *Brooke.* Not guilty upon my Honour.
L. *Hunſdon.* Not guilty upon my Honour.
L. *Chandois.* Not guilty upon my Honour.
L. *Willoughby of Parham.* Not guilty upon my Honour.
L. *Evers.* Not guilty upon my Honour.
L. *Fitzwalter.* Not guilty upon my Honour.
L. *Morley.* Not guilty upon my Honour.
L. *Berkley of Berkley.* Not guilty upon my Honour.
L. *De-la-Ware.* Not guilty upon my Honour.
L. *Willoughby of Eresby.* Not guilty upon my Honour.

L. H. Stew. My Lord Viſcount *Villiers, &c.*

Viſc. Villiers. Not guilty upon my Honour.
Viſc. Longueville. Not guilty upon my Honour.
Viſc. Weymouth. Guilty upon my Honour.
Viſc. Newport. Not guilty upon my Honour.

L. H. Stew. Earl of *Warrington, &c.*

Earl of *Warrington.* Guilty upon my Honour.
Earl of *Scarborough.* Not guilty upon my Honour.
Earl of *Marlborough.* Not guilty upon my Honour.
Earl of *Montague.* Not guilty upon my Honour.
Earl of *Monmouth.* Guilty upon my Honour.
Earl of *Falconberg.* Not guilty upon my Honour.

Earl

Earl of *Portland.* Guilty upon my Honour.
Earl of *Abingdon.* Not guilty upon my Honour.
Earl of *Rocheſter.* Guilty upon my Honour.
Earl of *Nottingham.* Guilty upon my Honour.
Earl of *Radnor.* Not guilty upon my Honour.
Earl of *Macclesfield.* Not guilty upon my Honour.
Earl of *Peverſham.* Not guilty upon my Honour.
Earl of *Craven.* Not guilty upon my Honour.
Earl of *Carliſle.* Not guilty upon my Honour.
Earl of *Bath.* Not guilty upon my Honour.
Earl of *Eſſex.* Not guilty upon my Honour.
Earl of *Sandwich.* Guilty upon my Honour.
Earl of *Scarſdale.* Not guilty upon my Honour.
Earl of *Sunderland.* Not guilty upon my Honour.
Earl of *Thanet.* Not guilty upon my Honour.
Earl of *Cheſterfield.* Not guilty upon my Honour.
Earl of *Carnarvon.* Not guilty upon my Honour.
Earl of *Kingſton.* Guilty upon my Honour.
Earl of *Stamford.* Not guilty upon my Honour.
Earl of *Rivers.* Not guilty upon my Honour.
Earl of *Mulgrave.* Not guilty upon my Honour.
Earl of *Mancheſter.* Not guilty upon my Honour.
Earl of *Weſtmoreland.* Guilty upon my Honour.
Earl of *Bullingbrook.* Not guilty upon my Honour.
Earl of *Clare.* Not guilty upon my Honour.
Earl of *Denbigh.* Not guilty upon my Honour.
Earl of *Northampton.* Not guilty upon my Honour.
Earl of *Bridgwater.* Guilty upon my Honour.
Earl of *Bedford.* Not guilty upon my Honour.
Earl of *Huntingdon.* Not guilty upon my Honour.
Earl of *Kent.* Not guilty upon my Honour.
Earl of *Shrewſbury.* Not guilty upon my Honour.
Earl of *Oxford.* Guilty upon my Honour.
L. H. Stew. My Lord Chamberlain, *&c.*
Earl of *Dorſet.* Not guilty upon my Honour.
L. H. Stew. My Lord Steward, *&c.*
Earl of *Devon.* Not guilty upon my Honour.
L. H. Stew. My Lord Great Chamberlain, *&c.*
Earl of *Lindſey.* Not guilty upon my Honour.
L. H. Stew. My Lord Marquiſs of *Hallifax*, &c.
L. Marquiſs of *Hallifax.* Not guilty upon my Honour.
L. H. Stew. My Lord Duke of *St. Albans*, &c.
Duke of St. *Albans.* Not guilty upon my Honour.
Duke of *Northumberland.* Not guilty upon my Honour.
Duke of *Ormond.* Not guilty upon my Honour.
Duke of *Somerſet.* Not guilty upon my Honour.
Duke of *Norfolk.* Not guilty upon my Honour.
L. H. Stew. My Lord Privy Seal, *&c.*
Earl of *Pembroke.* Not guilty upon my Honour.

Then his Grace the Lord High Steward ſtood up uncovered, and laying his Right Hand on his Breaſt, pronounced his Grace's own Judgment thus:

L. H. Stew. My Opinion is, That my Lord *Mohun* is not guilty upon my Honour.

Then his Grace ſeated himſelf again in the Chair, and numbered up the Opinions of the Peers.

L. H. Stew. My Lords, I have carefully taken your Lordſhips Opinions, and find the Numbers to be thus: My Lords that have found my Lord *Mohun* to be Guilty are Fourteen; my Lords that have found him Not guilty are Sixty-nine. Call for the Priſoner.

Proclamation was made for the Chief Governor of the Tower *to bring forth the Body of the Priſoner, and he was brought to the Bar as before: And Proclamation for Silence was made.*

L. H. Stew. My Lord *Mohun*, you have been indicted for the Murder of *William Mountford*; upon your Arraignment you have pleaded Not guilty, and have put yourſelf upon the Judgment of your Peers; and your Peers have conſidered what hath been ſaid both for and againſt you, and the Judgment of my Lords is this, That your Lordſhip is Not Guilty: Your Lordſhip is therefore diſcharged. Make Proclamation for diſſolving the Commiſſion.

Cl. of Crown. Serjeant at Arms, make Proclamation,

Serjeant. O Yes.

Cl. of Crown. Again,——*Serjeant.* O Yes,

Cl. of Crown. Again.——*Serjeant.* O Yes.

Cl. of Crown. My Lord High Steward of *England* his Grace doth ſtraightly Charge and Command all manner of Perſons who have given their Attendance here, to depart hence in the Peace of God, and of our Sovereign Lord and Lady the King and Queen; for his Grace the Lord High Steward of *England* intendeth to diſſolve his Commiſſion.

Which the Serjeant at Arms repeated, and at the End of it, his Grace ſtanding up, and holding the White-Staff in both his Hands, broke it in two, by which his Commiſſion was diſſolved.

Marq. of Carmarthen. Is it your Lordſhips Pleaſure to Adjourn to your own Houſe?

Lords. Ay, Ay.

Marq. of *Carmarthen.* This Houſe is Adjourned into the Houſe of Lords.

And then the Peers returned to their own Houſe in the ſame Order.

CLII. *Proceedings between the King and* Thomas Kendall *and* Richard Roe, *in the* King's Bench, *on an* Habeas Corpus *upon a Commitment for* High Treaſon, Mich. 7 Gull. III. Octob. 31. 1695.

ON *Thurſday October* the 31*ſt* 1695, the Priſoners being brought up into Court on the *Habeas Corpus*, the Keeper of *Newgate*, to whom the Writ was directed, returned the Cauſe of their Detainer to be a Warrant under the Hand and Seal of Sir *William Trumball*, Knight, one of His Majeſty's moſt Honourable Privy Council, and principal Secretary of State, directed to the Keeper of *Newgate*, or his Deputy, *prout ſequitur*. "Theſe are in his Majeſty's Name to authorize and "require you, to receive into your Cuſtody the Bodies of *Thomas Ken-*"*dall* and *Richard Roe*, herewith ſent you, they being charged with "High Treaſon, in being privy to, and aſſiſting the Eſcape of Sir "*James Montgomery*, out of the Cuſtody of *William Sutton*, one of His "Majeſty's Meſſengers in Ordinary, and charged with High Treaſon. "You are to keep them in ſafe and cloſe Cuſtody, until they ſhall "be delivered by due courſe of Law: And for ſo doing this ſhall be "your Warrant. Given at the Court at *Whitehall* the 24*th* Day of "*Oct.* 1695."

Sir *Bartholomew Shower* moved that the Return might be read, and then that it might be filed. And Mr. *Attorney* owning that he had been attended with a Copy of it, and having nothing to ſay againſt it, the ſame was accordingly filed.

Then Sir *Bartholomew Shower* took Exceptions to the Return.

Sir *Bart. Shower.* My Lord, I am of Counſel for theſe two Priſoners; and what we deſire at preſent is only that they may be bailed, though perhaps we might preſs to have them diſcharged, and that upon good Reaſon.

To induce your Lordſhip to bail them, I muſt beg your Lordſhip's Pardon, and I hope Mr. *Attorney* will hold me excuſed, if I make a Queſtion whether the Perſon committing hath any Authority for ſuch a Purpoſe; it is for my Clients, who think themſelves aggrieved by this Impriſonment; and in Truth they ſay, That they are ſomewhat hardly dealt withal in this Caſe; for the Information againſt them is only for being privy to and aſſiſting the Eſcape of the Centinels, who were privy to Sir *James Montgomery*'s Eſcape: But this is Fact, of which the Court will not take Notice, and therefore I ſhall confine myſelf to the Return, as it appears before your Lordſhip,

With Submiſſion I muſt inſiſt upon it, that a Secretary of State, *quatenus* Secretary, cannot commit for Treaſon or Felony; he is not an Officer for ſuch a Purpoſe in common Parlance, The Word *Secretary* imports only a Writer of Letters or other Eſcripts for a Superior; and as *Spelman* explains the Word, this is the Senſe of it, with the Addition of Secrecy, of Privacy; and ſo is his *Gloſſary* upon that Word. He is not a Privy Counſellor *quatenus* a Secretary, nor is he a Juſtice; and though perhaps in Fact he may be in the Commiſſion, yet unleſs he hath taken the Oath of that Office upon a *Dedimus*, he cannot act as ſuch: And I have ſeen five or ſix Privy Counſellors at a Time appearing at a Seſſions of the Peace for this County, in the Caſe of the Duke of *Bedford*'s Power as *Cuſtos Rotulorum*, to remove the Clerk of the Peace; and when Intimation was made to them of the Juſtices Oath, which they had not taken, they refuſed to vote, and did thereupon withdraw. Here Sir *William Trumball* cannot be preſumed or intended to be a Juſtice of the Peace, becauſe the Commitment by him is as Secretary, and not as Juſtice; and ſo is the Return: And upon the Return, the Authority by which he commits ought to appear, otherwiſe the Return is vicious; and here doth appear none but that of Secretary. Now if the Office of Secretary doth not imply and carry in it a Power of Committing, then this Commitment is erroneous.

Our Conſtitution hath diſtributed the Adminiſtration of Juſtice, both in criminal and civil Cauſes, into ſeveral Courts, and hath appointed ſeveral Officers for ſeveral Purpoſes, ſome for civil, ſome for criminal Matters; and in Criminals ſome are to examine and commit, others to obey and carry, others to receive and keep; ſome to try and ſentence, others to execute; each hath his proper Province: And of thoſe your Lordſhip will take Notice, as alſo of their ſeveral Duties and Powers, and ſo do our Law Books. But a Secretary is a Court Officer of State, not relating to the Adminiſtration of Juſtice.

You take Notice, as do our Books, of Head-boroughs, Conſtables, Sheriffs, Coroners, Eſcheators, and the like: But neither *Coke*, *Crompton*, *Fitzherbert*, *Smith*, or any Book which treats of the Juriſdiction of Courts, the Pleas of the Crown, or the Officers of Juſtice, do ever mention a Secretary of State; his Office rather relates to foreign Negotiations than domeſtick; and if any Home Affairs fall under his Cognizance, it is rather as an Intelligencer, than with any Relation to Criminals, Priſons, or Gaolers, *&c.* In all the Debates about the Liberty of the Subjects, and wrongful Commitments, which were in Parliament in 4 *Car.* I. or 1628, and amongſt all the Precedents mentioned there upon each Side, which are Multitudes, there is none by a Secretary: It is true, there are divers *per mandatum Dom' Regis*, by Warrant from the Lords of the Council. I have peruſed Dr. *Franklin*'s Annals of King *James* the *Iſt. fol.* 261. and *Ruſhworth*, *Vol.* I. 458. and can find none by a Warrant from a Secretary. I have read *Coke*'s, *Selden*'s, and *Littleton*'s Arguments upon that Subject, but ſee nothing of a Secretary's Commitment. And it ſeems very ſtrange, if ſuch a Power were lodged in this State Officer, that there ſhould be no Precedents for it in thoſe Times, when extrajudicial and general Warrants were ſo frequent, that they became a Grievance to the People, and ſuch a one as laid the Foundation for the *Petition of Rights.*

I ſhall not controvert the Power of the Council at preſent, becauſe it doth not concern the preſent Queſtion: All that I can obſerve in the Caſe is, that it firſt began to be practiſed in Sir *Lionel Jenkyns*'s Time; and yet even in 1678, when the Popiſh Plot had increaſed the Number

of Priſoners to a wonderful Degree, it is notoriouſly known, that the Chief Juſtice *Scroggs* was frequently and often ſent for to *Whitehall* to examine, and commit, and grant Warrants. And ſome time ſince the Secretaries of State have thrown that Burden off from themſelves upon their Secretaries under them, who have been ſworn Juſtices of the Peace; and Mr. *Bridgeman* hath accordingly executed the Office of a Juſtice of Peace at *Whitehall*, and that frequently. It hath been a Queſtion, Whether a Chancellor or Keeper of the Great Seal can commit? And the better Opinion hath been, that he cannot: And it ſeems to be agreed by *Glanvill*'s and other Caſes in *Moore*'s *Reports*, 839, *&c.* that his Commitment is illegal, unleſs for a Cauſe within his Juriſdiction, as a Court of Equity; and the Matters muſt ſo appear. I muſt agree, that any Man may apprehend another for Felony or Treaſon; but there is a vaſt Difference between an arreſting of a Traytor or Felon upon Suſpicion or Knowledge, and a formal Commitment to Priſon, with a Charge of Treaſon. And I am ſure *Mr. Attorney-General* will not inſiſt upon this Reaſon; for then the Conſequence will be, that any Man may commit as well as a Secretary: And I ſuppoſe that Doctrine will ſcarce be allowed, though I think that any Man may as well as he. The Reaſon of an Apprehenſion upon Suſpicion, or Hue and Cry, or the like, is not to detain, but to carry to a Conſtable or Juſtice, as in 3 *Inſt.* 52. Then here the Gaoler doth not return that he detains him, becauſe he is guilty or ſuſpected, but becauſe by Virtue of a Warrant he is committed to his Cuſtody.

Beſides, the Reaſon of our Law is againſt it; for a Secretary cannot adminiſter an Oath. Now the Law requires, that no Man ſhould be committed by an extrajudicial Warrant, unleſs upon Oath. If there be but a Suſpicion, there ought to be Oath of the Cauſe of that Suſpicion; for the Perſon committing cannot commit upon another's Suſpicion, unleſs there be Oath of ſome reaſonable Cauſe for it. He cannot take Bail for any Perſon accuſed, he cannot take a Recognizance to proſecute: And I may very well challenge any Man living to ſhew me any one Recognizance ever returned into any Court, that was taken by a Secretary, either for Appearance of a Criminal, or for the Proſecution of one: And the Practice is always otherwiſe; for they have often taken Bonds to the King, with Condition to appear here. And your Lordſhip and the Court hath often had much Trouble in that Matter; for though they were bound to appear here, the Court hath refuſed to record their Appearance, becauſe no Recognizance returned or taken, whereupon to found ſuch an Appearance.

Now it ſeems ſtrange, nay abſurd, that our Conſtitution, which we admire for its Wiſdom, ſhould appoint an Officer who ſhould commit, and yet cannot give an Oath whereon to found a Commitment, that cannot bail, that cannot take any Recognizance to proſecute: This is to make the Liberty of the Subject very precarious, notwithſtanding the many Laws and Sayings of Judges in favour of it.

A Secretary is not obliged within the Statutes that require Juſtices to return the Informations and Examinations of the Perſons accuſed, and Witneſſes; which is a Method preſcribed by the Wiſdom of our Anceſtors, both for the Service of our King and the Subject; and may upon ſeveral Occaſions prove uſeful to each.

This I may ſay, That Mr. Secretary *Coventry* did ſcruple it; and upon good Advice, even from Sir *William Jones*, he took the Oath of a Juſtice of Peace. Now, my Lord, I think that thoſe Exceptions to this Power of a Secretary may very well be thought to render it ſo far a doubtful Queſtion, as to induce *Mr. Attorney* not to oppoſe our being bailed, to avoid any further mention of this or any other Queſtion.

But ſuppoſing that a Secretary can commit, yet in this Caſe the Parties ought to be bailed according to the *Habeas Corpus* Act*; for the Act commands, that they ſhall be forthwith bailed, unleſs they be committed for Treaſon or Felony, ſpecially mentioned and expreſſed in the Warrant; and if it be ſpecially expreſſed, then upon Prayer, if not indicted, they are to be bailed the laſt Day, *&c.* Now here the Commitment of a Perſon charged with Treaſon, if it goes no further, then unqueſtionably the Parties ought to be admitted to Bail, becauſe that the High-Treaſon is not ſpecially expreſſed; ſo a Commitment for Felony generally would bring a Man within the Benefit of the Act to be bailed, becauſe the Species of the Felony is not expreſſed. This is plain, and cannot be denied. Then I muſt further argue, that if the Facts mentioned after the Word *High-Treaſon* be not, or cannot be Treaſon, it muſt be allowed to me, that it is the ſame as if it had been for High-Treaſon generally, and without more Words: For if there be not a Species of Treaſon expreſſed, then we are ſtill admiſſible to Bail; this muſt be acknowledged.

Now that the ſubſequent Matter expreſſed after the Word *Treaſon* is not any Species of Treaſon, I ſhall endeavour to make out thus: A being privy to, and aſſiſting the Eſcape of Sir *James Montgomery* out of the Cuſtody of a Meſſenger, and charged with High-Treaſon, is not any Species of Treaſon, it is not Treaſon.

Firſt, I may with a great deal of Colour make a Queſtion, Whether the reſcuing or helping the Eſcape of one in Cuſtody for Treaſon, be Treaſon, or only Felony? If the latter, then the Commitment is erroneous.

At the Common Law, the helping any Priſoner to eſcape was Felony, and ſo is, 2 *Inſt.* 589. Now the Law in this Reſpect is not altered otherwiſe than by 1 *Edw.* II. *de frangentibus Priſonam*, and that Statute was rather to make it leſs penal than more; and if to promote the Eſcape of one impriſoned for Treaſon, was at the Common Law but Felony, then this Statute ſeems not to make it a greater Offence; for it is in the Negative, that none ſhall undergo Judgment of Life or Member for the breaking of Priſon, unleſs the Cauſe for which the Impriſonment was, did require ſuch a Judgment, if the Party were convicted.

The Lord *Hale*, in his *Pleas of the Crown*, ſaith, that Breach of Priſon turns into Felony only, though the Party were committed for Treaſon; though in another Place he ſeems to be of another Opinion. Now my Argument to make this a Doubt is this: By 2 *Hen.* VI. *Cap. ult.* to break Priſon when committed for Treaſon, is declared to be Treaſon; which would be needleſs, if it had been Treaſon before. By 25 *Edw.* III. nothing is to be Treaſon, but what is there declared to be ſuch; and by 1 *Mar.* all Treaſons and Declarations of Treaſons made by any Act of Parliament ſince 25 *Edw.* III. are repealed. So that by this Way of arguing ſuch Eſcape was only Felony.

There is one Caſe, *viz. Beuſted*'s, 16 *Car.* I. *Jones Rep.* 415. upon an Inſurrection in *Surrey*, where it is held, that if a Man be committed for Treaſon, and another breaks the Priſon, and by that Means the Traytor eſcapes, this was Treaſon in the Reſcuer, and there was one accordingly indicted and arraigned; but I find that he was acquitted; and though the Books ſay it was for Want of full Evidence, yet it is more than probable, that it was the beſt Ingredient in his Caſe, that the Judges doubted what Offence it was, whether Treaſon or Felony. Now that Caſe is founded upon *Stamford*'s *Pleas of the Crown*, 32. and all that is in *Stamford* is a Quotation of a Caſe in the Year Book, *viz.* in 1 *Hen.* VI. 5. That the Eſcape of a Traitor impriſoned was held Treaſon: But there it is put with a *quod nota*, as a ſtrange Thing, and ſome call it Petit Treaſon: But however, it was a ſtrange Thing, ſince we find in 2 *Hen.* VI. an Act of Parliament made to declare it Treaſon; which is improbable that ſuch a Law ſhould be made, if the Judges had the Year before juſtly condemned the poor Reſcuer. So that either they doubted the Law of that Caſe, or that Caſe had ſome other Ingredient in it than the Book informs us of.

This is not for receiving, aiding, and comforting a Traitor, knowing him to be ſuch, as was the Caſe of *Abington*, who aided *Henry Garnet*, the Superior of the Jeſuits, in 3 *Inſt.* 138. but this is only for aſſiſting the Eſcape: But ſuppoſing that ſuch an Aſſiſtance to eſcape, or reſcue of one committed for Treaſon, were Treaſon, and not Felony, yet in this Caſe, as this Warrant is, it is neither Felony nor Treaſon; for,

Secondly, Here is no legal Commitment of Sir *James Montgomery*; and conſequently the helping him to eſcape is not Treaſon. My Lord *Coke* 3 *Inſt.* 70. on 1 *Edw.* II. ſays, That a voluntary Eſcape of a Priſoner can be no Felony, unleſs the Priſoner be under lawful Cuſtody by a lawful Warrant expreſſing the Offence. Now there can be no Pretence, but that the ſame Rule muſt hold in Caſe of a Traitor's Eſcape, as to the Warrant of Commitment, and Lawfulneſs of Cuſtody, as doth in Caſe of Felony. Now if the Party commanded to receive, or the Party to whoſe Cuſtody he is committed, were no lawful Officer, then ſuch Cuſtody cannot make the Reſcuer guilty of any capital Offence. *Co.* 2 *Inſt.* 550. ſaith, That falſe Impriſonment is not within the Law in this Caſe; now there can be no lawful Warrant in this Caſe, becauſe the Officer was not a lawful one. This is not the Caſe of one carrying to Priſon, for then it would have been ſo expreſſed; but here it is under the Cuſtody of a Meſſenger, and charged with Treaſon, which ſuppoſes it a Cuſtody with a Charge by way of Commitment. Then my Lord *Coke* explains what is a lawful Warrant, and that is two-fold; either when the Offence appeareth by Matter of Record, as a *Capias* upon an Indictment, Inquiſition, or Preſentment; or when it doth not appear ſo, but only upon Oath, that a Felony is committed, and the Party is committed for the ſame to Gaol. And he tells us, That there is a great Diverſity between them; for in the firſt, the breaking of Priſon is Felony, tho' there were none committed: But in the other Caſe, where there is no Record of an Accuſation to found a Commitment on, if there be no Felony committed by him who is committed to Priſon for a ſuppoſed Felony, the Breach of Priſon is no Felony. Now this makes another good Exception to the Return, that here doth not appear, that there was either an Indictment or Appeal, or that there was a Felony or Treaſon committed; and one of them is neceſſary.

There muſt be a Felony done at the time of the Commitment; for a Relation, which is a Fiction in Law, ſhall never make a third Perſon a Felon; as *Plowd.* 401. If there be a Stroke or Wound one Day, and Death enſues upon another Day, this is Murder in the Party from the firſt Stroke; but the reſcuing of ſuch a Criminal before the Death is no Felony; which further ſhews, that a Felony done is neceſſary to make the Eſcape a capital Offence.

In 2 *Inſt.* 591. *Coke* ſaith two or three times in four Pages, That the Weight of the Buſineſs depends upon the Lawfulneſs of the Warrant, or *Mittimus*; and he ſaith, that it muſt be in Writing, in the Name, and under the Seal of him that makes the ſame, expreſſing his Place, Office, and Authority, by force whereof he makes the *Mittimus* as is to be directed to the Gaoler; and it muſt contain the Cauſe more eſpecially, and with more Certainty, than a Writ of *Capias* need to do, becauſe the latter is founded upon a Record, unto which a Reſort may be had. Then he ſaith, That if a Warrant be not lawful, it is no Felony in the Gaoler to ſuffer him to eſcape. Now here, we ſay, it doth not appear what the Warrant was, upon which Sir *James* was in Cuſtody; and a Meſſenger is not a lawful Gaoler; he is merely a Conveyancer of a Meſſage, Notice, or Summons; and the Practice of making their ſeveral Houſes Priſons is but of late Date; our Law-Books do take no notice of him as any legal Officer.

Gaolers have Fees, are ſubject to Proſecutions for Extortion; a Meſſenger is not within the Laws concerning it; for he cannot take Fees *Colore Officii*, who hath no Office; he is, at moſt, but a Gentleman Porter. I have often heard this Method of Commitments to the Cuſtody of Meſſengers ſeverely cenſured; and though any Man may be ordered to carry another to a Priſon, yet he cannot therefore become a Gaoler to detain him, as ſome Meſſengers have done, for Nine or Eleven Months, or more. How long Sir *James* was in Cuſtody, I cannot tell; but ſurely the Law, which requires Commitments to the County Gaols, is ſufficient Evidence of the Inſufficiency of a Meſſenger's Power to detain; and if he could not legally detain, the Conſequence muſt be, that the Eſcape or Reſcue is no Treaſon.

Beſides, here it doth not appear, that Sir *James* was in Cuſtody for Treaſon; it is ſaid, that he was in Cuſtody, and charged with Treaſon: The laſt might be upon Accuſation by Oath, or by an Indictment, and yet not charged in Cuſtody with Treaſon.

Then it is not ſaid with what Treaſon Sir *James* was charged; it might be for ſuch a Treaſon, wherein the receiving or helping to eſcape was not Treaſon; and it might be for Treaſon generally, and then Sir *James* was bailable; and it will be hard to exclude the Reſcuer from Bail, when the Perſon reſcued might challenge it.

* 31 Car. II. Cap. 2. § 7.

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Then further, though the Warrant be lawful, and in particular for Felony, and the Gaoler do willingly suffer him to escape, yet till the Prisoner is attainted, the Gaoler shall not answer to the Escape, though the Prisoner be indicted; and there is a very good Reason assigned for it, because the Felony of the Prisoner shall not be tried between the King and the Gaoler, for that he is a Stranger to it. Now a Rescuer or Assistant of an Escape is the same with a Gaoler in this Case, and shall not be in a worse Condition. It is true, the Party himself, if he breaks Prison, may be indicted for the Escape before he be tried for the Felony: Now the Reason of this holds for our being bailed, for that it is impossible that we can be tried in this Case, because Sir *James Montgomery* is dead, and was never attainted, or so much as indicted. Lord *Hale* agrees with this too, that if the Prisoner break Prison, he may be arraigned of it before he be convict of the first Felony; but the Gaoler permitting a voluntary Escape, shall not be arraigned till the Prisoner be first attaint; for if the Prisoner be acquit, the Gaoler is dispunishable as to any Capital Offence, or if the Prisoner die before Attainder, the Rescuer shall only be fined and imprisoned.

Now supposing the assisting the Escape of one committed for Treason, as some Books seem to say, shall make the Rescuer partake of the same Crime, for which the Party rescued was committed; yet if a Secretary cannot commit, or if a Messenger's House be not a lawful Prison *, or if Sir *James Montgomery*'s Offence be not specially enough expressed, or if by reason of his Death the Escape be only finable, then these Prisoners ought to be bailed.

Sir *Tho. Trevor.*

Mr. *Attorney General*, *e contra*, said, that they ought not to be bailed, because committed for Treason specially expressed; that harbouring a Traitor, knowing him to be such, was Treason; that there were no Accessaries, but all Principals in Treason; that rescuing him was a comforting of him; that to rescue a Felon, was Felony; to rescue a Traitor, was Treason; that a Messenger was a lawful Officer, and that any Man might imprison a Traitor; that Sir *James Montgomery*'s Death was Matter of Evidence upon the Trial; that they need not set forth a Treason committed, or an Attainder, though perhaps it would be necessary to prove it when the Prisoners came to be tried; that the Power of a Secretary to commit had been settled (but he could not say when); that there were many Precedents, which he doubted not to produce, and therefore prayed time to look into it.

Sir *J. Hawles.*

Mr. *Sollicitor* spoke much to the same effect, with this further, That the Prisoner's Counsel admitted, that the Privy Council might commit, and a Secretary of State was much more antient; that as to the Messenger, a Gaoler *de facto* was within the Law; that those Persons were wrong Doers, and that they could not take advantage of their own wrong; and therefore the Insufficiency of Sir *James Montgomery*'s Commitment was not material; and that this Warrant need not be so certain and special as an Indictment, which must have Time and Place; and that if Commitments be good in Substance, the same was enough; and therefore prayed that they might be remanded.

Sir *Bartholomew Shower* replied, That the Commitment of a Secretary was never yet allowed; that the same was always complained of; that tho' it were Treason to rescue one committed for Treason, yet here it did not appear to be so; that though in Trespasses a Man cannot take Advantage of his own Wrong, yet that was not the Question; because if Sir *James* was not legally in Custody, then this Fact was not Treason; that the Insufficiency of his Commitment was an Advantage allowable, especially *in favorem vitæ*; that though Sir *James*'s Death did not appear upon the Return, yet it was a Reason to induce the Court to bail, since they might bail in Cases of High Treason specially expressed; and if the Court were informed that they could not be tried, it would be hard to detain them in Custody.

Lord Chief Justice *Holt*. How were the Commitments at Common Law before Justices of Peace were instituted? It is true, my Lord *Coke* saith, that none could be imprisoned till Indictment; but that deserves Consideration. If you were to enquire, and search in the Tower, undoubtedly you will find Commitments there by Secretaries of State; look into the Resolutions in *Anderson*.

Mr. Just. *Rokeby*. I can see no reason upon the whole matter, why they should not be bailed; but since Mr. *Attorney* is not prepared, and has had so little Notice, it is fit he should have time. *Accordingly* Wednesday *next was appointed.*

Then Sir *Bartholomew Shower* moved, that they might have their Wives and Friends, and a Solicitor come to them, for that hitherto they had been kept close Prisoners. [*Which was granted accordingly.*]

Upon *Wednesday* the sixth of *November* the Prisoners were brought up by Rule of Court; and Sir *Bartholomew Shower* moved again, that they might be bailed, and that if Mr. *Attorney* thought fit to oppose it, he prayed to be further heard, for that he had more matter to alledge to justify the former Exceptions to the Return.

Then Mr. *Attorney*, and Mr. *Sollicitor*, and Sir *William Williams* came into Court.

Lord Chief Justice. Mr. *Attorney*, here are *Kendall* and *Roe* brought up by Rule, and their Counsel desire to know whether you oppose their being bailed; for if you do, they desire to be further heard to the Return; you had best consider of it.

Mr. *Attorney General.* I should not have so much opposed it, but that several Questions have been made and argued here at the Bar; as, that a Secretary hath not power to commit, that this Escape is not Treason, that a Messenger is not a legal Officer; and since these things have been started, I must insist upon it that this is a good Return, and that they ought to be remanded.

L. C. Justice. Then we must hear them again.

Sir *Barth. Shower.* My Lord, we do with Submission insist upon it, as I did the other Day, that a Secretary is not such an Officer, as hath a Power of committing for Felony or Treason: I have further looked into it, and do find somewhat in the Books concerning it, more than the King's Counsel did last time urge, but not enough to warrant such a Power in the Office of a Secretary, and a great deal more against it. What I find I shall offer to your Lordship's Consideration, as it appears upon the Words of the Books, and submit it to your Judgment.

My Lord, I have perused the Resolutions of the Judges in 34 *Eliz.* 1. *Anderson* 297, 298. and I must own that it is there said, that one or more of the Lords of the Council may commit; how far that is Law, I shall endeavour to examine presently: But now I have named it, I would beg your Lordship to observe another of those Resolves; though it would be more proper anon, yet I will just mention it here, and that is, that there is a Resolution which condemns this Return, it destroys a Power of a Messenger's Office, and, if it be Law, my Clients ought to be bailed; it complains that divers Persons were against Law committed to Prison in private Places, and not to any common or ordinary Prisons, or lawful Officers, as the Sheriff, or other Person lawfully authorized to have or keep a Gaol: so that upon Complaint made, the Queen's Courts could not learn to whom to direct her Majesty's Writs, and by this means Justice could not be done. Now this seems directly calculated for the 42 domestick Prisoners, at the Pleasure of the Messengers; and if Mr. *Attorney* will allow these Resolutions to be of any Authority in one part, he must agree it to be the same in the others.

But I shall not need it in respect of the Messengers Franchises, and therefore shall offer some things to your Consideration against those Resolutions.

In the first place they are extrajudicial, and not the Opinion of Judges upon their Oaths in any Matter before them; and I am sure my Lord *Coke* did refuse to subscribe his Opinion upon such Occasions. They are such Opinions, as the Judges may and often have varied from, when the Point hath come judicially in Question before them. Several of the Judges did so in the Case of the *Ship-Money*; and if they were not binding to the Judges who gave the Opinions, much less can they be binding to their Successors, as legal Resolutions; and if they be Law, yet they do not relate to the Office of Secretary, but only to that of a Privy Counsellor. Now we do, without any Disrespect to Authority, for our Clients, insist upon it, that that Resolution is not Law, that one single Privy Counsellor may commit for Treason.

In the first place, what is there said, can never be reconciled to the Rules of Law, that Persons committed by them ought not to be delivered; for those general Commitments were illegal at Common Law; and so it is affirmed in the *Petition of Right*; and very great Opinions have been, that there is nothing in the *Habeas Corpus* Act, but the Penalties and Times, that was not Common Law, and that it is affirmative in substance of the antient Law of this Realm, which makes that Resolution to be suspicious; for if what is affirmed by it in express Terms (*viz. That such Persons as they shall commit, ought not to be delivered*) be not Law, then what is implied, that one Privy Counsellor may commit, is more doubtful still.

I shall not inquire into the Occasion of those Resolutions, nor meddle with what our Histories tell us of that Time, and the then Jealousies between some great Men; but, as I said before, those are not judicial Opinions, but only a written Certificate delivered to the then Chancellor and Treasurer: Besides, there is not one Objection, which can be made against the Power of a Secretary in this Matter, but stands as firm and forcible against that of one Lord of the Council; we find no Authority for him to administer an Oath, or take a Recognizance, and there is no Precedent of either. And, as I said the other Day, it looks absurd, that a single Person should be an Officer to commit, and yet cannot do that which is necessary in order to it; he ought to have a Power to examine, and that upon Oath; and if upon Examination of Witnesses it appears that the Party deserves not to be committed, he ought to have Power to take Bail, as also a Recognizance to prosecute. A Justice of Peace is finable by the Justices of *Oyer* and *Terminer*, and Gaol Delivery, if he misbehave himself, or be guilty of a wilful Irregularity therein; but it will scarce be said, that a Lord of the Council is in those Circumstances. My Lord *Coke* saith, that a Lord of the Council is made by summons and taking the Oath, and that continues during the King's Life: It is true he may be discharged, and generally it is by forbearing to summon him; suppose then it be omitted, and afterward he is summoned again, doth he take a new Oath? When doth this Authority begin? How doth it continue or end? Our Law Books take no Notice of it.

Then further, The King himself cannot arrest a Man for Treason or Felony, nor can he command one in his Presence to be arrested for Felony or Treason; so said Sir *John Markham* to *Edw.* 4. and 2 *Inst.* 186. *per mandat. del Roy* is by Writ, or by Order or Rule of some Court of Justice; now what Judge is a Lord of the Council? He is to advise the King, and is sworn to it, and to withstand all Traitors, and to discover all traiterous Conspiracies, and so is every Subject by his Oath of Allegiance, but the Oath of a Privy Counsellor contains nothing relating to Commitments.

At Common Law, extrajudicial Commitments were Rarities; the usual Practice was to indict, and then to take them upon a Writ of *Capias*; the antient Law was tender of a Man's Liberty, and then were the Writs framed in the Register *de actio & atia, & de tradendo in Ballium*, and the Writ of *Habeas Corpus*.

By *Magna Charta* 19 *Hen.* 3. *cap.* 29, which hath been confirmed forty times by subsequent Acts of Parliament, it is enacted, that *nullus liber homo imprisonetur nisi per legem terræ*, which I shall explain anon. This was made upon a Grievance then complained of, *viz.* illegal Commitments; What could those be in that Age, but taking Men's Persons without a Record to found a Charge or Accusation? and that it was so, appears by *Coke* in his Comment upon those antient Statutes: He says, that there is no Invasion upon this Law till *Edward* IIId's Time, and then the People quickly resented it; for in 5 *Edw.* 3. *cap.* 9. the great Charter is confirmed; but then in 25 *Edw.* 3. *cap.* 2. it is fully and more at large expressed, and recited, that whereas it is contained in the great Charter of the Franchises of *England*, that none shall be imprisoned, unless it shall be by the Law of the Land; it is awarded, asserted, and established, that from thenceforth none shall be taken by Petition, or Suggestion made to our Lord the King, or to the Lords of his Council, unless it be by Indictment or Presentment of his good and lawful People of the Neighbourhood, tho' *Magna Charta*, and the rest of the seven Statutes mention'd in the Petition of Right, usually quoted upon these Occasions, be in the General, and have ambiguous Words in them, or Words made ambiguous by the King's Counsel in most Ages, yet this is plain and express, and needs no Strain on our Side. And I cannot find it ever pretended to on the other Side to be a Strain, they are so plain that the Inference is easy, and hard to be avoided. I will not, I must not

* See Proceedings against Bishop *Atterbury*, &c. No. 91. p. 338.

Authorities, againſt the Commitment by a Privy Council, but methinks they are ſtrong againſt an extrajudicial Commitment by a ſingle Lord of the Council, unleſs Mr. Attorney will argue, that the Council cannot commit by reaſon of this Law, but a ſingle Privy Counſellor is out of the Words of the Act; and when I hear that, he may expect another Anſwer.

Now for the Words *per legem terræ:* In *Magna Charta*, in 2 *Inſt.* 51. my Lord *Coke* doth indeed ſay, that in ſome Caſes a Man may be taken and arreſted before Indictment or Preſentment; and one Caſe which he mentions is, by lawful Warrant, where there is a Witneſs againſt an Offender: Upon Suſpicion there may be an Apprehenſion, but there cannot be a Commitment, with a Charge of an Offence, unleſs there be an Indictment or Preſentment, or a Witneſs againſt the Offender; now there can be no Witneſs, but there muſt be an Oath: So it is by all Laws, a Man cannot be a Witneſs, though he may be an Informer, unleſs he be ſworn; and by our Law, even Peers, if they are Witneſſes, muſt be ſworn. Now that a ſingle Privy Counſellor can give an Oath, I can find no Law or Precedent for it; it is true the Privy Council may adminiſter an Oath, and have done ſo for a long time, but that every ſingle Member can do ſo, doth not follow, it is no more a Conſequence, than that becauſe the Houſe of Peers can give an Oath, therefore every Peer may at home do the ſame. He is one of his Majeſty's moſt Honourable Privy Council, and that is all; and that is only (as I may may with Reſpect ſay) when they are *capitulariter congregati*.

Further, my Lord *Coke* ſaith, That to make a Commitment lawful, the firſt Requiſite is, that he, or they, who do commit, have lawful Authority; now whether a particular Lord of the Council hath ſuch a lawful Authority, I muſt ſubmit to your Judgment.

In antient Times the Practice was for the Privy Council not to ſend for Men in Cuſtody, but to iſſue Citations and Summons, and that by their Meſſengers, as doth the Court Chriſtian by their Purſuivants, who cannot arreſt or impriſon, as in 12 *Co. Rep.* 49. In all the Records cited by *Coke*, in his *Juriſdiction of Courts*, *cap. Privy Council*, or *Prynn*'s *Animadverſions* upon that Book, 46. there is no Precedent mentioned of impriſoning, or bringing Men into Cuſtody, but only Summons and Citations to appear; and there are many of them

I ſhall not meddle with their Power of committing for a Contempt, or Refuſal to anſwer, or queſtion the Authority of the Counteſs of *Shrewſbury*'s Caſe, 12 *Co. Rep.* 93. but I urge this only to ſhew the Improbability, that our Law ſhould veſt ſuch an Authority in each Member of the Privy Council.

In *Prynn*'s *Animadverſions on* 4 *Inſt.* it is in his Comment upon *Coke*'s *Epilogue*, *pag.* 422. is a very notable Record. *Rot. Parl. Anno* 28 *Hen.* VI. *num.* 56. where there is an Impeachment of *Talbois*, for a notable Riot upon ſeveral Lords of the Council met within the Palace at *Weſtminſter*; and it is prayed, that he may be ſent to the *Tower* of *London*, to be kept without Bail or Mainprize for twelve Months, to anſwer all Indictments for that and other Riots, before the King and his Juſtices in his Bench within that Time; and if the Conſtable of the *Tower* ſhould ſuffer him to eſcape, or go at large, he ſhould forfeit One Thouſand Pounds; to which Article of the Commons Petition and Bill the King aſſenteth, ſo that here was an Act of Parliament (for ſuch it is, though in Form of a Petition granted, as was the antient Form), to inforce a Commitment to the *Tower* for any Affront to the Lords of the Council: Now I would beg leave to obſerve, that it was not by way of Puniſhment for the Offence, but to ſecure the Parties to be forth-coming to anſwer an Indictment, the Puniſhment muſt be Fine and Impriſonment: Now it ſeems ſtrange, that an Act of Parliament ſhould be made to ſecure a Man, in order to anſwer an Indictment for an Aſſault and Riot upon the Lords of the Council, when any one Lord of the Council might have committed him, and he might have been indicted next Term; for the Fact was done at *Weſtminſter* in *Middleſex*.

I find a Caſe in 1 *Leon.* 70, 71. it is *Newell*'s Caſe; he was committed *per Mandatum Franciſci Walſingham, Militis, Principalis Secretarii, & unius de Privato Concilio Dominæ Reginæ*, and the Return was held inſufficient. I muſt agree, that the Book ſays it was, becauſe the Cauſe for which he was committed was not alledged, and they amended the Return, and then they made it *ex Sententia & Mandato totius Concilii Privati, ita quod Corpus ejus paratum habere non poſſimus*; it is true, that at laſt the Court took Exceptions to it, becauſe the Body was not brought, and there was a very wiſe Diſtinction made by the Court, That where one is committed by one of the Privy Council, there the Cauſe ought to be returned; but where the Whole Council do commit, there need no Cauſe to be alledged. Now it is plain, that this was a Diſtinction without a Difference; for by the Petition of Right, and the Seven old Statutes, and all the Records and Law of old Time, no *Engliſhman* ought to be deprived of his Liberty by an extrajudicial Commitment or Warrant, unleſs the Cauſe be ſhewn; and I would infer, that the then King's or Queen's Council thought a Commitment by one Lord of the Council was not legal, and therefore they added *ex Sententia & Mandato totius Privati Concilii*, as it ſeems to me, that the Court did ſlide over that Queſtion, by inſiſting upon the other Exception: However, at the moſt, though it make againſt the Novelty of the Commitments, yet it can never make for the Legality of them, when the whole is conſidered.

Upon theſe Conſiderations, I hope it will appear to your Lordſhip and the Court to be a doubtful Point, whether a Secretary of State may commit; and the Conſequence of that is, that the Priſoner ought to be bailed according to *Buſhel*'s Caſe, *Vaughan* 157. That the King's-Bench may bail in any Caſe of Treaſon, if they think fit, but the Common Bench muſt remand, if the Cauſe of the Impriſonment returned be juſt, and well returned: But then there is this Diſtinction: If it ſhall appear to the Court, that the Party was impriſoned againſt the Law of the Land, they ought, by Force of *Magna Charta*, to deliver him; but if it be doubtful, and under Conſideration, then he ought to be bailed: And this hath been the Practice upon Convictions by Juſtices of the Peace; and the Excuſe of the Judges in 4 *Car.* for their *Remittitur*, *&c.* that it was *quouſque*, *&c. i. e.* till further Conſideration, was never allowed as a wiſe or legal one. Now I hope I have ſaid enough to make it doubtful.

Then for Meſſengers, I have further matter to urge; the Reaſon why Commitments are required to be to the County Gaol, by 5 *Hen.* 4. *cap.* 10. is mentioned in 2 *Inſt.* 43. and 9 *Co. Rep.* 119. that they may have their Trial at the next Gaol Delivery, or Seſſions of the Peace; and my Lord *Coke* ſaith, that at Common Law the committing to Priſon is only to this end, that the Party may be forthcoming to be duly tried according to the Law and Cuſtom of the Realm: And the Abbots of St. *Alban* and *Crowland* loſt their Franchiſes of having Gaols, becauſe they detained Men in Priſon, for a long time, without making a Deliverance; and all this doth in Reaſon argue againſt Meſſengers Power to make their Houſes Priſons.

My Lord *Coke* ſaith, in 2 *Inſt.* 43. that the Statute 5 *Hen.* 4. extendeth to all Judges and Juſtices for two Reaſons: Firſt, Becauſe this Act is declarative of the Common Law; and ſecondly, *Ubi lex eſt ſpecialis, & ratio ejus generalis, generaliter accipienda eſt*; and if ſo, this was a falſe Impriſonment of Sir *James Montgomery*, and then the Conſequence is what I urged the other Day.

I find further, in 2 *Inſt.* 705. that by the Parliament Roll, 51 *Edw.* 3. *numb.* 68. it appears, that Gaols were anciently to be repaired at the King's Charge; and by Lord *Coke* upon 23 *Hen.* 8. *cap.* 2. concerning the new erecting of Gaols, his Opinion is, that the ſame cannot be done without Act of Parliament; and I cannot find any Act of Parliament for making the forty-two Houſes of the Meſſengers to be lawful Priſons: If there be any ſuch, I ſuppoſe the King's Counſel will ſhew them to your Lordſhip; nay, I cannot find any Grant of ſuch a Franchiſe to them.

Beſides, the Reaſon of the Law is with us. Out of the County Gaols you have at every Seſſions of Gaol Delivery Calendars of the Priſoners that are in Cuſtody there, but of the Priſoners in Cuſtody of Meſſengers you can have no Notice; and this is no ſmall Miſchief in reſpect of the Subjects Liberty; for at a Gaol Delivery the Calendar is to be called over, and by the Calendars in former times were the Executions made without any ſpecial Warrant from the Judge or Recorder, which is but a late Practice.

Beſides, according to 3 *Inſt.* 209. a Man regularly before the *Habeas Corpus* Act, if committed for Treaſon or Felony by a Perſon having Authority to commit, was not to be diſcharged until he was inquired of, and either indicted or acquitted, or an *Ignoramus* found, and delivered by Proclamation; now how this could be practiſed of a Meſſenger's Ward, is to me unaccountable.

I will in this Caſe offer to your Lordſhip what I find in this Matter, with Sincerity, and ſubmit it to your Judgment. There is in 12 *Co. Rep.* 129. a Caſe cited out of the Year Books, *viz.* 22 *Aſſize pl.* 49. One was beheaded for killing *Adam Walton, nuncii Domini Regis, miſſi ad mandatum ejus exequend'*, which is there taken for Petit Treaſon: This is all that I can find of antient Authority, which mentions ſuch a Creature as a Meſſenger; but nothing can be inferred from hence to prove the Meſſengers in Ordinary to be Keepers of Gaols for the Receipt of Felons and Traitors.

Nay, I find further a Caſe, which ſeems to overthrow the Commitment to any other Priſon than the County Gaol: I will but name it, and ſubmit its Conſideration to your Lordſhip's Judgment; it is in St. *John*'s Argument at a Conference concerning the Attainder of the Earl of *Strafford* (it is *fol* 46. of the *4to* Print of that Argument) the Caſe of Sir *John Mortimer*, who was drawn, hanged, and quartered for breaking the Priſon of the Tower, having been committed thither upon Suſpicion of Treaſon: But this was in 2 *Hen.* 6. and upon an Attainder by Bill in Parliament, and ſo it is in *Cotton*'s *Abridgment of the Records*, *pag.* 368. and there it is mentioned as a ſtrange Thing to be done in Times of Peace, and when the Realm was in quiet, for a Man to be condemned without Trial or Arraignment. Now I might infer from hence, that if the Law had been undoubtedly plain concerning an Eſcape out of the Tower, as a legal Priſon, there had been no need of an Act of Parliament to attaint him; but however, it may argue thus much, that if a Bill were neceſſary for ſuch an Eſcape, that an Act of Parliament is certainly neceſſary to make a Reſcuer of one ſuſpected of Treaſon out of the Cuſtody of a Meſſenger to be guilty of Treaſon; but all theſe I ſubmit to your Lordſhip's Conſideration. All that I contend for is, to make it a doubtful Queſtion to the Court, whether upon this Return, taking it for true, it is poſſible to indict and convict theſe Priſoners for Treaſon? for if not, they ought to be bailed.

Then there is another Exception, which I juſt mentioned the laſt time, and that is, that it is not mentioned in this Warrant, what the Species of Treaſon was, for which Sir *James Montgomery* was committed. I ſhall, as I have already, avoid the Repetition of any thing which I then offered; there are ſeveral Treaſons at this Day, where the receiving, comforting, and relieving of them afterwards, knowing them to be ſuch, may not be Treaſon; and then in ſuch Caſe the helping him to eſcape will not be ſo, and conſequently it ought to have been alledged in the Warrant, what the Treaſon was for which Sir *James Montgomery* was committed. Now it is no Treaſon to receive and comfort a Counterfeiter of the Great Seal, it is only Miſpriſion, for there are no Acceſſaries in Treaſon, and Principal he is not, becauſe he did not know of it at the Time; to this effect are the Words of the Book, 12 *Co. Rep.* 81. ſo it is of the receiving and comforting a Jeſuit, or other *Engliſhman* taking Orders abroad, and returning into *England*; for by 26 *Eliz.* that is made Felony; which Statute would never have been made, if it had been Treaſon, *Dyer* 296, 297. *Corrier*'s Caſe. If I know that one hath made falſe Money, and receive, comfort, and abett him, this is only Miſpriſion: How far theſe are Law I am not to argue, but I ſuggeſt the Words or Effect of the Authority, and ſubmit them. Sure I am of this, that if your Lordſhip and the Court be ſatisfied that they cannot be attainted of Treaſon, if the Fact be as this Return is, then you will not remand them.

Mr. *Solicitor* was pleaſed to argue, that theſe are are Niceties too ſubtle for a Return upon a *Habeas Corpus*; but according to *Vaughan*, 136. the Writ of a *Habeas Corpus* is now the moſt uſual Remedy by which a Man may be reſtored to his Liberty, if he have been againſt Law deprived of it; and therefore it is, that the Writ doth command to know, whether it be according to Law, or againſt Law; and therefore the Cauſe of the Impriſonment ought by the Return to appear, as ſpecially and certainly to be judged by the Court, where the Return is made, as it did appear to the Court or Perſon authorized to commit, elſe the Return is inſufficient. Now the Reaſon of adjudging that Return in *Buſhell*'s Caſe to be inſufficient, was becauſe it was only ſaid, that their Verdict was againſt full and

and manifeſt Evidence, and did not ſay what; by the ſame Reaſon Sir *James Montgomery*'s Treaſon ought to have been ſet forth in this Caſe; and as to Credence, no more ought to be given to a Perſon committing, when a *Habeas Corpus* is brought, than there is to a Court giving a Judgment, when a Writ of Error is brought to examine it, in order to Affirmance or Reverſal; for an *Habeas Corpus* is brought in like manner to examine the Cauſe of the Party's Impriſonment, either to bail or diſcharge, or elſe to remand him, which is to affirm the Commitment to be legal, and upon good Cauſe.

I have modern Authority to juſtify much nicer Exceptions to Commitments, than thoſe I have mentioned; ſuch Authority as Mr. *Solicitor* will not deny to be good. Complaint hath been of a Warrant of Commitment, that it did not appear in whoſe Reign the Treaſon was committed, whether in the late King's, or the former King's; it is obſerved in the Remarks upon *Corniſh*'s Trial, and I am ſure Mr. *Solicitor* muſt own that to be much nicer than what I have offered upon this; I do not juſtify that, but my Exceptions to the Return.

Mr. Serjeant *Levinz* argued on the ſame Side, that the Return was ill, becauſe the Commitment was to a Meſſenger; it ought to have been to a County Gaol, that the Cuſtody upon an Apprehenſion ought to be but twenty-four Hours, *Britton* 19. *Cuſtomer* of *Normandy* 456. *Hil.* 22 *Edw.* 4. *pl.* 4. thoſe Meſſengers exacted Fees, *viz.* 6*s.* 8*d.* or 10*s.* *per diem*. It is in effect to fine the Party before he is convicted. Then he ſaid, that all thoſe Queſtions might have been ſpared, if Mr. *Attorney* would conſent to their being bailed.

Lord Chief Juſtice. In truth moſt of them might have been ſpared, for they have been argued more for Pleaſure than Neceſſity.

Then Mr. *Attorney General*, and Mr. *Solicitor* inſiſted, that the Reſcue of one in Cuſtody upon Suſpicion of Treaſon, was Treaſon; that the ſetting forth the Overt Act was more for the Advantage of the Priſoner, than barely alledging the Species of Treaſon: That as to the Secretary's Commitment, it was owned now not to be ſuch a Novelty as was pretended the laſt Time: That it was very ancient; that the Caſe in 11 *Leon.* is very flat to that Purpoſe; that in the Tower they found a Commitment in 1660, by Secretary *Morris*, and that many more had been ſince, but that Sir *Joſeph Williamſon*, who had the Papers, was now in *Ireland*; that it was not needful, that he who commits ſhould be able to give an Oath; that the Houſe of Commons could not give an Oath, and yet could commit; and more to the like Effect.

Sir *Bartholomew Shower* replied, That he was glad to hear there were ſo few Precedents for a Secretary's Power; that if there had been more, Mr. *Attorney* would have ſhewn them; that the Houſe of Commons Power was an Inſtance not fit for him to anſwer; that he did deſire no more of Mr. *Attorney*, than that a Secretary could not give an Oath, and then he hoped the Conſequence would be plain; and ſo ſubmitted it to the Court.

L. C. J. I did always give Credit to the Reſolutions of the Judges in *Anderſon*, and it is Part of a Privy Counſellor's Oath to take care of the King's Perſon againſt all Traitors, *&c.* Was there not a Gaol Delivery at Common Law? And are not the Commiſſioners by their Commiſſion to inquire of the Priſoners in that Gaol, and a Grand Jury to be Impanelled? And conſequently, doth not the Law ſuppoſe ſome to have been committed thither before? And then, by whom they were committed *? Though a Meſſenger be not a proper Officer, yet any Perſon may be ordered to be received for convenient Time for Examination, †

&c. Commitments regularly ought to be to the County Gaols, and I wiſh the Juſtices of the Peace, who commit to *New Priſon*, and the *Gate-houſe*, were here to hear this. But, Mr. *Attorney*, the Queſtion is, Whether you ought not to have ſpecified theſe two Things in your Warrants, for what Treaſon Sir *James* was committed? And my Reaſon is, becauſe the Eſcape will be ſame Species of Treaſon with that for which the Party reſcued was committed; and ſecondly, That he had done a Treaſon, that Sir *James* was guilty. But, Mr. *Attorney*, will you further conſider of it, though I think we muſt bail them in the mean time, an *Habeas Corpus* being *feſtinum remedium*; but I would hear my Brothers Opinion. *Brit.* 19. 92.

J. Rokeby. Sir *Barth. Shower*, I am glad to ſee that you have rectified a Miſtake you were in about a Secretary's Commitment: It was long before Sir *Lionel Jenkins*'s time: *Walſingham* committed near Two hundred Years ago; and there is another Precedent in 2 *Leon.* 175. *Hilleyard*'s Caſe, I think, that a *Conſervator Pacis* at the Common Law may commit, and ſo may a Conſtable; it is incident to his Power of committing, that he may give an Oath, and take a Recognizance, and (*quod mirum*) one of the Counſel may commit. I would not have the Students go away with the Notion of the Novelty of it: I take Secretaries of State to be great Officers; they are Centinels to watch for the Preſervation of the King, and the common Peace of the Realm: And for Meſſengers, for any thing appears, he might be only carrying to Gaol; but yet I think they ought to be bailed, becauſe it is not expreſſed in the Warrant, what the Species of Treaſon was for which Sir *James Montgomery* was committed.

J. Eyre. There may be a Difference between carrying to Priſon, and a Commitment with a Charge upon them; and there may be a Difference between ſpecifying and not ſpecifying Sir *James*'s Treaſon. Upon the whole, I think they ought to be bailed.

J. Gregory was abſent.

Accordingly they were bailed to appear the laſt Day of Term, to anſwer ſuch Matters as ſhould then be objected againſt them.

CLIII. *The Trials of* Robert Charnock, Edward King, *and* Thomas Keyes, *at the* Old-Baily, *for* High-Treaſon, March 11, 1695. 8 Will. III.

THIS Day the Trial of *Robert Charnock*, *Edward King*, and *Thomas Keyes*, who were indicted at *Hickes*'s-*Hall* on this Day ſeven-night, upon a ſpecial Commiſſion of *Oyer* and *Terminer* for High-Treaſon, in Compaſſing the Death of the King by a barbarous Aſſaſſination, in order to further and aſſiſt an Invaſion into this Kingdom from *France*, and Subverſion of the Government, were proceeded upon in Manner following.

After opening the Court, at which were preſent a great many of the Nobility, Members of Parliament, and other Perſons of Quality, the petty Jury returned by the Sheriff of *Middleſex* to try the Priſoners were all called over, being in Number above Eight-ſcore, and conſiſting of Baronets, Knights, Eſquires, and Gentlemen, and the Appearances of thoſe who anſwered to the Call were recorded; and ſix of the Judges, *viz.* The Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr. Juſtice *Nevil*, Mr. Juſtice *Powell*, and Mr. Juſtice *Rokeby*, being upon the Bench, the Priſoners were called for to the Bar, and there arraigned upon the ſaid Indictments.

Clerk of Arraignments. Robert Charnock, hold up thy Hand (*which he did:*) *Edward King*, hold up thy Hand (*Which he did:*) *Thomas Keyes*, hold up thy Hand (*Which he did*). You ſtand Indicted in the County of *Middleſex* by the Names of *Robert Charnock*, late of the Pariſh of St. *Clement Danes* in the County of *Middleſex*, Gent. *Edward King* of the ſaid Pariſh and County, Gent. and *Thomas Keyes* of the ſame Pariſh and County, Yeoman, for that You the fear of GOD in your Hearts not having, nor the Duty of your Allegiance weighing, but being moved and ſeduced by the Inſtigation of the Devil, as falſe Traytors againſt the moſt Serene, moſt Illuſtrious, moſt Clement, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of GOD, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* your Supreme, True, Lawful, and Undoubted Sovereign Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of our Lord the King that now is, towards him our ſaid Lord the King ſhould bear, and of Right ought to bear, withdrawing, and utterly to extinguiſh, intending and contriving, and with all your Strength purpoſing, deſigning and conſpiring the Government of this Kingdom of *England* under him our ſaid Sovereign Lord the King that now is of Right happily and duly eſtabliſhed, altogether to ſubvert, change and alter; as alſo our ſaid Sovereign Lord the King to Death and final Deſtruction to put and bring, his faithful Subjects and the Freemen of this Kingdom of *England* into intolerable and miſerable Slavery to *Lewis* the *French* King to ſubdue and ſubject, the tenth of Day of *February*, in the ſeventh Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traiterouſly, did compaſs, imagine, contrive, purpoſe, deſign and intend our ſaid Sovereign Lord the King that now is, to ſlay, kill, and murder, and a miſerable Slaughter amongſt the Faithful Subjects of our Lord the King throughout this whole Kingdom of *England* to make and cauſe. And the ſame moſt abominable, wicked and deviliſh Treaſons and traiterous Contrivances, Intentions and Purpoſes of yours aforeſaid to fulfil, perfect, and bring to Effect, you the ſaid *Robert Charnock*, *Edward King* and *Thomas Keyes*, and very many others falſe Traytors to the Jurors unknown, afterwards, to wit, the ſaid tenth Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, clandeſtinely, traiterouſly, and with Force and Arms, *&c.* did meet, propoſe, treat, conſult, conſent and agree our ſaid Sovereign Lord the King by lying in wait, to aſſaſſinate, kill and murder: And that execrable, horrid, and deteſtable Aſſaſſination and Killing the ſooner to execute and perpetrate, afterwards, to wit, the ſame Day, Year and Place laſt mentioned, traiterouſly did treat, propoſe, and conſult of the Ways, Manner and Means, and the Time and Place where, when, how, and in what Manner our ſaid Sovereign Lord the King, by lying in wait the more eaſily you ſhould kill; and did conſent, agree and aſſent, that forty Horſemen or thereabouts, of you the ſaid *Robert Charnock*, *Edward King*, and *Thomas Keyes*, and the ſaid other Traitors unknown, and others by them to be hired, procured and paid, with Guns, Carbines and Piſtols with Gun-powder and leaden Bullets charged, and with Swords and other Arms armed, ſhould lie in Wait, and be in Ambuſh, our ſaid Sovereign Lord the King in his Coach being when he ſhould go abroad, to ſet upon, and that a certain and competent Number of thoſe Men ſo armed upon the Guards of our ſaid Sovereign Lord the King then and there attending upon him, and being with him, ſhould attack, and ſhould overcome and ſubdue them, whilſt others of the ſaid Men ſo armed our ſaid Sovereign Lord the King ſhould Aſſaſſinate, Kill, Slay and Murder: And alſo that You the ſaid *Robert Charnock*, *Edward King*, and *Tromas Keyes*, your Treaſons and traiterous Intentions, Deſigns and Contrivances aforeſaid, to execute, perpetrate, fulfil,

* Juſtices of the Peace are not by Common Law, but appointed by Statutes, the firſt of which was 1 *Edw.* 3. *cap.* 16. By Common Law there were only Conſervators of the Peace, wh[ose] Power was very ſhort of a Juſtice's now-a-days. See *Crompton's* and *Dalton's* Juſtice. † This is at moſt but for three Days, *Cro. Eliz.* 830.

fulfil, and fully to bring to Effect afterwards, to wit, the Day and Year laſt aboveſaid at the Pariſh aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Swords, and other Weapons, Ammunition, warlike Matters, and military Inſtruments, falſely, maliciouſly, ſecretly and traitorouſly did obtain and buy, collect and procure, and cauſe to be bought, obtained, collected and procured with that Intention, the ſame in and about the deteſtable, horrid and execrable Aſſaſſination, Killing and Murdering of our ſaid Sovereign Lord the King as aforeſaid, to be uſed, employed, and beſtowed, againſt the Duty of your Allegiance, and againſt the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, as alſo againſt the Form of the Statutes in ſuch Caſes made and provided.

How ſay you, *Robert Charnock*, are you Guilty of the High-Treaſon whereof you ſtand indicted, or Not Guilty?

Charnock. My Lord, I deſire I may have a Copy of this Indictment, that I may adviſe with Counſel upon it before I plead.

† *L. C. J.* Pray, Mr. *Charnock*, will you ſpeak out, that we may hear what you ſay.

† *Sir* John Holt.

Charnock. My Lord, I find here is a very bad Crime that is laid to my Charge; I deſire that I may have a Copy of the Indictment, to adviſe with Counſel upon, and that I may have Counſel to aſſiſt me in my Tryal, and to direct me, who am an ignorant Man in theſe Matters, how to manage myſelf according to the new Act made this Seſſions of Parliament, for regulating Tryals in Caſes of High-Treaſon.

L. C. J. Have you not had Counſel already to adviſe and direct you, Mr. *Charnock?*

Char. My Lord, I had Notice on *Wedneſday*, that I ſhould be tried this Day, and it was *Saturday* laſt before I could get my Counſel to come to me.

L. C. J. And what did your Counſel adviſe you? Did they tell you, you were to have a Copy of your Indictment, by Virtue of the late Act of Parliament?

Char. My Lord, tho' the Act does not take Force as to ſome Things till the 25th of this Month, yet the Equity of that Act, it being now reduced into a Law, is conceiv'd to reach to Caſes of the like Nature before the 25th, and I deſire the Act may be read.

L. C. J. You ſhall have it read, if you will, but of what Avail or Benefit it will be to you, I cannot tell; for you yourſelf take notice, that it is an Act of Parliament made this Seſſion, and is not to take Effect until the 25th of this Month. You now here ſtand indicted before the 25th, and for a Treaſon committed before, and therefore you can't claim, nor have any Benefit or Advantage by this Act; but you are to be proceeded againſt according to the Law before, and the Practice uſed in all Proceedings againſt other Perſons in your Circumſtances. And it is the known Practice, and received for Law, in all Times before this new Act was made, That no Copy of an Indictment for High-Treaſon ſhould be granted, nor Counſel aſſigned, or permitted to aſſiſt the Priſoner in making his Defence: True it is, a Copy of the Indictment has been often deſired, but as true, that it has as often been denied.

Char. My Lord, the Equity of this Act (it being now an Act of Parliament) is now in Force, as much before the 25th of this Month as after.

L. C. J. Equity is nothing in theſe Caſes: You are here tried by the Law, and we are bound to go in all ſuch Caſes according to the Rules of Law, and are not to be guided by any equitable Conſideration, further than the Law itſelf does allow us.

Char. But, my Lord, the Ground of that Act, which is the Reaſonableneſs and Equity that all Priſoners ſhould be made capable of fairly defending themſelves, is now in Force, I ſay: And I hope your Lordſhip and the Court will look upon it to be reaſonable, that I ſhould have the Benefit of that Equity.

L. C. J. I tell you, we are not here in a Court of Equity, but muſt proceed according to the Rules of Law; and the Law you now ſpeak of does not yet commence.

Char. My Lord, I am informed, for I am very ignorant in theſe Matters myſelf, that there is nothing that I now deſire, which is contained in this Act, but what was Law before the making of this Act, tho' the Practice may have been otherwiſe.

L. C. J. Then I muſt tell you, Mr. *Charnock*, you have been very much miſinformed; for if all that is contained in this Act of Parliament that you mention was Common Law before, there would have been no Occaſion for the making a new Act of Parliament.

Char. My Lord, I do not ſay that all Things in this Act of Parliament were Law before, becauſe there are ſeveral Things in it that have not been Law before. But, my Lord, there are ſeveral Things beſides; and particularly thoſe two Things which I now deſire, a Copy of the Indictment and Counſel to aſſiſt me, were Things that were agreeable to Law before; and I muſt take the Liberty to appeal to a Judge that I ſee upon the Bench, my Lord Chief Juſtice *Treby*, as to his own Opinion, and deſire he would pleaſe to declare, whether formerly, in a Conference between the Lords and the Commons, he did not deliver his Opinion, That it was the Common Law, that a Priſoner ſhould have a Copy of his Indictment, and Counſel to aſſiſt him.

L. C. J. Here is my Lord Chief Juſtice *Treby*, you had beſt to apply yourſelf to him for his Opinion.

L. C. J. Treby. Pray, Sir, What is your Queſtion you would aſk me?

Char. My Lord, I am here for my Life, and muſt take all the Advantages that I can; I am here arraigned for a very grievous Offence; I deſire I may have a Copy of the Indictment, and Counſel to aſſiſt me in my Defence. Here is an Act of Parliament, out of the Equity of which I apprehend, I ought to have ſome Advantage; for I am informed, that what I deſire was Common Law before the making of the Act; and particularly that your Lordſhip's Opinion, in a Conference between the two Houſes, was, that the Priſoner ought to have thoſe Advantages by the Common Law.

L. C. J. Treby. Then, Sir, I take your Queſtion to be this: You would have my Opinion to be declared, That this Act, which was lately paſs'd for regulating Trials in Caſes of High-Treaſon, and all the Particulars in the Act were Common Law before.

Char. No, my Lord; I do not ſay that all the Particulars in the Act were Common Law before.

L. C. J. Treby. Then, pray, Sir, name your Particulars, and I will endeavour to give you an Anſwer.

Char. My Lord, the Particulars that I do aſk are theſe: Firſt, That I may have a Copy of the Indictment, and Counſel to adviſe me, becauſe it is a grievous Crime I ſtand here accuſed of, and that I may have them to aſſiſt me at my Trial in Court: This I do inſiſt upon from the Equity of the Act of Parliament, and your Lordſhip's Opinion at the Conference that it was Common Law before.

L. C. J. Treby. As to my Opinion about the having a Copy or Counſel, I do not think or believe, that I ever ſaid that it was Common Law.

Char. My Lord, I beg your Pardon; I was informed your Lordſhip had delivered ſuch an Opinion, at a Conference between the Lords and the Commons: But I deſire the Aſſiſtance of Counſel, becauſe I myſelf am ignorant of the Law; and particularly as to this Point, whether I am not entitled to the Equity of this Act of Parliament; for it now having paſs'd both Houſes of Parliament, and had the Royal Aſſent, it is a good Law; and though it be to take its Commencement on the 25th of this Month, yet that which is the Law of all Laws, the Reaſon and Equity of it, is, and always will be, the ſame.

L. C. J. No, Mr. *Charnock*, that does not follow, that becauſe the Wiſdom of the Law-makers has thought it to be equitable *de futuro*, therefore it ſhould be Law now; which, as I told you before, is the Rule that we are to go by; it is Equity and Juſtice, that the Proceedings be according to this Act of Parliament, from and after the 25th of this Month; but it is not Juſtice that ſuch Proceedings ſhould be till then, becauſe not according to Law.

Char. My Lord, the Ground of all Laws is Equity; and certainly it cannot be Equity, that a Priſoner ſhould make his Defence againſt an Accuſation in Writing, without having a Copy of it.

L. C. J. The Time of the Court muſt not be ſpent in this Manner; you have been already told, that by Law you are not to have a Copy of the Indictment; but you are to plead without having any Copy; for there is no Law now in being that allows the giving of ſuch a Copy, and 'tis but a ſhort Queſtion that you are aſked in order to your Trial, *viz.* Are you Guilty, or Not Guilty?

Char. My Lord, it is impoſſible for me to go to Trial preſently, and without the Aſſiſtance of my Counſel.

L. C. J. Why, had you not Notice of your Trial?

Char. My Lord, I confeſs I had Notice upon *Wedneſday* laſt.

L. C. J. Had you not your Counſel with you ſince that?

Char. Yes, my Lord, I had on *Saturday* laſt; but from that Time I have not been able to prepare myſelf as I think I ought; and I cannot conceive but that I ſhould have the Aſſiſtance of ſome Counſel to direct me in my Trial; for here is a very great Crime and heinous Charge laid againſt me in this Indictment, and I am very ignorant in all Law Proceedings.

L. C. J. It is very reaſonable that there ſhould be convenient Notice given to all Perſons in your Circumſtances; and truly this Day Sevennight is a very convenient Notice; eſpecially you having had, by your own Confeſſion and Acknowledgment, Counſel with you in the mean time.

Char. But, my Lord, what is the Advantage of having Notice, if one have not Privilege of Pen, Ink and Paper, and one's Counſel and Friends coming to them, and Privacy, without the Preſence of the Jaylor?

L. C. J. What ſay you that are of the King's Counſel? Was there Counſel allow'd to come to them?

Mr. Attorney General †. My Lord, there was Order given, that their own Counſel that they deſired ſhould come to them.

† *Sir* Thomas Trevor.

Mr. *Baker.* My Lord, as ſoon as ever they deſired Counſel there was an Order for it, and left with the Jaylor, that he ſhould permit the Counſel to come to them, and be with them in private.

L. C. J. Then tho' you had not your Counſel come to you till *Saturday*, it was your own Fault, for you had an Order for Counſel as ſoon as you deſired it; and even from *Saturday* is a reaſonable Time enough to prepare for anſwering the Queſtion, Whether Guilty or Not Guilty?

Char. I ſuppoſe Mr. *Bale* is in Court, who gave Notice on *Wedneſday*, and I acknowledge he came upon the *Thurſday*, and aſked if I would have any Body come to me; and he took then the Names of the Counſel that I deſired might come to me; and told me he would carry them to *Mr. Attorney General*, and ſee what his Opinion was of them; I ſuppoſe he did ſo: For upon *Friday* he came again, and brought me an Order for it; but when that Order was brought, the Counſel that was deſired was not to be had, or at leaſt with very great Difficulty, becauſe it was the Time of the Aſſizes, or very near it, and Counſel were gone or going out of Town; ſo that we could not have the Advantage of the Order for Counſel.

L. C. J. Look you, Sir, We think you have had convenient Notice, with Liberty of conſulting whom you had a mind to; if you have neglected your Opportunity of conſulting them, you muſt blame yourſelf, and nobody elſe; we muſt go on according to Law.

Mr. Att. Gen. My Lord, they had the Liberty of naming their own Counſel, and the Names were brought to me; and as ſoon as ever they were ſo brought, thoſe that were named had Leave to go to the Priſon to them; and they had a further Order than the firſt, which was, that their Friends ſhould be permitted to come to them; but that was not, as it was not convenient to be, in private; but the other Order was, that the Counſel ſhould ſpeak with them in private, and not in the Preſence of the Jaylor.

L. C. J. Pray hear what *Mr. Attorney* ſays, that your Counſel was ordered to be with you in private.

Char. But there was no Order, my Lord, for my Sollicitor to be with me in the Abſence of the Jaylor, who is the only proper Perſon for the conſulting with, and for going about to ſummon the Witneſſes.

L. C. J. We think you have had convenient Notice, and all the Allowances that can be in ſuch a Caſe. Aſk him to plead.

Cl. of Arr. Robert Charnock, Are you Guilty of the High-Treaſon whereof you ſtand indicted, or Not Guilty?

Char. My Lord, I hope you will give me ſome more Time to get my Witneſſes, that are now abſent; ſeveral of them are ten Miles out of Town; and therefore I would beg your Lordſhip to give me ſome Time.

L. C. J. Why, is ten Miles ſuch a Diſtance, that you could not have your Witneſſes between this Day Seven-night and this Day? But beſides, Mr. *Charnock*, what you now urge is out of Time; you ſpeak too ſoon to put off the Trial, for there can be no Trial till Iſſue joined; and that cannot be till Plea pleaded.

Char.

Char. My Lord, I was never inſtructed in Querks of Law, nor bred up to the Law; and I hope your Lordſhips will take care that I be not hurt for Want of Knowledge in the Forms of Law.

L. C. J. You may aſſure yourſelf, Mr. *Charnock*, you ſhall not be hurt by your Ignorance in the Law. All the Harm you will receive will be for having done contrary to the Law, and there is none of your Counſel, if they have been faithful to you, but muſt tell you the ſame Things we tell you now.

Char. My Lord, if I am to have no Counſel, I muſt deſire that the Court would be pleaſed to take the greater Care of me: For, as I have been informed, that was the Reaſon of the Practice of denying Counſel, that the Court ſhould be of Counſel for the Priſoner.

L. C. J. Mr. *Hardeſty*, aſk him whether he be guilty, or not guilty.

Cl. of Ar. Robert Charnock, are you guilty, or not guilty?

Char. Not guilty.

Cl. of Ar. Culprit, how wilt thou be try'd?

Char. By God and my Country.

Cl. of Ar. God ſend you a good Deliverance.—*Edward King*, How ſay you, Are you guilty of the High-Treaſon whereof you ſtand indicted, or not guilty?

King. My Lord, I beg the ſame Favour that Mr. *Charnock* has done, that I may have ſome more Time to prepare for my Trial, and a Copy of the Indictment, and Counſel aſſigned.

L. C. J. But you hear what has been ſaid to Mr. *Charnock* upon thoſe Points, and the ſame Rule that was given in his Caſe, you muſt expect will be in your Caſe.

Cl. of Ar. What ſay you, are you guilty or not guilty?

King. Not guilty.

Cl. of Ar. Culprit, how wilt thou be try'd?

King. By God and my Country.

Cl. of Ar. God ſend thee a good Deliverance. *Thomas Keyes*, are you guilty of the ſame High-Treaſon, or not guilty?

Keyes. My Lord, I have had no Counſel at all.

L. C. J. But you might have had, if you would; you had an Order for it as well as the others.

Keyes. My Lord, I was a Servant to Captain *Porter*; I was not able to fee any Counſel.

L. C. J. But you can tell whether you are guilty, or not guilty.

Cl. of Ar. Art thou guilty, or not guilty?

Keyes. Not guilty.

Cl. of Ar. Culprit, how wilt thou be tried?

Keyes. By God and my Country.

Cl. of Ar. God ſend thee a good Deliverance.

Char. My Lord, I deſire I may have the Favour of Pen, Ink, and Paper, upon my Trial.

L. C. J. Yes, yes, you ſhall have it; and if you have a Mind to it, you ſhall have the Indictment read to you in Latin.

Char. My Lord, my Ignorance in Forms of Law made me not aſk that before, becauſe I did not know whether I ſhould properly aſk it or not: And I do not know whether I ſhould aſk it properly now.

L. C. J. Yes, it is a very proper time to aſk it, and you ſhall have it, if you have a mind to it.

Char. My Lord, I do really deſire it, if it be a proper Time for me to have it.

L. C. J. Read the Indictment in Latin.

Char. And now, my Lord, I hope your Lordſhip will pleaſe that I ſhall have Pen, Ink, and Paper, that I may make the beſt Obſervations I can, ſince I cannot have a Copy.

Cl. of Arr. *Juratores pro Domino Rege ſuper ſacrum ſuum preſentant quod Robertus Charnock, nuper de Parochia Sancti Clementis Dacorum, in Com. prædicto, Generoſus; Edwardus King, nuper de Parochia Sancti Clementis Dacorum in Com. prædicto, Generoſus; & Thomas Keyes, nuper de Parochia Sancti Clementis Dacorum, in Com. prædicto, Yeoman, timorem DEI in cordibus ſuis non habentes, nec debitum Ligeanciæ ſuæ ponderantes, ſed inſtigatione diabolica moti & ſeducti, ut falſi Proditores contra ſereniſſimum, illuſtriſſimum, clementiſſimum & excellentiſſimum Principem, Dominum Gulielmum Tertium, DEI Gratiâ Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, Fidei Defenſorem, &c. Supremum, verum, legitimum, legalem & indubitatum Dominum ſuum; cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeanciam, quas quilibet ſubditus dicti Domini Regis, nunc erga ipſum Dominum Regem gereret, & de jure gerere tenetur, ſubtrahentes & penitus extinguere intendentes & machinantes, & totis ſuis viribus excogitantes, deſignantes & conſpirantes, gubernationem hujus Regni Angliæ ſub ipſo Domino Rege nunc de jure feliciter & debite ſtabilitam omnino ſubvertere, mutare & alterare, nec non eundem Dominum Regem ad mortem & finalem deſtructionem ponere & adducere; ac ſubditos ſuos fideles, & liberos homines hujus Regni Angliæ, in ſervitutem intolerabilem & miſerrimam Ludovico Regi Gallico ſubjugare & mancipare decimo Die Februarii, Anno Regni dicti Domini Regis nunc ſeptimo, & diverſis aliis diebus & vicibus, tam antea quam poſtea, apud Parochiam prædictam in Com. prædicto, falſo, malitioſe, diabolice & proditorie eum faſſaſſaverunt, imaginati & machinati fuerunt, excogitaverunt, deſignaverunt & intendebant dictum Dominum Regem nunc occidere, interficere & murdrare———*

Char. What Word was that laſt, Sir?

Clerk of Ar. Murdrare.

Char. That is an odd Word, I can't underſtand what it means.

L. C. J. It is a Term of Art, the Signification of it is to murder:—— Go on, Mr. *Hardeſty*.

Cl. of Ar. *Ac ſtragem miſerabilem inter fideles ſubditos ipſius Domini Regis per totum hoc Regni Angliæ facere et cauſare & eaſdem nefandiſſimas, nequiſſimas & diabolicas proditiones & proditorias machinationes, intentiones & propoſita ſua prædicta perimplend' perficiend' & ad effectum redigendum ipſi iidem Robertus Charnock, Edwardus King, & Thomas Keyes, & quam plurimi alii falſi proditores Juratoribus prædictis ignoti, poſtea, ſcilicet, eodem decimo die Februarii, Anno ſupra dicto, apud Parochiam prædictam, in Com' prædicto, ac diverſis aliis diebus & vicibus tam antea quam poſtea, ibidem & alibi in eodem Com. falſo, malitioſe, adviſate, clandeſtine, frauditorie ac vi & armis, &c. conveniebant, propoſuerunt, tractaverunt, conſultaverunt, conſenſaverunt & agreeaverunt ad ipſum Dominum Regem ex inſidiis & dolo percutiend', Anglice* To Aſſaſſinate, *interficiend' & murdrand'; & ad execrabilem, horrendam & deteſtabilem Aſſaſſinationem, Anglice* Aſſaſſination, *& interfectionem illas citius exequend' & perpetrand' poſtea ſcilicet eiſdem die, anno, & loco ultimo mentionatis, proditorie tractaverunt, propoſuerunt, & conſultaverunt de viis, modis & mediis ac tempore & loco ubi, quando, qualiter, & quomodo dictum Dominum Regem ſic ex inſidiis facilius interficerent, & conſenſerunt, agreeaverunt & aſſenſerunt quod quadraginta homines Equeſtres, aut eo circiter de ipſis, Roberto Charnock, Edwardo King & Thoma Keyes & prædict' aliis proditoribus ignotis ac aliis per eos conducend' procurand' & impendend' cum bombardis, ſclopis & ſclopetis, pulvere bombardico & globulis plumbeis oneratis, & cum gladiis enſibus & aliis armis armatis inſidiati forent & eſſent in ſubſeſſa, Anglice* Ambuſh, *ad eundem Dominum Regem in Rheda ſua,* in *Anglice*, his Coach, *exiſtentem, quando foris iret invadend'; quodq; quidam & competens numerus de hominibus illis ſic armatis in ſatellites, Anglice* the Guards, *ipſius Domini Regis eum tunc ibidem attendentes, & ſecum exiſtentes aggreſſi forent & eos devincerent & expugnarent, dum alii eorundem hominum ſic armatorum ipſum Dominum Regem percuterent, interficerent, occiderent & murdrarent; & etiam iidem Robertus Charnock, Edvardus King & Thomas Keyes ad proditiones & omnes proditorias intentiones, deſignationes & machinationes ſuas prædictas exequend' perpetrand' perimplend' & plenarie ad effectum redigend' poſtea, ſcilicet die & anno ultimo ſupra dictis, apud Parochiam prædictam, diverſos equos & quam plurima arma, bombardas, ſclopos, enſes & gladios, & alia ornamenta, munitiones & res bellicoſas & inſtrumenta militaria falſo, malitioſe, ſecrete & proditorie obtinuerunt, emebant, colligerunt & procuraverunt ac emi, obtineri, colligi, & procurari cauſaverunt, eâ intentione ad illa in & circa deteſtabilem, horrendam & execrabilem Aſſaſſinationem, Interfectionem & Murdrum dicti domini Regis ut præfertur utend', occupand' & impendend' contra Ligeanciæ ſuæ debitum, & contra pacem dicti Dom. Regis nunc, Coronam et Dignitates ſuas, nec non contra formam Statut' in hujuſmodi Caſu edit' & proviſ.*

Char. My Lord, I deſire the Indictment may be read again, for there is ſo great a Noiſe in the Court, and that Gentleman hath not the moſt perfect Delivery; he is more uſed to Law-*Latin* than to any other. But I beg I may have it read again, that I may as perfectly as I can underſtand it.

The Indictment was read again in *Latin.*

L. C. J. Look ye, you that are the Priſoners, every one of you has the Liberty to challenge 35 of thoſe that are returned to ſerve upon the Jury that is to try you, without ſhewing any Cauſe; now, if you will all join in the ſame Challenge, then we can try you all together, as ye are all together jointly in the Indictment; and ſave the Time and Trouble that will otherwiſe be unavoidable. But if you will not join in the ſame Challenge, but every Man challenge for himſelf, as by Law he has Liberty to do, we muſt be forced to try you ſingle, and therefore we would know of you, whether you deſign to join in your Challenge, or not?

Char. My Lord, I hope the Court will give me leave to have my Sollicitor by me during my Trial, that I may be inſtructed in ſome meaſure how to manage myſelf, and when it is proper for me to ſpeak, and what.

L. C. J. No, we can order no ſuch Thing, you muſt ſpeak for yourſelf.

Char. My Lord, I am ignorant of the Methods of Law, and may make a great many Miſtakes and Slips, and omit what may be material to be obſerved for my Defence, and therefore ſhall the more need a Friend or Sollicitor to be by me, to mind me of it.

L. C. J. No, we cannot direct any ſuch Thing by Law. What ſay you as to your Challenges?

Char. As to the Jury, I had not a Copy of the Pannel till Yeſterday, and I have been informed, that it is uſual to have a Copy of the Pannel ten Days before the Trial; they are Gentlemen that I have no Knowledge of, nor can come at any Account of their Qualifications, ſo as to make proper Challenges.

L. C. J. You have the ſame Privilege that is ordinarily given to Perſons in your Condition.

Mr. *Att. Gen.* There was Order given for a Copy of the Pannel to be delivered.

L. C. J. That was not of Right, but of Favour; and it is a Practice that has of late obtained; but for what you talk of ten Days, that never was in any Caſe, nor is it practicable; you have the ſame Favour ſhewn you, that all other Priſoners have, and you can expect no more: But you do not anſwer the Queſtion, whether you will join in your Challenges or not?

Char. It is an indifferent Thing to me, my Lord.

L. C. J. Do you agree to it, Mr. *King?*

King. My Lord, I do not well underſtand it, I am ready to do any Thing I ſhould.

L. C. J. What ſay you, *Keyes?*

Keyes. My Lord, I have had no Counſel at all, to adviſe me about any Thing.

L. C. J. I tell you what the Law is in ſuch Caſes: You may, every Man of you, challenge 35 peremptorily without Cauſe; but if you do not all agree in the ſame Challenges, ye cannot be tried together by the ſame Jury: But the Court muſt ſeparate you, and try you every one ſingly.

Char. My Lord, I have got a Copy of the Pannel, if theſe Gentlemen that are by me, do agree to join in the Challenge, I am very well content; it is indifferent to me.

L. C. J. Do you underſtand what is ſaid to you, Mr. *King*, and Mr. *Keyes?* Every one of you may, without ſhewing any Cauſe, except againſt 35 of thoſe that are returned of the Jury which are to try you, if you have no mind that thoſe ſhould be ſworn; but then if each of you do ſeverally challenge 35, ye cannot be tried by the ſame Jury.

Char. I hope, my Lord, if I do challenge, as I do not know how I ſhall be enabled without knowing their Qualifications, the Court will put me in mind when I come near the Number, that my challenging may not injure me; becauſe I am ignorant in the Law, and perhaps may ſlip in point of Number; and therefore I would beg that your Lordſhip would allow me a Sollicitor to aſſiſt me, and put me in mind, that I may not run into Errors.

L. C. J. You have been told over and over, that we cannot do that; the Court will take care that you be informed in Time, that you do not exceed in challenging a greater Number than you ought: What ſay you, Mr. *King?* Do you agree that one ſhall make Challenges for you all?

King. I do agree, that whatſoever Exception Mr. *Charnock* makes, I will abide by.

Char. My Lord, I cannot but think it hard, that I have not either Counſel or Sollicitor; my Counſel that I had are out of Town.

L. C. J. Why, was there no Counſel but thoſe that are gone the Circuit?

Mr. *Att. Gen.* My Lord, he had Order firſt for one Counſel, and then for another, and whomſoever he named he had Order for.

L. C. J. If you will chuſe none but thoſe you cannot have, that is your own Fault; You, Mr. *Keyes*, will you join in the Challenge?

Keyes. Yes, with all my Heart.

Cl. of Ar. Then you the Priſoners at the Bar, thoſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King, and you, upon Trial of your ſeveral Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Then thoſe of the Pannel that had appeared were called, and the Priſoners challenged 33. And the Names of thoſe that were ſworn are as follow.

Samuel Harwer,	*Jaſper Hodgſden,*	*Simon Smith,*	*John Mills,*
Jonas Morley,	*William Farnborough,*	*Thomas Dunck,*	*James Ketwich,* and
Anthony Nurſe,	*William Bird,*	*Richard Heath,*	*Chriſtopher Redknap.*

Then Proclamation for Information, and the Witneſſes appearing, was made in uſual Form.

Cl. of Ar. Robert Charnock, Hold up thy Hand, *(Which he did): Edward King*, Hold up thy Hand, *(Which he did): Thomas Keyes*, Hold up thy Hand, *(Which he did):* You Gentlemen of the Jury, look upon the Priſoners, and hearken to their Cauſe; They ſtand indicted by the Names of, *&c. (prout* in the Indictment, *mutatis mutandis)* —— And againſt the Form of the Statutes in that Caſe made and provided. Upon this Indictment they have been Arraigned, and thereunto have ſeverally pleaded, Not Guilty, and for their Trial have put themſelves upon God and their Country, which Country you are: Your Charge is to enquire of them, and every of them, whether they be guilty of the High-Treaſon whereof they ſtand indicted, in Manner and Form as they ſtand indicted, or Not Guilty; if you find them, or any of them, Guilty, you are to enquire what Goods or Chattels, Lands or Tenements they had, at the Time of the High-Treaſon committed, or at any Time ſince. If you find them, or any of them, Not Guilty, you are to inquire whether they fled for it; if you find that they, or any of them, fled for it, you are to inquire of their Goods and Chattles, as if you had found them Guilty; if you find them Not Guilty, nor that they did fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr. *Montague.* May it pleaſe your Lordſhip, and you Gentlemen of this Jury; The Record that has been now read unto you, is an Indictment of High-Treaſon, which charges the three Priſoners at the Bar, *Robert Charnock*, *Edward King*, and *Thomas Keyes*, with a Traitorous Conſpiracy and Deſign to ſubvert the Government of this Kingdom, and to murder the King, and to bring the Subjects and Freemen of this Kingdom into Slavery and Subjection to the *French* King; and to this End the Indictment ſets forth; That upon the Tenth of *February* laſt, and divers other Times, as well before as after, at the Pariſh of St. *Clements Danes*, in the County of *Middleſex*, theſe three Priſoners at the Bar, with divers other Traytors unknown, did Conſult and Agree to Aſſaſſinate the Perſon of our Sovereign Lord the King, as he was riding in his Coach; and did likewiſe agree, that Forty Horſemen, of which they themſelves were to be Part of the Number, ſhould lie in Ambuſh, and ſet upon the King, ſo being in his Coach, and upon the Guards that were to attend him: And it likewiſe charges them with buying Horſes and Arms, for the Execution of this Wicked and Villainous Intention: To this they have pleaded Not Guilty. We ſhall call our Witneſſes, and prove this Matter upon them; and then we doubt not, but you, Gentlemen, will do Juſtice, according to your Evidence.

Mr. *Att. Gen.* My Lord, and you Gentlemen of the Jury, theſe Gentlemen at the Bar ſtand indicted for a moſt Horrid and Barbarous Conſpiracy, to Aſſaſſinate and Murder his Majeſty's Royal Perſon: Gentlemen, this Aſſaſſination was to be ſeconded with an Invaſion from *France*, where Troops lay ready at *Calais*, as ſoon as the diſmal Stroke was given, to have landed upon our Coaſts; which if it had taken Effect, we had not only ſuffered that moſt unſpeakable Loſs of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, This Offence in its Nature is ſo Horrid and Barbarous, that as it needs no Aggravation, ſo it is incapable of having any, by any Words that can be uſed; for the very Naming of an Aſſaſſination of a King, carries ſuch Horror and Deteſtation in its ſelf, to all honeſt People, that it is impoſſible to aggravate it by any Expreſſions that can be uſed about it; but there is this peculiar Conſideration to be had, by all *Engliſhmen*, who love their Country, that this deſigned Aſſaſſination upon the Perſon of His Preſent Majeſty, was to take away the Life of a King, who every Body knows firſt ventured his own Life to reſtore our Religion, Laws, and Liberties, when they were juſt expiring under the Oppreſſion of Popery and Tyranny. And as he ventured his Life firſt to reſtore 'em, ſo he has ſince, upon all Occaſions, with the utmoſt Hazard expoſed his Royal Perſon to the moſt imminent Dangers, for the preſerving and maintaining our Religion, Laws and Liberties, againſt the Power and Violence of the common Enemy: This Conſideration to all true *Engliſhmen* muſt have a very great Weight, and create the greateſt Horror and Deteſtation, both of the barbarous Deſign, and of all thoſe who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of ſuch a King.

Gentlemen, when you hear the Evidence that we ſhall offer to you, to prove this bloody Conſpiracy againſt theſe Priſoners, I doubt not but that there will be enough, and more than enough, to ſatisfy all true-hearted *Engliſh* Subjects, and all People that have a Deſire to preſerve our Conſtitution and Government, in what Danger we and our Poſterity were of being utterly ruined, and involved in a common Deſtruction. I ſhall not detain you longer with any Diſcourſe about the Heinouſneſs of this Offence, becauſe every Man's own Thoughts cannot but ſuggeſt to him, how diſmal the Conſequences muſt have been, if ſo fatal a Stroke had been given.

But, Gentlemen, I muſt crave leave to take up ſo much of your Time, as to open how this bloody, execrable Conſpiracy was firſt framed, and afterwards carried on by the Priſoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Diſcovery.

Gentlemen, this Conſpiracy was firſt framed and conſulted upon the laſt Year; there were ſeveral Conſultations and Meetings, at ſeveral Places about the Town, for this Purpoſe; then, and at thoſe Conſultations and Meetings, there were preſent Capt. *Porter*, the Priſoners, and others of whom you will have an Account from the Witneſſes; and at that Time they had an Expectation of Commiſſions from the late King to authorize the Deſign; that not coming, they yet reſolved to put it in Execution before the King went away. But becauſe the *French* Troops were then not in Readineſs to come over hither, to protect them after the Execution of the bloody Deſign, it was neceſſary for them to fly thither for Shelter: and therefore they endeavoured to procure a Veſſel to be ready to carry them over to *France*. But they could not get a Veſſel time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Deſign for that Time, and ſo Matters reſted till the King's Return.

About two or three Months ago, Sir *George Barcley*, who is an Officer in the late King *James*'s Guards in *France*; and ſome other Officers, with Sixteen or Eighteen Troopers in thoſe Guards, privately came over from *France* to put this Deſign in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Deſign, knowing that they had been engaged in the Matter before, and ſo could not but expect that they would readily aſſiſt. This Deſign was treated and conſulted of between them at ſeveral Times, and in ſeveral Places, at Captain *Porter*'s, and Mr. *Charnock*'s Lodgings in *Norfolk-ſtreet*, at the *Globe* Tavern in *Hatton-Garden*, the *Nagg's-head* Tavern at St. *James*'s, and ſeveral other Places; ſeveral Conſultations and Meetings were had between the Priſoners at the Bar, and others, whom you will hear named at theſe Meetings; ſeveral Ways and Methods were propoſed how it ſhould be beſt effected: it was propoſed by ſome, that it ſhould be done by Ambuſcade, that ſhould be laid near the King's Houſe at *Richmond*, ſuch a Number on Foot were to lie in the Wood, there ready to attack the King as he came by, and the reſt of the Conſpirators at the ſame Time to fall on the Guards. But this Method was not ſo well approved of, as that which was afterwards propoſed and agreed to: That is, there were to be three Parties of them, and the Place was the Lane, lying between *Brentford* and *Turnham-Green*, at the End next *Turnham-Green*, which the King uſed to paſs thro', upon his Return from *Richmond:* The Order and Method of the Deſign was this; Sir *George Barcley*, with Eight or Ten more was to attack the Coach, and by firing into it, to have killed the King, and all in it, and the reſt were to attack the Guards, in two Parties, on each Side of the Lane, whereof Mr. *Charnock* and *Porter* were to command one, and Brigadier *Rookwood* the other. In order to ſee how feaſible this Deſign might be, the Priſoner *King*, Capt. *Porter*, and *Knightly*, were to go and ſurvey the Place; and the next Day after that Conſultation, they went to view the Ground, and did very carefully do it, both on this Side the Water, and on the other Side the Water; and they came back and met the reſt of the Company at the *Nagg's-Head* Tavern late at Night, to give an Account what they had done in order to this Enterprize. It was agreed the Number ſhould be about Forty; Sir *George Barcley* was to make up about Twenty, Mr. *Charnock* was to furniſh Eight, Capt. *Porter* Seven, and ſo in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accompliſh the Deſign.

In order to make this Matter the more ſure, they did appoint Two to lodge and wait at *Kenſington* near the Guards; who were to give Notice when the King went abroad: And they had their ſeveral Perſons aſſigned to whom they ſhould give Notice, who thereupon were to ſend Orders to the ſeveral Parties; one of which was *Chambers*, who was to give Notice to the Priſoner at the Bar, Mr. *Charnock*; and there was one *Durance*, who was to give Notice to Sir *George Barcley*; and when ſuch Notice was given, then they were to ſend Orders to the ſeveral Perſons, who were to be concerned in this bloody Buſineſs, to come at the Time appointed, to be diſpoſed of into their ſeveral Poſts.

Gentlemen, in order to the furthering of this Deſign, they did likewiſe ſend *Durance* to go and view, and give them an Account of the moſt convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent, which were leaſt liable to Obſervation, where the Men might be the moſt conveniently diſpoſed of, to lie ready againſt the Time, when they were to execute this barbarous Aſſaſſination; accordingly he went, and took an Account of the ſeveral Inns within that Compaſs, and they were to be billetted by Two or Three in an Inn, ſo as not to be obſerved; Sir *George Barcley* and his Party at *Turnham-Green*, and the reſt at *Brentford*.

Gentlemen, after they had thus laid the Deſign, *Saturday* the 15th of *February* was the firſt Time pitched upon for the putting it in Execution, if the King went abroad, as he uſed to do, upon *Saturdays*, to *Richmond* to hunt; and if they had Notice from *Durance* and *Chambers*, that he was ſo to do, which Notice they had; and every Thing was prepared in order to have perpetrated this villainous Deſign; but it happened that the King went not abroad that Day, of which they had Notice about Noon from *Chambers* to *Charnock*, and *Charnock* ſent Word ſo to *Porter*'s Lodgings, and then the Order for their getting together was countermanded, and the Note, by which *Charnock* ſent Word, was ſubſcribed with the Name of *Robinſon*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

Thus they were diſappointed at that Time; but they were not diſcouraged from purſuing this inhuman Enterprize, but reſolved to go on the next Opportunity that ſhould be given. And to omit ſeveral Things that intervened, which the Witneſſes will give you an Account of, on the *Friday* following they met again, to have every Thing ready againſt the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he uſually did on that Day of the Week; and that Meeting was at the *Sun* Tavern in the *Strand*, and there were preſent Capt. *Porter*, Sir *William Perkins*, Sir *George Barcley*, and Mr. *Charnock*; and at that Time there was a Diſcourſe amongſt them about the Diſappointment, which they had had the Week before, and ſome of them had a Jealouſy that a Diſcovery had been made of their Deſign: But then, upon further Conſideration, they concluded, If it had been ſo, they ſhould not have met there, but ſhould have been taken up: And therefore they concluded the King's ſtaying at Home that Day was but Accidental, and ſo reſolved to put their Conſpiracy in Execution the next Day.

While

While they were there, ſeveral Perſons from whom Capt. *Porter* had undertaken, that is, one *Cranborne*, *Kenrick*, and *Keyes* the Priſoner at the Bar, came to *Porter*; theſe were carried into another Room, and commanded all to be ready the next Day, when it was reſolved to put the Aſſaſſination in Execution: And then Capt. *Porter* aſked *Kenrick* for *Sherborne*, who it ſeems had been undertaken for; but it was anſwered, That he aſked ſo many Queſtions about the Matter, that he did not think fit to truſt him.

The next Morning they met again at Capt. *Porter*'s Lodgings; and there met, as the Witneſſes will tell you, amongſt others, Mr. *Pendergraſs*, Mr. *Keyes*, and Mr. *King*; *King* brought a Meſſage to Capt. *Porter* from Sir *George Barcley*, to know the Names of thoſe that were concerned, and upon that Meſſage Capt. *Porter* writ down the Names of his Men, who were for his *Quota*, and ſent the Liſt by *Cranborne* to Mr. *Charnock*, to add his Liſt to it of the Men he was to have under him; *Cranborne* afterwards came back, and brought the Liſt that Capt. *Porter* ſent, with the additional Liſt ſent by Mr. *Charnock*, written with his own Hand, and ſubſcribed *R. C.* and *Cranborne* told them that *Chambers* had ſent Word, that the King would go out that Morning: At the Hearing of which there was much Joy amongſt them; for they hoped then their wicked Deſign would be put in Execution that Day. There was a Diſcourſe then likewiſe, that *Porter* had a Piece which carried Six Bullets; and this, it was ordered, ſhould be put into the Hands of *Pendergraſs*, who was to be one of Sir *George Barcley*'s Men, to attack and fire into the King's Coach.

This was upon *Saturday* the 22d of *February*, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from *Richmond*. From Capt. *Porter*'s Lodgings they went to the *Blue Poſts* in *Spring Garden*; but about 12 o'Clock there came News from *Chambers*, one of the orderly Men at *Kenſington*, that the King did not go abroad that Day: This put them into a very great Confuſion; they then thought ſome Diſcovery muſt needs be made becauſe of the Diſappointment two *Saturdays* together; and *Keyes*, the Priſoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the *Meuſe*: And this confirmed them in their former Jealouſy that the Matter was diſcovered; upon which Captain *Porter*, Mr. *Pendergraſs* and Mr. *Keyes* went together to lie hid ſome Time; but they ſaid they would ſend *Keyes* to Mr. *Charnock*, to let him know where they might be heard of; and if the Matter was not diſcovered, they would ſtill go on to put it in Execution: But they could not part without drinking ſome Traiterous Healths, which the Witneſſes will tell you of, to the Reſtoring of the late King and his Queen, and the Prince of *Wales*; and after all, one of the Company taking an Orange in his Hand, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drunk by all of them before they parted, though they were under the Apprehenſion at that Time of being diſcovered already.

This is the Beginning and Progreſs of the ſeveral Conſultations that were had for the Carrying on this execrable, Traiterous Conſpiracy. I have opened it ſhortly to you, but you will hear it much fuller in its ſeveral Parts by the Witneſſes. By what I have opened, you cannot but obſerve, that it was very near coming to be executed, if there had not been a Diſcovery of it Time enough, thro' the Providence of Almighty God, to prevent it. They had agreed, after the intended Aſſaſſination, to keep together, till they came near the Town, and then they were to lie hid till the *French* Troops landed, which they were aſſured of were ready upon the leaſt Intimation of the Succeſs of this Conſpiracy.

Gentlemen, every Body may gueſs at the diſmal Conſequences that would have follow'd, had this bloody Deſign taken Effect; and I am ſure, as we and our Poſterity could not have expected any Thing leſs than the perpetual Yoke and Burden of Slavery and Popery, if it had pleaſed God to permit this Conſpiracy to take Effect; ſo I hope we ſhall always remember the merciful Hand of Providence, that has detected and diſappointed it.

Gentlemen, I ſhall not detain you any longer; I have opened unto you Part of that which will more fully be made out by the Witneſſes; only I would obſerve, that the Providence of God has not only made a Diſcovery to prevent the Execution of this abominable Villainy, but hath brought this Conſpiracy ſo far to light, by ſuch unqueſtionable Teſtimony, that no Man can doubt of the Reality of it, which I hope will raiſe in every honeſt Man's Mind an Abhorrence and Deteſtation of thoſe Principles, upon which ſo villainous and barbarous a Deſign was founded; and I think I may ſay, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof, but either ſuch as are ſorry for the Diſcovery, or ſuch as knew too much of the Conſpiracy before. I ſhall trouble you no further, but call our Witneſſes, who will give you a clear and full Account of this Conſpiracy. Swear Captain *Porter*. (*Which was done.*)

Sir *John Hawles.* Mr. *Sol. Gen.* Captain *Porter*, I would not lead you with any Queſtion, but pray will you give the Court and the Jury an Account what you know concerning any Conſpiracy about aſſaſſinating the King, and when it was to be done, and where, and how, and by whom; and particularly what relates as to that Matter to the Priſoners at the Bar.

Char. My Lord, there are two Things that I muſt beg of the Court, in Relation to the Witneſſes that are to be produced, and the Evidence that is to be given againſt me at this Time: And the firſt is, That before any of the Witneſſes give any Evidence againſt me, the reſt that are to be ſworn and produced, may be kept out of Court, till they that are called have ſeverally given their Evidence, that one may not hear what the other ſays; That I ſuppoſe is but reaſonable in a Caſe of this Nature, and what was never denied, but always allow'd, as I have been informed.

L. C. J. There is but one Witneſs ſworn, and I believe, that there are none of the reſt here.

Char. Yes, my Lord, here is one Gentleman in Court whom I ſuppoſe to be an Evidence, and that is Mr. *De la Rue.*

L. C. J. If there be any others of the Witneſſes, let them withdraw till they be called for; let there be ſome Body to look after them and attend them. (*Which was accordingly done.*)

L. C. J. Mr. *Charnock*, you have your Deſire as to this Matter, all the reſt of the Witneſſes are withdrawn.

Char. My Lord, there is another Thing that I have to beg of the Court, and that is, in relation to the Evidence in general, That if there be any Thing prov'd to be ſpoken in Company, and talked of by Way of common Diſcourſe, or only in Jollity in ordinary Converſation, that may not be interpreted as a Proof of any ſettled Deſign or Practice.

L. C. J. Look you, Mr. *Charnock*, who can tell what the Evidence will be until it be given? you will hear what is depoſed by the Witneſſes, and you have Pen and Ink, and may make ſuch Obſervations as you think fit: When the Witneſſes are heard, you will have all the Advantage that can be allowed you, and you may then propoſe your Objections to the Matter of their Evidence; which, no doubt, will have their juſt Weight with the Court: In the mean time, have you any Exception to this Man's being a Witneſs? If you have no Exception againſt him; then he muſt give his Evidence; and after he has deliver'd himſelf, and the King's Counſel have done with him, you are at Liberty to ask him what Queſtions you think fit.

Mr. *Sol. Gen.* Captain *Porter*, I deſire you will acquaint the Court and the Jury what you know of any Conſpiracy to take away the Life of his Majeſty, when it began, in what Manner it was carried on, how far it proceeded, how it came to be diſappointed, who were concerned in it, and what relates to the Priſoners at the Bar, as to their Share therein.

Capt. *Porter.* My Lord, I am unfortunately ingaged in this Matter, and have made a frank Diſcovery, to make the King all the Atonement I can, for having been concerned in ſuch a Deſign. Some Weeks before this Conſpiracy for Aſſaſſinating the King was in Hand, there came to my Lodging ——

Mr. *Att. Gen.* Captain *Porter*, I would not interrupt you, but to put it into a Method, and Order of Time, will you pleaſe to recollect your ſelf, and give the Court and the Jury an Account of your Knowledge about the firſt Beginning of this Conſpiracy the laſt Year; I would not lead you, and therefore I aſk you the general, and no particular Queſtion.

Char. My Lord, I ſuppoſe that any Queſtion about what was done the laſt Year is not at all to the Purpoſe in this Caſe, for there is nothing mention'd in the Indictment of the laſt Year.

L. C. J. It is in the Indictment diverſe Days and Times, as well before as after.

Char. The Crime for which we are accuſed is laid to be the 10th Day of *February*, 1695.

L. C. J. The Day is not material, but only a Circumſtance, but in Form, ſome Day before the Indictment preferred, muſt be laid; and tho' the Day mentioned in the Indictment is the 10th of *February*, yet it is alſo ſaid, that the Things contained in the Indictment, of which you are accuſed, were done likewiſe at diverſe Days and Times, as well before as after, and ſo the Indictment comprehends even what might be done the laſt Year as well as this.

Char. I beg the Favour of the Court in this Matter, for ſure the 10th of *February* laſt can no way be ſuppoſed to be in the laſt Year.

L. C. J. I told you before, the Day is not material, nor are the Witneſſes nor the King's Counſel tyed up either to the particular Time or Place mention'd in the Indictment, ſo it be within the County, and before the Indictment preferred. All that is to be regarded is, that no Evidence be given or admitted of any other Species of Treaſon, but what is contained in the Indictment; for a Man may certainly be indicted for a Treaſon committed this Year, and upon his Trial Evidence may be given of the ſame Treaſon committed the Year before.

Char. But then how can a Man prepare for his Defence?

Mr. *Att. Gen.* The Time is but a Circumſtance, it may certainly be proved at another Day than what is laid in the Indictment, and yet very good Proof; and ſo it is in all other Caſes, as well Civil as Criminal.

Char. Mr. Attorney General has ſaid enough I think to confute himſelf; for if one Year may be put in the Indictment, and another Year brought in in the Evidence, how ſhall any Man be able to apply himſelf to his Defence, whoſe Thoughts run only upon the Time laid in the Indictment? I hope neither the Court nor the King's Counſel will come ſo hard upon us, as to put our Thoughts quite out of all Order, that when we apprehend we are only to defend ourſelves againſt what is ſaid to be done this Year, we muſt afreſh prepare ourſelves to anſwer what was done the laſt Year.

L. C. J. It is always ſo; for Form Sake, there is a particular Time laid in the Indictment, but the Proof is not to be tyed up to that Time; but if it be proved at any Time before or after, ſo it be before the Indictment preferred, it is well enough: And not without great Reaſon, for the Treaſon conſiſting in imagining and compaſſing the King's Death, which may be manifeſted by diverſe Overt-Acts, ſome before, ſome on, and others ſince, the Tenth of *February*, yet they are Evidences of one Treaſon, which is the Compaſſing the King's Death.

Char. Then we may be under an Obligation to give an Account of all the Tranſactions of our Lives, if that be the Rule.

L. C. J. No, not ſo neither, for that very Treaſon aſſigned in the Indictment muſt be proved, and therefore you are only to give an Anſwer to that, and nothing elſe.

Char. But, my Lord, it may give a very great Looſe, and much hinder our Defence; for as it is now deſired that Proof may be given, of what was done laſt Year, at the ſame Rate, they [as well before and after] may ſignify ſeven Years ago.

L. C. J. And ſo it may if your Conſpiracy reach'd ſo far, or did then begin, and was afterwards purſued; this is not any Thing that is unuſual, but the Common Law is plain in it. Well, what ſay you, Mr. *Porter?*

Capt. *Porter.* My Lord, I will give you an Account, if your Lordſhip pleaſeth, of what was done this Year? and if any Queſtions afterwards be thought fit by the King's Counſel to be now aſked me, about what paſſed before, I will anſwer them very readily.

Mr. *Att. Gen.* Well then go on your own way; we will reſerve ourſelves till afterwards.

Capt. *Porter.* Some Weeks before this Deſign was on Foot, for aſſaſſinating the King, Sir *William Perkins*, when he was in Town, was at the ſame Place where Mr. *Charnock* and I did lodge; it was about the latter End of *January*: He aſked Mr. *Charnock* where he would be at Night;

and I told them, if they were not about private Buſineſs, I would meet them. He told me, there were ſome Friends come from *France*, and that ſomething was a doing that would be for the Service of the King: I told them, if any Thing of that Nature was a doing, I would readily engage in it; and they told me I ſhould know it very ſoon. A little after I fell ſick of the Gout, and could not ſtir from my Chamber: But then Mr. *Charnock* did acquaint me, that Sir *George Barcley*, and thoſe that came from *France*, had brought a Commiſſion to raiſe and levy War upon the Perſon of King *William*, and he asked me how many I could bring to join with them, if the King landed; I deſired to conſider of it, and he told me Sir *George Barcley* would come to him about it. Accordingly, he and *Holmes* came to the Houſe where we lodged, in *Norfolk-ſtreet*, and there they were in private with Mr. *Charnock*; and afterwards, becauſe I was lame, and could not ſtir, they came into my Room, and Sir *George Barcley* told me, he was glad to ſee me in good Health, but ſorry to find me lame, but he hoped to ſee me abroad in a little Time; and I told him, I hoped ſo too. They ſaid, they were going then to ſome Company, and they hoped to ſee me afterwards. After that there were ſeveral Meetings that we had, particularly at the *Globe-Tavern* in *Hatton-Garden*, the *Naggs-Head* at St. *James-ſtreet*, and the *Sun-Tavern* in the *Strand*, and in all theſe Places we did conſult together, which was the beſt Way, and where was the beſt Place to aſſaſſinate the King, when he came from Hunting. Sir *George Barcley* told us he had ſome Money to buy Horſes, but not much, he had as much as would furniſh about Forty. Captain *Charnock* ſaid, he would bring ſix or ſeven Men, that ſhould come out of the Country. Sir *William Perkins* ſaid he would lend five Horſes, there to be mounted by Men of his own, the other two by ſuch as ſhould be provided. I promiſed to bring ſeven Men with Horſes, and Sir *George Barcley* ſaid, that *Lowick* and others that came over with him from *France*, would engage in the Deſign, and make up the Number. I deſired very much to ſee the Commiſſion that came from the late King, and asked Mr. *Charnock* about it; he ſaid he never ſaw it, but Sir *William Perkins* told me, he had ſeen it, and that it was all writ with King *James* his own Hand, and ſigned by himſelf. All this was agreed to, and then there were Conſultations in what Method it was to be done. Several Propoſals there were; one was to ſet upon him as he came from *Richmond* by the Road, others when he was on Horſe-back at *Kew*. Sir *George Barcley* was for having it done by Ambuſcade in the *Park* by *Richmond*, and therefore deſired me to go with Mr. *Knightly*, and view the ſeveral Places and Ground thereabouts, to find out which was the moſt convenient Place. The Day before we were to go, Capt. *King* came to me, and would know if we were to go about ſuch a Matter, and proffered to go with us. I told him I had never a Horſe, but he ſaid, he would get one. We went that Night to the *Swan* at *Knights-bridge*, and there we lay, and went the next Day to view the Ground, and came the next Evening to the Company, to give an Account what we had done; and upon the Account that we gave, Sir *George Barcley*'s Mind was altered, and it was agreed to do it in the *Lane* coming from *Brentford* to *Turnham-Green*, and the particular Manner was agreed on too. There was one *Rookwood* that was to command one Party of Sir *George Barcley*'s Men, to attack the Guard; he told us, he had bought twenty Horſes which were to be employed in this Expedition; they were to be divided in three Parties, and Sir *George Barcley* was to have four out of each of the other Parties, and to ſeize upon the King's Coach, and to ſhoot into it, and kill the King, and all thoſe that were with him: And this was to be done on the 15th of *February*, which was a *Saturday*, and the King uſually went to *Richmond* on *Saturdays*. We had two orderly Men (as they were called) who were to lie at *Kenſington*, to give Intelligence when the King and the Guards went out, the one was *Chambers*, and the other one *Durant*, a *Flemming*, I think, or I do not well know what Country-man he was; and *Durant* was to bring an Account when the Guard went out, and *Chambers* when the King went out, and when we had Notice that the King was gone, we were to go by three or four in a Party to prevent Suſpicion, and we were to be diſperſed in the ſeveral *Inns* about *Brentford* and *Turnham-Green*. Sir *George Barcley* was to be at the King of *Bohemia*'s Head; and we ordered a Man to give Notice to him when the King landed, and then he was to give Notice to us, and ſo we were to form our ſelves into our ſeveral Bodies, to take our ſeveral Poſts as were agreed upon. I aſked him, what he thought to do when the Matter was over, how we ſhould diſpoſe of our ſelves? He told me, we need not fear any Thing, but might go to Town and lie ſtill, and that there would come a ſufficient Number from Abroad ready to aſſiſt us. That 4 or 5000 *French* were to divert in *Scotland*, and the King would be near the *French* Shore with a ſufficient Army. On *Friday* before the 22d, when it was to have been executed again, we met at the *Sun-Tavern* in the *Strand*, and there diſcourſed, for a matter of half an Hour, about the former Diſappointment, and ſeveral in the Company were afraid the Deſign was diſcovered; but then I told them, if it had been ſo, ſure we ſhould have been taken up before now; upon which it was agreed, Then let us reſolve upon it again To-morrow, and ſo it was reſolved upon. Capt. *Charnock* ſaid, he could not ſtay, becauſe he ſhould want ſome Men that were come up out of the Country on purpoſe. I ſaid, I was afraid my Horſes were ſick, and could not be uſed in the Service, and Sir *William Perkins* thereupon undertook to furniſh me, and told Mr. *Charnock* and me he had ſent to Mr. *Lewis*, that belongs to the Earl of *Feverſham*, to procure ſome, having, as he ſaid, promiſed ſo to do. I ſent the next Morning to have a Note for two, by Mr. *Cranburne*, and he ſent me a Note back again by *Cranburne*, that he had ſent to Mr. *Lewis*, and Mr. *Lewis* ſaid, he would help him to three Horſes, with Saddles, Holſters and Piſtols, and deſired the Liſt of my Men, which I ſent him, and he ſent it me back again with the Liſt of his own, and then I ſhewed it to Mr. *De la Rue*, and we were preparing all Things for the Execution of this Deſign, and preſently after News came, that the King did not go out that Day neither; upon which I ſaid I would go out of Town, and I aſked Capt. *Pendergraſs* to go with me, and we ſent *Keyes* to bring Linnen unto us, but he did not come until the *Wedneſday*, and upon the *Thurſday* we were taken.

Mr. *Att. Gen.* Captain *Porter*, you mention ſeveral Conſultations, at ſeveral Times and Places; who were preſent at any, and which of them? Were any of the Priſoners at the Bar there, and which?

Capt. *Porter.* There was Mr. *Charnock*, and Mr. *King*, at all of them.

Mr. *Att. Gen.* What do you ſay about *Keyes*? What was he?

Capt. *Porter.* He was my Servant a Year and a Half.

Mr. *Att. Gen.* Was he acquainted with the Aſſaſſination?

Capt. *Porter.* Yes, he was, and was preſent at moſt of the Conſultations. He hired Horſes for me to be employed in the Buſineſs. On the firſt *Saturday*, he hired two, I gave him Money for them, and he did know upon what Account they were hired.

Mr. *Att. Gen.* Was he preſent when News was brought of the Diſappointment? —— Capt. *Porter.* Yes, he was both Times.

Mr. *Att. Gen.* You are ſure he was preſent then?

Capt. *Porter.* Yes, the ſecond Time he ſaid, that he met the King's Guards that were come back all in a Foam, and that he had ſpoke to one of my Lord of *Oxford*'s Regiment, and that ſomething was mutter'd, upon which he feared a Diſcovery.

Mr. *Att. Gen.* Did *Keyes* agree to be one of the Men, that ſhould be concerned and act in this Buſineſs?

Capt. *Porter.* Yes, he did.

Mr. *Att. Gen.* What Quality is he of? What is his Profeſſion?

Capt. *Porter.* He uſed formerly to help to dreſs me, and he was to look after my Linnen and Equipage.

Mr. *Sol. Gen.* Had he not been a Trumpeter? Was not that his Profeſſion?

Capt. *Porter.* He was a Trumpeter, and uſed ſometimes to entertain us with his Trumpet.

Mr. *Conyers.* You ſpeak of a Meeting at the Sun Tavern in the *Strand* upon *Friday* the 21ſt of *February*, where it was reſolved to execute this Attempt upon the next Day.

Capt. *Porter.* Yes, there was ſuch a Meeting.

Mr. *Conyers.* Was *Keyes* there at that Time?

Capt. *Porter.* He was not in the Room where we were, but he was in another Room in the ſame Houſe, where I went out to him, and there was he, *Cranburne* and *Kenrick*.

Mr. *Conyers.* Pray what did you go to them for?

Capt. *Porter.* I went to acquaint them what was reſolved upon; and I told them they were reſolved to do it the next Day, to which they agreed, but that I thought my Horſes would not be ready, but I hoped I ſhould get ſome other.

Mr. *Con.* Pray, what other Diſcourſe had you in that Company: With whom, and about what?

Capt. *Porter.* Mr. *Kenrick* came to me with his Arm in a String; either he had broke his Arm, or pretended ſo to have done. I then aſked him for Mr. *Sherbourn*, whom he had mentioned before to me, as one that was likely to be concerned: He told me Mr. *Sherbourn* aſked a great many Queſtions about the Deſign, which he did not think fit to anſwer; I thanked him for telling me ſo, and ſaid I would not ſend to him.

Mr. *Cooper.* Pray, Captain *Porter*, give me leave to aſk you one Queſtion, Can you remember what Number of Men *Charnock* was to provide for this Enterprize?

Capt. *Porter.* He promiſed ſeven or eight Men, ſome of which ſhould bring their Horſes out of the Country, others he would borrow or hire for them.

Mr. *Att. Gen.* Pray, Sir, was there any Body ſent to take an Account of the Inns about the Place where this Aſſaſſination was to have been executed?

Capt. *Porter.* Yes, Mr. *Durant* was, and he did bring us an Account of the ſeveral Inns about *Brentford* and *Turnham-Green*.

Mr. *Att. Gen.* As to the Liſt of Men, which you ſay you ſent to *Charnock*, and he ſent you back with a Liſt of his Men, pray can you tell whoſe Hand that Liſt of his Men was in?

Capt. *Porter.* I know Captain *Charnock*'s Hand very well, and, to the beſt of my Knowledge, it was his own Hand, and ſubſcribed *R. C.*

Mr. *Att. Gen.* Sir, you have given an Account of the Meeting the 22d at your Lodging.

Charnock. I was not there he ſays.

Mr. *Att. Gen.* Firſt let me aſk you, how came it that it was not put in Execution the 15th; for that you did not tell us before?

Capt. *Porter.* I tell you, Sir, it was becauſe the King did not go out that Day, according as we had Notice, that he intended to do: *Durant* wrote firſt Word that the Guards were gone before, upon which I went for my Men, and about Noon I received a Note from Mr. *Charnock* that the King did not go out that Day.

Mr. *Att. Gen.* Pray what Name was ſubſcribed to that Note?

Capt. *Porter.* *R. Robinſon*, which was a Name he uſed to go by ſometimes.

Mr. *Att. Gen.* And pray in whoſe Hand was that Note?

Capt. *Porter.* To the beſt of my Knowledge it was Captain *Charnock's*, I know his Hand very well.

Mr. *Att. Gen.* My Lord, if the Priſoners will aſk him any Queſtions, they may. —— *L. C. J.* Will you aſk him any Queſtions?

Char. My Lord, in the firſt Place I deſire the Judgment of the Court, whether he be a legal Evidence or no. I conceive he is not, and I hope your Lordſhips will think ſo too: For he makes himſelf a Criminal by his own Confeſſion, and that of a very heinous Crime, and it is equal in my Judgment (and as I have been adviſed, who I muſt ſtill ſay am ignorant in theſe Matters) as if he had confeſs'd it upon an Indictment, and then the Law can take no Notice of him as a good Witneſs. And if he were no legal Witneſs then, I take it by the ſame Reaſon he is no legal Witneſs now: For the Crime is the ſame, and it is an Acknowledgment in open Court.

L. C. J. Look you, Mr. *Charnock*, if it had been a Confeſſion upon an Indictment, it would have been a Conviction, which would have had quite another Operation; but it not being upon an Indictment, it is no Conviction, and therefore he is a legal Witneſs, though he does acknowledge himſelf to be guilty of the Crime.

Char. Then, my Lord, he is looked upon as no good Evidence, in my Judgment, becauſe he is a Criminal.

L. C. J. He is a legal Evidence, though he does confeſs himſelf guilty of the Crime.

Char. He owns himſelf a Partner in a bloody Deſign, and to convict me, he ſwears to take away my Life, to ſave his own. I cannot imagine why he ſhould be accounted a legal Witneſs, that is a Party by his own Confeſſion in ſuch a Matter.

L. C. J. Pray, who can tell better what was intended and done in ſuch a Conſpiracy than he that was a Party in it?

Char. My Lord, he has forfeited his Life by his own Confeſſion, and now he would, by Swearing againſt me, take away my Life to ſave his own.

L. C. J. Whatſoever Objections you have againſt the Credit of his Teſtimony, you may make what Uſe of them you can in the proper Time; but for any thing that yet appears, he is a legal Witneſs.

Char. My Lord, I know not how far he is a legal Witneſs, therein I muſt be governed by the Judgment of the Court; but ſure it will take away from the Credibility of his Teſtimony, his own Acknowledgment of his being guilty of ſuch a Crime. Tho' he may be a legal Witneſs, he cannot be a good one. And I hope the Gentlemen of the Jury will conſider of it, when a Man comes to take away other Men's Lives to ſave his own, by accuſing them of Crimes which he acknowledgeth himſelf to be guilty of.

L. C. J. Look you, Mr. *Charnock*, for that matter, it is ſo in all Caſes of this Nature, not only in Caſes of High-Treaſon, but of Robberies and Burglaries, and the like, where the Parties concerned are, and always have been allowed to be good Witneſſes againſt their Accomplices in thoſe Crimes. Will you aſk him any Queſtions, Mr. *Charnock?*

Char. My Lord, here is another Thing, which, I apprehend, I have Reaſon to object againſt the Teſtimony of this Witneſs; he does not only ſwear to ſave his own Life, and take away another's to deſerve the ſaving of his own, but there is in this Caſe Swearing to get a Reward, for there is a Reward of 1000 *l.* apiece promiſed by Proclamation, for the Apprehenſion of this Man and others. And not only a Pardon, but the 1000*l.* to any of thoſe in the Proclamation who ſhall diſcover and take any of the proſcribed Perſons. Now, where a Man ſtands accuſed by Proclamation, and his own Life is thereby concerned, and a Reward is propos'd for any of the Conſpirators diſcovering and apprehending the others, it is a hard Matter to admit any one that acknowledgeth himſelf guilty of ſuch a Crime, to prove a Priſoner guilty of that Crime under thoſe Circumſtances. Beſides, my Lord, I have known this Gentleman, and tho' he may have had an Eſtate, yet ſince I have Reaſon to ſuſpect, and perhaps it may be very well known, that the Fortune he had is laviſhed away; to make up that Damage, he may be tempted to undertake this Way of Swearing. So I think he cannot be a good Evidence, and I hope your Lordſhip will think ſo too, and that he is to receive no Credit or Countenance before an honeſt Jury, as I doubt not theſe Gentlemen are, that are to try us.

L. C. J. Mr. *Charnock*, do not miſtake yourſelf; he is to have no Reward by the Proclamation unleſs he had come in voluntarily, and apprehended one of the others; for only thoſe that apprehend any of the Perſons named in the Proclamation, are to receive any Part of the Reward, not any of the Witneſſes againſt any of them; the Reward is for the Apprehenſion, whether they be found guilty or not guilty.

Char. But ſtill, my Lord, he cannot be a good Witneſs, for it looks as if he was a Man that was willing to have become an Evidence, becauſe we, whom he has accuſed, particularly myſelf, were permitted to be taken, and then in the mean while he ſeems to withdraw, only that he might be taken as a Colour. For my Part, I know not but that it may be a Contrivance of his own, to be colourably taken up, becauſe he is ſo willingly an Evidence, as the Jury may perceive he is.

L. C. J. It is certainly a very hard Matter, if not impoſſible, to diſcover Crimes of this Nature, if the Accomplices in thoſe Crimes ſhall not be allowed to be good Witneſſes againſt their Fellow Conſpirators.

Char. My Lord, I muſt ſubmit to the Judgment of the Court that he is a legal Witneſs. But tho' I ſhall not preſs upon the Legality, yet I muſt ſay he is not a good Witneſs for all the Reaſons that I have urged.

L. C. J. Nay, he is a very good Witneſs, if he be a legal Witneſs; but the Credit of what he ſays, as in all other Caſes, muſt be left to the Jury, who are Judges of the Matter of Fact, and the Credibility of the Witneſſes.

Char. My Lord, when Perſons will own themſelves guilty of joining in ſo barbarous a Crime as we ſtand indicted for, and accuſed of, ſure there will be little Credit due to their Teſtimony.

L. C. J. His Credit muſt be left to the Jury, who are the Judges of it; now if you will aſk no Queſtions, I muſt ſpeak to the reſt. Mr. *King*, will you aſk him any Queſtions?

Char. I ſpeak this only in general; but I have ſome Remarks that I have made upon the Evidence that has been given, out of which, when I have told you of them, Queſtions may ariſe, which it may be fit for me to propoſe, and I ſhall deſire your Lordſhip's Leave accordingly.

L. C. J. Look you, Mr. *Charnock*, you ſhall be heard all that you have to ſay, when your Time comes for your Defence, and to make what Obſervations upon the Evidence you pleaſe. But the Matter is now, whether you will think fit to croſs-examine the Witneſſes that are produced for the King, or to aſk them any Queſtions?

Char. My Lord, I have taken ſome Notes of what has been ſaid, and I deſire I may make the beſt Uſe of them that I can.

L. C. J. You may make what uſe you will of your Notes, and make what Obſervation you will to make any Queſtion you aſk intelligible.

Char. My Lord, Capt. *Porter* in his Evidence has ſaid that this Conſpiracy was in the latter End of *February*. Now I apprehend his Oath is not valuable upon this Indictment, becauſe the Offence is laid the Tenth of *February*, and ſo his Conſpiracy that he talks of, was after the Time laid in the Indictment.

L. C. J. I believe you miſtake him, Sir.

Mr. *Att. Gen.* If he pleaſes to aſk him, I ſuppoſe he will find himſelf miſtaken.

Capt. *Porter.* My Lord, I ſay the latter End of *January*; if I ſaid *February* I miſtook.

L. C. J. And ſo it muſt be; for the two and twentieth of *February* was to have been the ſecond Time for the Execution of the Deſign, and ſeveral of the Conſpirators were taken the next Day.

Char. My Lord, I deſire Capt. *Porter* may be aſked, where it was, and when, that I brought Sir *George Barcley* and Mr. *Holmes* into his Company?

Capt. *Porter.* It was the Beginning of *February*, at my Chamber, in the ſame Houſe where Mr. *Charnock* lodged, and I was then ſick of the Gout.

Char. My Lord, I declare it, I know nothing of it. Then he ſays, we had ſeveral Meetings, particularly at three ſeveral Taverns; by what I can obſerve, there is no Time at all, nor at any of thoſe three Places that there was any Sort of Conſpiracy for the Aſſaſſinating of the King.

L. C. J. Yes, he ſays, that you met at thoſe Places, where you did conſult about Aſſaſſinating of the King, and the Ways and Methods how it ſhould be carried on, and that you was at thoſe Conſults; for Mr. Attorney aſked him particularly, Whether you that are the Priſoners were there? and he ſays, Ay.

Char. He ſays, that we met at the *Nagg's-head* Tavern in St. *James's-ſtreet*, where it was agreed that he and *Knightly* ſhould go and view the Ground, to ſee which would be the moſt convenient Place; and that they came the next Night to give an Account according to our Deſire: Now, my Lord, I was there at Dinner, and Capt. *Porter* did come in at Night; and if you do remember, Captain, you could not pull off your Boots well, and complained of the Gout, and was very peeviſh; and ſaid you had been at *Mortlack*, and had met with a Friend there; That is all that I know. There was Capt. *King* and Mr. *Knightly* indeed; who ſent for ſome other Cloaths, but it cannot be pretended that there was any Crime tranſacted at that Time; for you cannot imagine, that I would have to do in any ſuch Matter amongſt Porters and Meſſengers that were to go on common Errands.

L. C. J. I will only put you in a right Method; You may aſk what Queſtions you will now; but you are not to make your Obſervations upon the Witneſſes to the Jury till the King's Evidence be given, for then your Time will come for your Defence.

Char. My Lord, it may be I may forget then what may be proper for me to inſiſt upon. If your Lordſhip will pleaſe to allow me a Sollicitor to put me in Mind, I ſhould be the better able to manage myſelf.

L. C. J. You may be helped by your Notes; but you have been told over and over, we can allow no Sollicitor.

Char. My Lord, Capt. *Porter* ſays, I told him there was ſuch a Commiſſion brought by Sir *George Barcley* from King *James*; he ſays indeed, I told him I never ſaw it; and I do not know how I could, becauſe I do not believe there ever was any ſuch, and it is improbable there ſhould be any ſuch.

L. C. J. Mr. *Charnock*, I would not hinder you from ſaying any Thing that would be proper for your Defence, nor will interrupt you when your proper Time comes.

Char. My Lord, what I ſay is as to what Capt. *Porter* has evidenced; and I will make Obſervations upon one Part of the Evidence after another, as it is given.

L. C. J. But that is not regular, according to the Courſe of Evidence; and will introduce a Confuſion. You may aſk any Queſtions of the particular Witneſſes, as they are in Order, if you will; but your Obſervations, as to your own Defence, you muſt defer, till the Witneſſes are heard, that ſo the Evidence may be intire, and your Defence intire; therefore if you will aſk him any Queſtions, ſay ſo.

Char. No, my Lord.

L. C. J. Then Mr. *King*, will you aſk him any Queſtions?

King. Capt. *Porter*, Did I mention any Thing, or was there any Diſcourſe when you and I, and Mr. *Knightly*, as you ſay, went out to view the Ground, about killing the King?

Capt. *Porter.* The Day before we went, we dined together, and it was at the *Nagg's-head*, and he aſked if I was to meet *Knightly*, and go and view the Ground, in order to ſettling the Deſign, which was then talked of, and conſulted about; and Captain *King* deſired to go with us, and we lay at *Knights-bridge*; and when we were about it, we diſcourſed ſeveral Times of the Nature of the Place; and Captain *King* did not approve of the Place on this Side the Water, but liked the Ambuſcade better, which was to have been on the other Side the Water.

L. C. J. Will you aſk him any more Queſtions?

King. No, my Lord.

L. C. J. Well then, What ſays the other Man, *Keyes?* Will he aſk him any Queſtions?

Keyes. My Lord, I have had no Body to adviſe me, no Counſel; I was only a Servant to Captain *Porter*.

Mr. *Att. Gen.* If then they have done with him, before he goes, I deſire to aſk him one Queſtion. What Diſcourſe, or Treaty, or Conſultation about this, or ſuch like a Matter, there was the laſt Winter, and between whom?

Capt. *Porter.* There were ſeveral Meetings and Conſultations the laſt Winter between Capt. *Charnock*, Sir *William Perkins*, and myſelf, about ſuch a Thing; and we thought that the quickeſt Way to bring in the King, and reſtore him to his Crown, was by knocking King *William* on the Head; and there were ſeveral Meetings about the Ways of doing it.

Mr. *Att. Gen.* Who elſe were there at thoſe Meetings?

Capt. *Porter.* There were ſeveral others in Company.

Mr. *Att. Gen.* But the Meaning of my Queſtion is, who of the Priſoners?

Capt. *Porter.* I cannot remember any but Capt. *Charnock*.

Mr. *Att. Gen.* Pray will you acquaint us with the Reaſon why it was not done at that Time?

Capt. *Porter.* We wanted a Commiſſion from *France*, which we thought was a neceſſary Authority for us to act by.

Mr. *Att. Gen.* You ſpeak of a Liſt that was brought you again from *Charnock*, with the Addition of thoſe Names that were his Men; pray at that time was there no Diſcourſe about a particular Gun that was ſomebody's, and that one in the Company was to have, to be employed in this Service?

Capt. *Porter.* My Lord, I ſaid, I had a Muſquetoon that carried 6 or 8 Bullets, that Captain *Pendergraſs*, who was one of the Four out of my *Quota*, that was to go with Sir *George Barcley*, ſhould have if he pleaſed.

Mr. *Att. Gen.* Capt. *Porter*, I would not lead you, but were there any particular Directions given, and what, touching the particular Employment of that Gun?

Capt. *Porter.* I remember I told Capt. *Pendergraſs*, if the Coach made any great haſte to get away, he might eaſily hinder that, by killing or laming one of the Horſes with that Gun.

Mr. *Att. Gen.* Pray recollect yourself, Sir, was *King*, the Prisoner at the Bar, present at that Discourse?

Capt. *Porter.* Capt. *King* was then in my Room in *Maiden-lane*, where I then lay, being removed from my Lodging at *Norfolk-street*.

King. Do you say that I heard any such Discourse?

Capt. *Porter.* I cannot say you heard it, but you was present then.

Mr. *Att. Gen.* Was there not some Discourse about a Defect of the Numbers that were appointed, and expected to join in this Thing?

Capt. *Porter.* My Lord, I told you I wanted a Man, and that was *Kenrick*, who had his Arm in a String; and Mr. *De la Rue* brought one that I knew not, and some of the Company went to the *Blue-Posts* to tarry there whilst I came to them, and Capt. *King* was present when the News was brought us of the Disappointment, and then I resolved to go out of Town.

Mr. *Att. Gen.* The next Witness, my Lord, that we call is Mr. *De la Rue*, and we desire he may be sworn. *(Which was done.)*

Mr. *Sol. Gen.* Mr. *De la Rue*, we would desire you to acquaint the Court and the Jury, what you know of any Design or Conspiracy to Assassinate the King, when it began, how it was carry'd on, and by whom, and by what Methods?

Mr. *De la Rue.* My Lord, this Conspiracy hath been carrying on a great while, for some Years: And it originally came from Col. *Parker*, especially as to my Knowledge of it; and that was five or six Years ago, at St. *Germains*, when I was there: He proposed it to me, and said he would propose it to my Lord *Melfort*, who was King *James*'s Secretary in *France*. Two Years after, he came over into *England*, it was a little before the Business of *La Hogue*, and he would have had me come over into *England* with him; upon which I applied myself to my Lord *Melfort*, to know whether I should come over hither yea or no: My Lord *Melfort* advised me to stay there awhile; for, said he, you will find there is something a doing which will please you. But nothing being done, after that I came to *England*, and suffered a very tedious Confinement here. I became acquainted with Mr. *Charnock* and Capt. *King* abroad, I have been with Mr. *Charnock*, Mr. *King*, Mr. *Porter*, Mr. *Goodman*, and Col. *Parker*, here in Town several Times, and at several Places. And now I come to what was a doing the last Year. In the Months of *January*, *February*, and *March*, till the King's going to *Flanders*, there were several Conferences and Consultations about this Matter, between Sir *William Perkins*, Capt. *Porter*, and others; I cannot say that ever I was in Company with *Goodman* at that Time, when we talked of any Thing of this Nature. But Capt. *Charnock* carried me to Sir *William Perkins*, whom I had never seen before, to the *Mitre-Tavern* in St. *James*'s Market, and there I was asked if I would be concerned in the Easing us from the Yoke that then lay upon us. I asked which way it was to be done, for I could not understand what was meant, but the taking off the King, and therefore I asked which way it was to be done. Then they asked me, whether I knew where Capt. *Stow* lived; and they employed me to go to his Lodgings, and appointed me to meet them at the *Star-Tavern* in *White-Friars*. They were there before me, when I had met with the Captain, and brought him thither; but that they thought not a fit Place to consult in, and therefore they went to *Bromfield*'s Coffee-house, and there they did talk something of it; but they took one another aside, and talked privately amongst themselves, which I took some Observation and Notice of; and upon Enquiry I was told it was because there was an old Gentleman in the Company, whom they did not care to acquaint with any Thing of the Matter, because he was too old to have any Hand in it, and they would acquaint none with their Resolutions, but those that were to be Actors in the Design. My Lord, I was not often in their Company after that, but I heard from Time to Time, how Matters went on, and I heard from Captain *Porter* particularly, that they had been at *Turnham-Green* and liked the Place very well, and that the Design was to take the King off, or else to hurry him away to *Rumney-Marsh* alive, and carry him into *France*.

Charnock. Surely this is not any Evidence, because Captain *Porter* only spoke of it, and it is by Hear-say, and we are not concern'd what other People talk of.

Mr. *Att. Gen.* Pray who was in the Room, when the Proposals were made?

De la Rue. What Proposals do you mean, Sir?

Mr. *Att. Gen.* At the Tavern in St. *James*'s-*Street*.

De la Rue. At the Coffee-house there was a little Talk of it between themselves; but they would not talk much, they said, because there was an old Gentleman there who was too old to engage, and they would have none but Actors; that I understood to be the Reason why they talked one with another so: But I taking Notice of their Privacy, whenever I asked *Charnock* of it, he referred me to Captain *Porter*. But withal he told me several Times, that he believed it would come to nothing. The Design was to carry the King alive into *France*, if they could; if they could not take him alive, then to Assassinate him, and pretend it was done by a Random Shot. He told me also, that they had sent to King *James* for a Commission to execute this Matter, and to authorize them to carry the King into *France*, if they could take him; and then if they could not, they agreed to excuse themselves, as I said, by pretending that he was killed by a Random Shot. It should seem (as I understood) the Commission was delayed a long Time, and then they resolved to execute the Design without a Commission; and within a few Days before the King was to go to *Flanders*, I was told all was ready. But then they wanted a Ship to carry him off when they had taken him; and there met at the *Rose* Tavern, as I remember, Captain *Porter* and Sir *William Perkins*; but I cannot tell whether Mr. *Charnock* was there or not. I asked them if they had concluded upon the Matter; they told me it was concluded upon, and, as I remember, they told me Captain *Charnock*, or *Robinson* (for he went by both Names) was to have a Recommendation to some Body at *Deal*; and there they were to hire a Vessel, and I was asked whether I would go with him: I told them, I would. But then the King went a little after for *Flanders*; and they had no Time to compleat the whole Affair, and so the Business was put off till the King's Return this last Winter.

Mr. *Sol. Gen.* Well, what say you to any Thing since?

De la Rue. This Year, in the Months of *November* and *December*, Mr. *King*, the Prisoner at the Bar, told me, that there would be a Major General come over from *France*, and that there was a Man of Quality about the Town, that offered to disburse two or three Thousand Pounds, if King *James* would give Order for it: And this was, as I suppose, to buy Horses to be engaged in this Matter, and he would tell me more a while after. A Month or two after, he told me he was out of Money about it, which could not be had: I was brought in by Capt. *Porter*, and they communicated this to me about the latter End of *January*, or the Beginning of the Month of *February*; they told me there was a Major General come over from *France*, and there were a great many People come over besides; and there would be something speedily put in Execution, which would be for the King's Service.

L. C. J. Who told you this?

De la Rue. Captain *King*. The next Time I saw him, he told me he wanted a Saddle with Holsters, it was the 7th of *February*, on *Friday* Night, for he was to go out of Town with some Friends, about something in order to this Affair; he desired me to lend him one; but I had none, I told him, but I would write to Capt. *Porter*, to procure one for him; and he told me he was to go with *Knightly*, *Durant*, and others, to see whether the King went to *Richmond* or to *Hounslow*, because they were told the King had altered his Journey from *Richmond* to *Hounslow*. He afterwards told me, he went with his Friends, and the *Sunday* Morning he comes to me, and told me, there was the rarest Place for the Execution of the Design against the King, that was possible to be thought of; if they should have studied never so long, and desired a convenient Place, they could not have had such another. It was within a Quarter of a Mile of the King's House at *Richmond*, in a Lane that leads to the House, and so narrow, that the Officers and the Guard could go but very few a-breast, hardly broad enough for a-breast; and there was to be an Ambuscade behind the Park Pales, and the other Side was the River; and, says he, he will have all the Pales sawed so far that when the King's Coach comes into the Place, the Pales shall be broke down, and we will have a Parcel of Horse ready, that shall be sure to do the Work with the Guards; and when we fire, they shall take Notice to make their Attack. *Durant* desires to command this Party; and they were to be dressed in Country-Men's Habits, that they might be the less taken Notice of: and he said 10 or 12 Men on the other Side would beat 100 of the Guards in that Consternation, especially we having the Park Pales before us to defend us. He asked me if I would be one of the Ambuscade. I told him I had rather be one of those on Horseback to secure the Retreat, and I would rather attack the Guards. It was late, and so *King* and I went Home; and the next Day I went to see Captain *Porter*, when he was ill of the Gout. This was *Sunday*, the 9th of *February*; we did go to *Porter*, and he was in his Chamber, and two or three more, and they were talking of indifferent Things: He asked for Captain *Charnock*, and they said he was gone out; but he takes out Capt. *Porter* into the Yard to talk with him by himself; and what he said to him, I suppose was to tell him what he had told me before: Says Captain *Porter* to him, I have taken Care of a Horse for you; we will ride out on *Tuesday* next to see the Place. Mr. *Porter*, and Mr. *King*, and, as I was told, Mr. *Knightly* went to *Knights-bridge*, and lay there all Night: and the next Day they went out of Town to view the Place. I was at *Porter*'s Lodging on the *Monday*, but I was told there by *Keyes* and his Landlady, that he lay that Night at the *Swan* at *Knightsbridge*, and was to go out the next Day. On the *Tuesday* Morning I was coming back from *Kensington*, which was the 11th of *February*, and when I was coming along the Street I met with *Keyes*, and ask'd him where he was going? Says he, I am going to Sir *William Perkins* with a Lerrying Trumpet; for it seems he was raising a Troop of Horse, as *Porter* told me afterwards; and within a little Time afterwards, I saw Captain *Porter* at the End of *Norfolk-street*, and he told me they would all be together at the *Nagg's-head*, about 7 or 8 o'Clock. I went, and expected to be admitted, and asked if Captain *Porter* was there; they told me he was above, but there were several other Persons with him; and there was a Coach at the Door which had brought two *Scotch* Gentlemen, of which I thought Sir *George Barcley* was one, whom I heard to be in Town. I desired to speak with Captain *Porter*; they told me he was busy above in Company, and could not be spoke with; by which I saw they were not willing that I should come there amongst them, which I took very ill. Captain *King* came out to me, and was talking with me at the Door, and Captain *Charnock* comes with another to the Door in a Coach: I saw him, but when, I suppose, he perceived me, he pulls himself back into the Coach, as if he had no Mind to be seen; but finding he could not avoid it, he comes out, and asks me if I would not go up Stairs into the Company? I told him, No, I hear they are busy, and because I was not invited up at first, I would not trouble them. I was then thinking of going to my Lord *Shrewsbury*'s Office immediately, to get some Messengers immediately to apprehend them; but then I thought I had not enough to discover their Intentions, and make it out against them, but I should have one Time or another. I did not see Captain *King* till *Saturday* afterwards at 12 o'Clock, and I was then at *Charnock*'s Lodging, to to see whether he was gone out, that I might be able to give the King the better Account; they told me he was at the *Blue Posts* in *Spring-Garden*: I would not go and dine there, but went home, and afterwards went thither; and *King* told me, the King did not go out that Day; I told him that I heard so, and would come and see them after Dinner. At this Meeting at *Spring Garden* I saw *Keyes* was one, and *Kenrick*, and *Sherbourn*, and *Bryerly*, and two that I did not know. This was *Saturday* the 15th. On *Sunday* the 16th, I met Mr. *King* at St. *James*'s-*street*, and we went thence to the *Dog* Tavern, and there we supped together, and he told me Sir *George Barcley* had brought over Sixteen of the Guards, and two Officers, and a Brigadier, and a Sub-Brigadier; and he told me the Day before, that he knew some of them, and was going to meet them; for they were *en Cachet*, as he called it in *French*, and did not stir abroad without Leave, and were subsisted at the Rate of 4*s.* a Day, as the Guards were here. He told me, he had a been lately with them a drinking. I asked him whither they went; he told me, to the *Bear* Tavern in the *Strand*; and he told me Mr. *Charnock* and Captain *Porter* had several Conferences with them to contrive how to take off his Majesty, to Murder and to Assassinate him. And he told me—

Charnock. My Lord, I desire he may be ask'd whether he was at the *Bear* Tavern with these Men.

L. C. J. What he says about this Matter, is what *King* told him.

Char. That is not Evidence, my Lord.

L. C. J. That is true, not to affect you, but only Mr. *King*.

De la Rue. Captain *King* told me besides, that Mr. *Charnock* did not argue like a Soldier, and reflected upon him for it; for he said, he seemed to desire to have his Post in as little Danger as was possible. And for Mr. *Porter*, he did not approve of him; for he told me he had as much Fat in his Brains, as he had in his Body. I remember those Words he said; and that what he and *Durant* had proposed, was rejected, that was about the Ambuscade: For it was said, that after all their Consideration, Sir *George Barcley* was not sure of Horse enough to carry them off afterwards; wherefore they resolved to Assassinate his Majesty in the Lane coming from *Brentford* to *Turnham-Green*; and Sir *George Barcley* was to command Eight Persons to assault the King, and those that were in the Coach; and Mr. *Charnock* was to attack the Guards in the Rear; and one *Rookwood*, with a Party that came from *France*, and Captain *Porter*, in two Wings, were to attack the two Sides of the Guards. I remember on *Sunday* Night I asked him if he had a good Sword, for I wanted one; and I said to him, Where is your Sword-Cutler? He told me, On the other Side of the Way; and he was sent for to bring a good Sword, and I chose one that was but a little Blade, which he thought would do best, and was ridiculing Captain *Charnock*'s Sword, as being too broad, and of three or four Fingers Breadth. I liked his Sword, and spake to the Man to get me one like his; and he said a *Tuesday*, that he had sent him to my Lodging, but I had not seen him. On *Tuesday*, the 18th of *February*, I went to him, and asked him, whether I should see him in the Afternoon? He told me, No; for he was to go out with *Knightly* to buy Arms. Shall I see you then at Night? said I. I cannot tell whether you can or no, said he. I cannot remember any Thing more that passed upon the 18th. But I spoke to Mr. *Charnock*, whom I met near his Lodging in *Norfolk-street*, and desired to have a Word with him towards the Water-side: I asked him, how the Matter in Hand went; Says he, I find People that were sanguine, and hot, and forward, are now grown cold: I believe the King has Notice of it, and the Thing has taken Air; for he has not been abroad a good while. He was not abroad on *Saturday*, as he usually does go: and I hear that upon *Friday* Night it was agreed in Council, to take up several People. Said I, Does the Business go on? No, says he, I believe it is off, because we apprehend the Thing has taken Air; besides Things of such a Nature are not to be communicated to so many, nor delayed, both which are very dangerous; not above Three People should know of it. Said I, How then would they get enough for the Execution? If they be not acquainted with the Design, they will never engage. Well, said he, I believe they are quite off of the Thoughts of it; but you may depend upon the main Business, that will be very speedily, which was the Landing of King *James*. While I was talking, comes *Bryerly* from Captain *Porter*; and after him, came Captain *King* in a Coach, and asked me, if I would go Home with him? I told him, No, I was not going Home, but was going into *White-Fryers*, and I took my Leave of them; and nothing pass'd more, that I remember, at that Time. On *Wednesday* Morning I went to Capt. *Charnock*'s, thinking to learn something how Matters went on; but he was closer, and more reserv'd than before. I asked him to lend me a good Sword. He said he had none, but Mr. *Porter* had a good broad flaming Sword, which I thought to be the Sword that Capt. *King* mentioned to be his: And we had little Talk that Day; for I had Business to do, and I left him pretty soon on the *Wednesday*. Next Day after, I went to Captain *Porter*'s Lodging, who was removed from *Norfolk-street* into *Maiden-head-lane*, to one *Brown* a Surgeon's, and very few People knew where he was, but those that were of the Party in this Business; and I went into another Room, into the Dining-room, because his Room had not a Fire, and he came in to us, and I told him what I had heard from Mr. *Charnock*, that the Thing was quite off. He told me, he heard nothing of it, but found all People that were concerned, as resolute for the Execution of it, as ever they were.

Char. My Lord, he speaks of what Captain *Porter* told him; that is nothing to me.

L. C. J. No, it is not, nor will it ever be urged against you; it is but Hear-say from another. Go on, Sir.

De la Rue. I stayed there but a short Time: But, Capt. *Charnock*, since you speak of this Matter, I only say, I told Captain *Porter* what you told me, That you thought they were off of the Business, and that it had taken Air; and I asked him what he thought: Says he, I know nothing of any Alteration; I believe they are as resolute as ever they were: For they fully purpose, that if the King goes abroad on *Saturday* Morning, we will have all ready. And he told me how it was to be done. He desired me to lie with him on *Friday* Night, that we might prepare every thing against the next Day: But I could not do that; and therefore he bid me send at Nine, or thereabouts. I told him I would be at my Lodging about that Time, if he would send to me, to be sure about seven or eight a Clock in the Morning. About that Time in the Morning Capt. *Porter* sends to me again; a Servant-Maid came to me, for the *Black* that used to attend him, used only to go abroad at Nights, and was not seen to go in and out a-Days, for Fear of being taken Notice of; because, as I said, none but those that were of the Party knew that he lodged there. I dress'd myself, and went to Captain *Porter*'s Lodging. He was in Bed, but presently he rises, and told me in *French*, *Toutes Parties sont prests*; All Things are ready: And when he was up, he put on his Boots; and by and bye, in comes Mr. *Kenrick*; and after him in comes Mr. *Keyes*; and after him, Mr. *King* and Mr. *Pendergrass*: and Captain *King* takes Mr. *Porter* into another Room, and there they were whispering a while, but I did not hear what they said; but *King* told me afterwards, he did not observe that I was in the other Room. The Question then was asked of *Cranbourne*, When he saw Sir *George Barcley*? He said, he just came from him: And then Captain *Porter* takes a Pen and Ink, and writes down a List of the Persons that he was sure of, and puts me down first. What, says Mr. *Pendergrass*, are you the Captain? I told him, I believed I was in before the rest of the Company that were there. Then Capt. *Porter* sends Mr. *Cranbourne* with the List to Captain *Charnock*'s Lodgings; and in the mean Time, when Mr. *Cranbourne* was gone, Capt. *Porter* told me, that Mr. *Pendergrass* was to be one of the Eight under Sir *George Barcley*, that were to Assassinate the King; And now, says he, I am going to lend him a Gun that will carry six or eight Bullets. Says Captain *King* thereupon to him, I hope you will not fear to break the Glass Windows. No, says he, I will have a Hand or a Finger in the Business. By and bye came in News, that *Chambers*, one of the orderly Men, as they called them that lay at *Kensington* to give Intelligence, had sent Word that the King was to go abroad, and the Guards were gone out. *Durant* was to stay last, to see when the King went out. *Chambers* had been there all the Week. Mr. *Cranbourne* came back, and told Captain *Porter*, that *Chambers* had sent to Captain *Charnock*, that the King would go out that Day. At which all the Company seemed joyful. Captain *Porter* told me likewise of several Disappointments that they had, both as to Time, and as to Men; particularly that one Major *Lowick* had engaged to bring two Men, and that one of them had told his Wife, that he was to mount for King *James*'s Service; and she went and cried after him when he went to the Coffee-house; and so he was forced to abscond, and so we lost three: And also told me, that *Kenrick* said he had broke his Arm; and when Captain *Porter* asked for *Sherbourne* whom *Kenrick* had talked of, he said he asked so many Questions that he durst not trust him: so that they had lost Five or Six in the whole: And there was one *Plowden* that they were disappointed of besides, whom they had very much reckon'd upon. When Mr. *Cranbourne* brought back the List that Captain *Porter* sent to Captain *Charnock*, there were added to it several Names, which Captain *Porter* said were the Names of the Men that were to be under Captain *Charnock*, and that it was his Hand; and at the Bottom there were the Letters *R. C.* which I thought stood for *Robert Charnock*. The Names made up about seventeen or eighteen: I told him, I thought there had been more. He told me, there would have been more, but that they were under some Disappointments, as I told you before. He asked me to get him some Men to supply the Defect, and I proposed some Names, to make him believe I was hearty in the Business: We agreed to go to the *Blue-Posts* in *Spring-Garden*, and I went under Pretence to get the Men, and came and told them, I had got them, and I found Mr. *Pendergrass* there, and I took Mr. *Keyes* thither, and Mr. *Porter* sent Mr. *Cranbourne* to Captain *Charnock* several Times; by and bye Word was brought that *Chambers* had sent Word, the King would not go abroad that Day; upon which they all look'd very blank: And *Keyes* came two or three times in, and went out again; he was several times up and down, at last he came and told us, the Guards were returned from *Richmond* foaming; and he went down again to learn further Intelligence, and within a little Time came and told us, the King's Coach was returned to the *Mews* Gate, and the People very much wondred what should be the Reason that the King did not go a Hunting for two *Saturdays* together as he used to do. They seemed to be in a very great Consternation at this News, and Captain *Porter* said he resolved to go out of Town, and asked me if I would go: I told him, No; I had a Suit in *Doctors Commons*, and I would go to my Proctor and Lawyers to consult about it. Then he asked Mr. *Pendergrass* to go with him, which he agreed to do; and Captain *Porter* sent *Keyes* up to give the rest of the Company an Account, that there was no Occasion for them then, and so they dispersed.

Charnock. Did I go out of Town, can you tell?

Mr. *De la Rue.* Now you put me in Mind, Mr. *Cranbourne* brought a Message from you about that Time to Captain *Porter*, that Sir *George Barcley* desired to speak with him at his Lodgings. Captain *Porter* was then apprehensive of Bailiffs meeting with him; and, says he, he knew this, I wonder he would not come to me. But he did not go to him, but resolved speedily to go out of Town; and *Keyes* was to give an Account where he was in the Country, that, if Occasion was, he might be sent for. This is all I can at present recollect, only, I beg your Pardon, I remember, there were several disloyal Healths drunk in the Company, at several Times, as the Restoring the late King, the Health of the Prince of *Wales*, the late Queen, and the *French* King; and particularly, I remember, when the News of the Disappointment was, Mr. *Porter* took an Orange in his Hand, and squeezed it, and gave it into the Hand of the next Person to him, whom he drank to, and began a Health to the squeezing the rotten Orange; and said, Though we are disappointed one Day, I hope to have another: And *Keyes* was at Dinner with them all the Time, and every Body drank it, I did not see any Body refuse it, but it went from one to another quite round.

Mr. *Att. Gen.* Pray, who were there at that Time?

De la Rue. All the Company pledged the Health, and Mr. *Keyes* was there.

Charnock. Pray was I there?

De la Rue. No.

King. Was I there?

De la Rue. No, there was none of the Prisoners, but Mr. *Keyes*, who belonged to Mr. *Porter*'s Party; Mr. *King* for his Part belonged to Sir *George Barcley*'s Party.

Mr. *Att. Gen.* My Lord, before we go to another Witness, I desire to know whether the Prisoners will ask this Witness any Questions.

Char. You say, there was a Note of Names sent by me to Captain *Porter*; Pray, do you know my Hand-writing?

De la Rue. I cannot say I have seen you write, or that I saw you write that; but I have seen your Writing several Times, and I believe it to be your Hand.

Char. Why so, have you any of my Writing?

De la Rue. I have received several Notes from you, which I believe are your Writing.

Char. But you do not swear, that they were my Writing, or that this was my Writing.

De la Rue. I tell you, you have sent several Notes to me at several Times, and you have owned the Messages came from you, and I do believe it was your Hand-writing, because it was like the rest: and Capt. *Porter* told me, it was your Hand-writing.

Mr. *Att. Gen.* Pray did Mr. *Keyes* use to sit down at Table with Mr. *Porter*?

De la Rue. Yes, in all Companies he was treated as familiarly as a Companion, and no ways as a Servant; and dined and supped at the same Table with the rest.

Mr. *Att. Gen.*

Mr. *Att. Gen.* What was done after that the News was brought of the King's not going abroad, and Captain *Porter* resolving to go into the Country?

De la Rue. When Captain *Porter* was gone, the Company broke up; and away goes I to Captain *Charnock*, to see him, about four of the Clock in the Afternoon. When I came there, his Landlady told me there was a great deal of Company: But I desired her to go in, and tell him that I was there. She did so; and he sent and desired me to come in. I did so, and I saw several Persons there. There was one *Douglas*, and one *Trevor*, and four Troopers of my Lord of *Oxford*'s Regiment, and a Trumpeter that was his Servant in *Ireland*, when he was a Captain in *Parker*'s Regiment; I know Captain *Charnock* was a great Croney of *Parker*'s, and he sent Letters by me to him: I have seen some of the Letters that *Parker* sent; and they were drinking the same Healths as were drunk before at the *Blue Posts*, to the restoring King *James*, the Queen, the Prince of *Wales*, and the Grand Monarch (as they called him) the *French* King.

L. C. J. Who was in Company then?

De la Rue. Mr. *Douglas*, Mr. *Trevor*, four Troopers of my Lord *Oxford*'s Regiment, one *White*, one *Lowthorp*, and one *Mason*, whom I know when I see very well; Mr. *Charnock*, one Day in the Summer, asked me to go and drink a Bowl of Punch, which I was unwilling to do; but he must needs press me, and he carries me where *Mason* and *Lowthorp* were, at the *George Inn* in *Piccadilly*; whence we went to the Prince of *Orange*'s Head, and Captain *Charnock* spent in Wine and other Liquors upon them a great deal of Money. This was half a Year ago in the Summer Time, but I do not remember that I saw those two, *Lowthorp* and *Mason*, afterwards, till the 22d of *February*.

Mr. *Att. Gen.* Is this all that you can say as to the Prisoners?

De la Rue. This is all at present that I can recollect.

Mr. *Att. Gen.* Then for the Satisfaction of the Court and Jury, give us an Account when you first made a Discovery of this Conspiracy, and in what Manner, and to whom.

De la Rue. The last Year I had discovered it if it had come to a Head, and been ripe enough to have been put in Execution; I did then design to acquaint the King with it; but it coming to no Head then, I deferr'd troubling the King with it: And now this Year I designed (had the King gone out the 15th of *February*) to have prevented any Mischief, but they had Notice that he was not to go: But my Way was, to have put them all into the King's Hands, by getting two or three General Officers to be acquainted with it; and dividing some of the Guards into several Parties in the Lanes between *Brentford* and *Turnham Green*, and so have surprized them and their Horses in their several Inns that they were quartered in. But upon *Monday* the 17th of *February*, lest they should alter their Resolution, and I should happen not to be acquainted how it was to be done, I went to a General Officer of my Acquaintance, that is, Brigadier *Lewson*, to acquaint him with the Matter; but he was gone out of Town with Colonel *Fitz-Patrick* and another: I went then to *Durant*'s Lodgings for a Colour, and it was told me, he had been out all Night. I went again to Brigadier *Lewson*'s, but he was not in Town, and I left Word for him, that the next Day I would wait upon him, and desired he would not go out till I came to him. I went, he was not then at home, but I afterwards met with him, and acquaints him with this Business, and begs of him to acquaint the King with it that Day, which he told me he would. He asked me which Way I purposed to put them into the King's Hands. I told him the best Way and safest for me, was for his Majesty to go out on the 22d, for the Party that was to execute this Design, were not to go out of Town till the Afternoon, to be at *Brentford*, when the King came back from Hunting, and that they should have two or three Troops of Horse by Parties to have seized them and their Horses in the several Inns and Publick-Houses, where they were dispersed. He said, it was not safe to run that Hazard, but he would offer it to the King, and let me know his Mind. He sent to me the next Day, and told me, he had acquainted the King with it, who desired to know who they were that were concerned in it; then I gave him the Names of those that I knew, and where they lived. I dined with him on *Thursday*, and told him what had passed on the *Wednesday* Morning between Captain *Charnock* and I, and what *Porter* said about it on *Wednesday* Night; and after Dinner he said he would go again to the King and acquaint him with it; and that I should come to him on *Friday* Night, which was the Reason I was not there with Captain *Porter*, where Sir *George Barcley* and they were together; for I went to the Play to pass away the Time. When I came home to my Lodging, I found there were a Couple of Letters from the Brigadier, to whom I went, and he told me, the King was desirous to see me: I told him I would wait on him to the King with all my Heart. I went with him to *Kensington*, and was introduced to the King by my Lord *Portland*, where I think I told the King what I have told the Court now.

Mr. *Att. Gen.* What Day do you say it was you discover'd it to the King?

De la Rue. Brigadier *Lewson* acquainted the King upon the *Tuesday* Night before, and that had been done the Day before, if I could have met with him; but it was *Friday* Night that I was with the King.

Mr. *Att. Gen.* Will they ask him any Questions?

Char. No, my Lord, I do not think that any Thing he says against me is material at all.

De la Rue. My Lord, I remember one thing more; that upon *Tuesday* Night Mr. *King* told me he had my blue Coat on.

Mr. *Att. Gen.* Have you any thing more to say as to *Keyes*?

De la Rue. Keyes was the only Man that told me of the Meetings.

Char. Where was it that you say I pull'd myself back in the Coach?

De la Rue. It was at the *Nagg's-head* in St. *James's-street*, and he came out of the Coach and asked me to go up; but I took it ill to be refused before, and because I was not invited up at first, I refused, and said, I had Business elsewhere, and went away.

L. C. J. Will you ask him any more Questions?

Char. No; yet I think I would ask him one Question more. You say, Sir, I carry'd you once to the *George Inn* in *Piccadilly*, where there were *Lowthorpe* and *Mason*: Are you sure it was the *George Inn*?

De la Rue. Yes, sure.

Char. Are you positive it was the *George Inn*?

De la Rue. I believe so, I took it to be that Inn.

Char. You did swear it positively, that it was the *George Inn* before.

De la Rue. I saw those two Men since, which was on *Sunday* the 23d, at *Kensington*, and they said they did quarter at the Inn in *Piccadilly*, where you carried me to them.

Char. Pray, where-abouts is the *George Inn* in *Piccadilly*?

De la Rue. The Inn that I speak of is about the Middle of *Piccadilly*, upon the Left-hand.

Char. There is but one *George Inn* in all *Piccadilly* that ever I heard of, and that is at the further End, there is no such Sign in the Middle.

L. C. J. He is not positive as to the Sign, but as to the Place.

Char. I appeal to every Body, if he did not swear before positively, that it was the *George Inn* in *Piccadilly*.

De la Rue. I do say, it was to an Inn in *Piccadilly*; and *Lowthorpe* told me on *Sunday* the 23d at *Kensington*, they were quarter'd at an Inn in *Piccadilly*, I take it to be the *George Inn*, if it be not the *George*, I know not what Sign it is; but I think it is not very material what the Sign was.

Char. Yes, it is all material to us; and I think it is very material for every Man to take care how he forswears himself.

L. C. J. No, it is not forswearing himself, when he is not positive as to the Sign.

Char. But I hope every Body considers, that he did swear it was the *George Inn*, and there is no such Inn there.

De la Rue. This I did not think of, to take so much Notice of it then, as to mind what the Sign was; 'twas you carried me thither.

Char. It was your Interest to mind every Particular; for, according to your own Words, you have been a Trapanner half a Year before.

De la Rue. I have told you already, I intended never to have been an Evidence; but to put you into the King's Hands, and prevent the Execution of the Design, and I begg'd of the Counsel to be excused from giving any Evidence, but I could not by any Means get myself excused.

L. C. J. Will Mr. *King* ask any Questions? —— *King.* No.

L. C. J. Well, what say you, *Keyes*, will you ask him any Questions?

Keyes. My Lord, he says I drank the Health to the Squeezing of the *Orange*, and the other Healths: I was not in the Room while any such Healths were drunk, nor did I sit down while I was there, nor do I know any thing of the Horses, upon my Word, that he speaks of.

Mr. *Att. Gen.* Then if they have done with him, there is a noble Lord, whom he has mention'd, as being present when he discover'd this to the King, who we desire may be examined touching that Matter: We must humbly pray my Lord *Portland*, that he will please to be sworn.

L. C. J. Hold, my Lord, the Book, and swear him. (*Which was done.*)

Mr. *Att. Gen.* My Lord, I humbly ask your Lordship this one Question, whether Mr. *De la Rue* did make any Discovery of this Matter in your Presence to his Majesty, on *Friday* the 21st of *February*.

E. of *Portland.* Yes, he did.

Mr. *Att. Gen.* Your Lordship has heard what he said now: Was it to the same Purpose?

E. of *Portl.* Yes, to the very same Purpose, and he did it before he went in to the King to me, being brought to me by his own Desire: It was all the same in Substance as he has told you now; and afterwards he was brought to the King on *Friday* Night, and there he said the same Things.

Mr. *Soll. Gen.* This Gentleman did it not to save his own Life, but the King's. Our next Witness, my Lord, is Mr. *Pendergrass*.

(*Who was sworn.*)

Mr. *Att. Gen.* But before we go on to another Evidence, I would ask Mr. *Porter* one Question, and that is, What is become of the List which you spoke of? —— Capt. *Porter.* I burnt that List.

Mr. *Att. Gen.* Why did you so?

Capt. *Porter.* Because I thought the Thing was discover'd, and it was not fit to have such a Paper remain.

Mr. *Soll. Gen.* Mr. *Pendergrass*, pray will you tell my Lord and the Jury what you know about this Matter, how you came to be acquainted with it, who were concerned in it, and when and how it was to be done?

Capt. *Pendergrass.* My Lord, about the 11th of *February* last, I was sent to by Captain *Porter*, where I was in the Country, to come to Town; the 13th of *February* I met him at the *Blue Posts* in *Spring-Garden*; we dined there, and he told me of a Design that was on Foot to take away the King's Life, and that Sir *George Barcley*, and other Officers, were come on purpose out of *France*, in order to execute the same. I was very uneasy when he told me of the Thing, but I said nothing till I had an Opportunity of waiting upon my Lord *Portland*, which I did as soon as I could, and acquainted him with the whole Matter of the Design, and desired him to acquaint the King: This was upon the *Friday* Night, which was the 14th, and he told me the King had a mind to speak with me; and afterwards my Lord *Portland* carried me into the King's Closet, where the King ask'd me some Questions. I told him what I knew of the Design, but desir'd to be excus'd from naming any Persons, because my Intention was only to prevent such a barbarous Action, and I was resolved not to be a Witness. The King promised me I should be safe, and press'd me to name them, and assur'd me I should not be forc'd to come in as an Evidence; upon which I did tell all that I knew, and went out of Town with Mr. *Porter* as resolving not to be an Evidence; but being satisfied, after we were taken, that Mr. *Porter*, who had engaged me in it, had himself discover'd, and accus'd me, I thought myself discharged from any Obligation of Honour in concealing it, and am willing to give an Account of any thing that I know.

Mr. *Att. Gen.* We know you do it voluntarily, as you did it at first honourably, and therefore, Sir, we desire you would please to give an Account of your Knowledge in the Matter.

Capt. *Pendergrass.* My Lord, as I told you before, the 11th of *February* I was sent to by Captain *Porter* into the Country, where I was with Mr. *Bryerly*, to come to Town; accordingly the 13th, which was the *Thursday*, I came to Town with Mr. *Bryerly*, and found Captain *Porter* at the *Blue-Posts* in *Spring-Garden*, and we dined there. There was *Keyes*, and *Bryerly*, and *Porter*, and I in Company, where he acquainted me with the Design. We had no further Discourse that Day; the next Day we dined at the *Rose-Tavern* in *Covent-Garden*,

where there was *King*, *Bryerly*, *Cranbourne*, *Porter*, and I dined together.

King. Pray, was it by way of Rendezvous or set Meeting?

L. C. J. Holt. Look you, you must stay your Time before you ask any Questions of the Witnesses; you shall be heard, when your Time comes, as fully as you desire. Go on, Sir.

Capt. *Penderg.* This was *Friday* the 14th of *February*, we had some Discourse about the Matter; Captain *King* and Captain *Porter* went away, and then I went to my Lord *Portland*'s, and was by him introduced to the King. The 15th I came to Captain *Porter*'s Lodgings, and he was getting ready, in Expectation of Notice whether they should execute the Design that Day or no. While he was getting ready, I goes to the *Blue Posts*, where was *Kenrick* and *Sherbourne*, and Mr. *Bryerly*, and there we were drinking a Glass of Wine, and in comes *Durant*, who was an orderly Man that lay at *Kensington* to give Intelligence; and *Bryerly* directed him to Capt. *Porter*'s Lodgings to carry the Intelligence which he brought, that the King intended to go out that Day; upon that he went away to his Lodging, and Capt. *Porter* came a little time after, booted, to the *Blue Posts*, and there he din'd; within an Hour or two after Capt. *Porter* came in, Mr. *Charnock* sent a Note to Capt. *Porter*, to tell him, the King did not go that Day, and so there must be Counter Orders; Capt. *Porter* told me it was his Hand; the Note was signed *R. Robinson*, and he shewed me the Note, and acquainted me, and the rest of the Company, that they were disappointed that Day, since the King did not go; there we dined, and drank a Bottle of Wine. The next time we met, there was Mr. *King* and Mr. *Keyes*, and Mr. *De la Rue*, at Mr. *Porter*'s Lodgings; this was *Saturday* the 22d, in the Morning; there we had some Discourse of the Matter; and Capt. *Porter*, upon Notice from Capt. *Charnock* of the King's intending to go abroad, had sent a List of his Men, and receiv'd back a List of Capt. *Charnock*'s; and Capt. *Porter*, and *De la Rue*, and we went to the *Blue Posts* to dine, where we had an Account afterwards, that the King did not go, and so there was another Disappointment; and a little after *Keyes* came in, and said, the Guards were come home all in a Foam, and the King's Coaches come back to the *Mews*. Capt. *Porter* then thought all was discover'd, and says he, I will go into the Country; Mr. *Pendergrass*, will you go with me? With all my Heart, said I; so we sent *Keyes* to get our Horses ready; we lay at *Epsom* that Night, and from thence to another Place we sent the next Day, where we lay 'till *Thursday* Morning, when Capt. *Porter*, Mr. *Keyes* and I was taken together, the Place was called *Leatherhead*, in *Surry*; whence we were brought up to Town, and have remained Prisoners ever since.

Mr. Att. Gen. Which of the Prisoners were there present upon the *Saturday* the 22d, at Capt. *Porter*'s Lodgings?

Capt *Pendergrass.* There was Capt. *King* and Mr. *Keyes.*

Mr. Att. Gen. Pray was there any Discourse about a Gun, and who was to have it?

Capt. *Pendergrass.* Capt. *Porter* told me there was a Musquetoon that he had would carry 6 or 8 Bullets, and I should have it, being to join with Sir *George Barcley* to set upon the King's Coach, and directed me to be sure to shoot some of the Horses to stop their Course if they seemed to drive furiously away; and Mr. *Cranbourne* was the Person that carried the Messages from Mr. *Charnock* to Mr. *Porter.*

Mr. Sol. Gen. Do you remember, Sir, that *Keyes* said the Guards were come back?

Capt. *Pendergrass.* Yes, and that they were all in a Foam, and the Coaches were come back to the *Mews* Gate; and one of my Lord of *Oxford*'s Regiment told him there was something extraordinary mutter'd among the People, upon which they concluded it was discovered.

Mr. Att. Gen. Will the Prisoners ask him any Questions?

Char. King, and *Keyes.* No.

Mr. Att. Gen. Then I must beg the Favour of my Lord *Portland* to give himself the further Trouble of acquainting the Court how this Gentleman behaved himself in reference to this Discovery.

E. of *Portland.* My Lord, it was as he has acquainted you. This Gentleman came to me upon the *Friday* Night, and told me of it; and then upon the same *Friday* Night, which was the 14th, I think the Night before the first time that it was to have been executed, and declared his Abhorrence of such a barbarous Business: And he told me his Design of coming into it, and keeping Company with them, was to save the King's Life by acquainting me with it, and discovering it, which he would do upon a Promise that he should not be used as an Evidence, nor pressed so much as to name Names; which Promise I made him, and the same Promises were made him that Day seven-night, when I carried him to the King. But the King pressing him to name their Names, assuring him he should be safe, and not forced to be an Evidence, he did then name the Names under that Promise from the King.

Mr. Att. Gen. Pray, my Lord, who was by then besides your Lordship?

E. of *Port.* My Lord *Cuts.*

Mr. Att. Gen. We must desire my Lord *Cuts* will please to be sworn.

(*Which was done.*)

Mr. Sol. Gen. Pray, my Lord, will you please to acquaint the Court and the Jury what happen'd at that time.

L. *Cuts.* My Lords, I was in the King's Closet that same *Friday* Night when Mr. *Pendergrass* was brought in there: 'Twas, as near as I can remember, between 12 and 1 a-Clock at Night; Nobody was present but myself with the King, when my Lord *Portland* came in with this Gentleman: All that he said to the King at first was, that he had a Discovery to make of a Design to assassinate his Person, if that his Name might not be made use of, nor he forced to be an Accuser or a Witness; and therefore desired to be excused if he said no more; then desiring the King not go out the next Day, but to take care of himself, because there were some Persons had resolved to assassinate him coming home; but begg'd to be excus'd from naming Names, for he said he would rather die than betray his Friend, and he thought it enough that he had saved his Majesty's Life. It was above half an Hour before the King could perswade him to name Names, and he would not 'till the King had given him his Word and Honour that he should not be obliged to be a Witness, and then he did name the Names. Afterwards, when Captain *Porter* and Mr. *Pendergrass* were taken, as my Station obliged me to give Orders, and require Intelligence, and assist at the securing and Examination of the Conspirators, I happen'd to see them before they were carried into the Council, and presently knew Mr. *Pendergrass* to be the Person that was with the King that *Friday* Night; I had a great Compassion to see Gentlemen and Officers, whom I had some Knowledge of before, in such a Condition, and I told them naturally what my Opinion was: Mr. *Porter* did seem sorry for what he had done, and inclin'd to make the King that Atonement for his Fault which he has now done. When I came out and told Mr. *Pendergrass* this, and that Mr. *Porter* had named him, and owned the whole Matter, I only gave him my Opinion upon it, that I thought he was discharged from any Obligation of Friendship: And he seemed then inclined to do the same likewise that Mr. *Porter* had done.

Mr. Sol. Gen. Swear *Thomas Bertham.* [*Which was done.*] Pray do you give my Lord and the Jury an Account how long you have known Mr. *Charnock* to be engaged in this Conspiracy: Tell your whole Knowledge as to him.

Mr. *Berth.* The 8th or 9th of *February* last I was crossing *Covent-Garden*, I lit upon one Mr. *Trevor*, who is now in *Newgate*, and he told me he was going down to Mr. *Charnock*'s Lodgings, and that he heard him say he wanted to speak with me; I told him he had no Business with me nor I with him, that I knew of: But he prevailed upon me to go with him and when we came to Mr. *Charnock*'s Lodgings, he met me in the Entry.

Mr. Sol. Gen. Who did?

Mr. *Berth.* Mr. *Charnock* did. He told me he wanted to speak with me, and took me into a back Room, because he had Company in his own; and he told me the King, that is King *James*, was a-coming, and there was a Piece of Service to be done before he could come, and if I would assist in it, it would answer my Expectation. I asked him what was to be done? He answered, You must only go abroad to take the Air, you will see several of your Acquaintance there. I desired to know what was to be done? He said it was to cut off this Spark or to take off this Spark, I can't tell which, and then the King will come home quietly.

Mr. Att. Gen. Who were to cut him off?

Mr. *Berth.* The Party that I was to meet when we rode out to take the Air.

L. C. J. Who did they say they were to take off?

Mr. *Berth.* He said we must take off this Spark, or cut off this Spark, I can't tell which, which I understood to be the King.

Mr. Att. Gen. How long had you known *Charnock?*

Mr. *Berth.* By Times, seven Years.

Mr. *Cooper.* How came you acquainted with him?

Mr. *Berth.* We were in the Army together; he was a Lieutenant in Col. *Parker*'s Regiment, and I was a Trooper there then.

Mr. Sol. Gen. What Discourse was there between you and *Charnock* after you heard there were Warrants out?

Mr. *Berth.* Sir, I have not yet done with what past at his Lodgings. He asked me if I would accept of being one in the Business: I told him I could not engage in it, for I had disposed of myself otherwise. So we came out of that little Room, and he desired me to come into his Room and drink a Glass of Wine: There were three or four Gentlemen that I did not know; and then there was one Mr. *Chambers* and Mr. *Trevor*, and Mr. *Lee*, which Mr. *Chambers* fetch'd afterwards in there.

Mr. Att. Gen He would not be engaged there because he had otherwise disposed of himself: Indeed, he was engaged with Sir *William Perkins.*

Mr. *Berth.* After I came in I observed great Whisperings among the Company, and frequent calling out of Mr. *Charnock* for private Discourse; but there was no other particular Discourse about this Matter that Night.

Mr. Sol. Gen. Pray when did you see Mr. *Charnock* again, and where?

Mr. *Berth.* At another time, which was the 22d of *February*, I met him at *Lincoln's-Inn* back Gate; and meeting me here, he called me aside and took me within the Inn upon the Pav'd-stones; we took a Turn there: He told me Warrants were out against us, as he heard, and we had as good, if I would come to his Lodging, go out to *Kensington* and do the Work at once and take him off, and then we shall be quiet, and have the King peaceably here. I am sure he cannot say that I do him a Word of Wrong in what I have said, he knows it all to be true.

Mr. *Cooper.* Has any Body else engaged you in this Matter? Do you know one *Lowick?*

Mr. *Berth.* If that be necessary, I will tell it. But this is all that I know of any thing of the Prisoners; only Mr. *Charnock* did ask me as to Mr. *Trevor*, what I thought of him, whether he might trust him? I told him he might do what he pleased.

L. C. J. Holt. Mr. *Charnock*, will you ask him any Questions? for his Evidence relates only to you.

Char. No, I think not. Pray did I send for you?

Mr. *Berth.* I met Mr. *Trevor*, and he told me, he was coming to your Lodgings, and that you desired to speak with me. And when I came, you told me yourself you wanted to speak with me: Indeed I knew no Business you had with me, or I with you.

Mr. Att Gen. We have one more Witness, and that is one Mr. *Boyse.*

(*Who was sworn.*)

Mr. Sol. Gen. Pray, Mr. *Boyse*, will you give an Account when you were spoke to about this Design, and by whom?

Mr. *Boyse.* On *Friday* the 14th of *February* I went to visit Mr. *King*, and he was the first that ever told me of the Business; it was in his own Chamber, he told me there was a great Undertaking in Hand, and he had put my Name into the List, and if I would make one, I should have a Horse; and he asked me if I had any Boots; I said No. He desired me to see if I could get any, and to meet him in the Afternoon at the *Rose-Tavern* in *Covent-Garden*; but in the mean time he bid me go to Mr. *Knightley*, and he would inform me further. I went to Mr. *Knightley*, and I came to Mr. *King* again in the Afternoon at the *Rose-Tavern*, and he desired me not to be out of the way the next Day, but to be at my Lodging, and he would come or send for me; and I had Twenty Shillings of him to buy Boots, and he still referr'd me to Mr. *Knightley*: When I came to Mr. *Knightley*, I was told there was nothing to be done that Day: But I was desired to be always in the way, for the Business would soon be over. This is

is all the Diſcourſe that Day. After that I met Mr. *King* ſeveral times, who ſtill referr'd me to Mr. *Knightley*, and when I aſked him for my Horſe, he told me I ſhould have one allotted for me time enough; and when this Thing was done we ſhould be happy: But he never told me it was to take off the King.

Mr. Att. Gen. Pray what did you underſtand was to be done?

Mr. *Boyſe.* I did believe I ſhould know further of it; for I would not have engaged till I did know. But he did not tell me it was to take off the King, or what it was. This, to the beſt of my Memory, is what I know of the matter.

Mr. Att. Gen. Pray when did you come from *France?*

Mr. *Boyſe.* He told me indeed ſeveral were come from *France*, and that the King would land very ſpeedily.

Mr. Att. Gen. But when did you come?

Mr. *Boyſe.* I came the Beginning of *June* laſt.

Mr. Att. Gen. Do you remember nothing about Sir *George Barcley?*

Mr. *Boyſe.* Yes, he told me Sir *George Barcley* would command the Party, and that there were about forty or forty-five, that were concerned in the Deſign.

Mr. Sol. Gen. Do you remember nothing elſe?—Mr. *Boyſe.* No truly, I do not remember any thing more concerning Mr. *King*.

L. C. J. H. Mr. *King*, will you aſk him any Queſtions? for what he ſays relates only to you.

King. No, my Lord.

Mr. Att. Gen. Then we have done, my Lord; we reſt it here till we hear what they can ſay.

L. C. J. H. Mr. *Charnock*, The King's Counſel have done all the Evidence they deſign to give, and now is your Time to make your Defence.

Charnock. My Lord, I have taken ſome Notes of the Evidence, and made ſome Remarks, which muſt be my Defence; and I ſhall take them in Order of Time as they were given: The firſt is Capt. *Porter*; and the main Evidence he hath given againſt me, is my informing him that Sir *George Barcley* was come from *France*, with a Commiſſion all written with King *James*'s own Hand, thereby authorizing us to raiſe War againſt the Perſon of *King William*. But then he ſays, at the ſame time, I told him I never ſaw it; and I know not how I ſhould; for it is impoſſible to ſee a Thing that is inviſible, a Thing that never was in being; and to ſuppoſe that ever there ſhould be ſuch a Commiſſion under the King's own Hand, and writ with his own Hand, is ſuch a Contradiction to all Senſe and Reaſon, that no rational Man can be guilty of; and therefore I hope the Court and the Jury will conſider of it, and reject it all as a fooliſh, idle, nonſenſical Fiction and Story. It is very well known that King *James* has always had, and ſtill has, notwithſtanding his preſent Sufferings and Circumſtances, his Miniſters of State about him, in how ſlender a Condition ſoever they may be, or be repreſented to be. He has my Lord *Middleton* as his Secretary of State, he has been all along with him, and it is not ſuppoſable that he ſhould put himſelf to the Trouble of writing any Commiſſions with his own Hand, when there were others enough to do it for him, and he need only ſign the Top of it *James R.* much leſs is it ſuppoſable, that he ſhould give any ſuch Commiſſion as this that they ſpeak of, and writ it all with his own Hand, and that Sir *George Barcley* ſhould bring it over. This is ſuch a nonſenſical, ridiculous Story as ought to be rejected with Scorn and Contempt, and is only fit to be laughed at: I hope every body will look upon it as ſuch, and think that ſuch Evidence is very incredible.

My Lord, Another Thing that I obſerve out of Capt. *Porter*'s Evidence is this: He ſays, he and I was to command a Party; he knows what he himſelf intended to do, but I am ſure I know of no Party that I was to command. It is all a Dream, a mere Dream and a Fiction. He thinks fit to acknowledge his own Guilt of a very bad Crime, and he may accuſe himſelf as long as he will, but I think that will not make me guilty of any ſuch Thing, only becauſe he ſays ſo: He does not ſay what Men they were, or who they were; and it cannot be an Overt-Act, unleſs he can tell who they were. He ſays Sir *George Barcley* and I met at the *Sun* Tavern in the *Strand*, and at ſeveral other Places where this Matter was diſcourſed of, and a great many were ſuppoſed to be in the Aſſaſſination, to the Number of Forty; but he does not mention any thing then of its being diſcourſed who they were to be: And is it ſuppoſable, when the Deſign he talks of was ſo near being put in Execution, it ſhould not be known who ſhould engage in it? For my Part, I deny that ever I was with him at any Place where Sir *George Barcley*, or any Body elſe, talked of any ſuch thing. When I was examined before the Council, my Lord Keeper aſked me when I ſaw the Duke of *Berwick?* I thought it not fit to anſwer that Queſtion, becauſe I knew the Duke of *Berwick* was out-law'd here, and I might accuſe myſelf if I acknowledged having been in his Company, tho' it were at St. *Germains*. But I ſaid I never believed he was in *London*, and I do not believe he was. I heard that Colonel *Parker* was in *England*, but I did not ſee him; and as to the Major-General, and other Officers they talk of, it is all a Jeſt to me; and it is no way at all to be believed or credited, that becauſe other Men have Notions of Caſtles in the Air, I muſt be ſo fooliſh as to believe ſuch Impertinencies too. He ſays I ſent him a Liſt of Men, and written with my own Hand, and ſubſcribed with the two Letters of my Name; he does not ſwear he ſaw me write it, and Similitude of Hands was never thought good in Criminal Cauſes; and I believe it was never look'd upon for Law, that it ſhould be a good Evidence for a Man to ſwear ſuch a Writing was another Man's own Hand, unleſs he ſays he ſaw him write it, and kept it in his own Cuſtody till it ſhould be produced as Evidence, and produce it in open Court, and not let it go out of his Cuſtody till then. All theſe Things, I apprehend, the Law judges neceſſary to make a good Proof of a Writing to be of a Man's own Hand; but here is nothing of that here: Here is nothing produced, nor does he ſay he ſaw me write it; and ſo I think it all goes for nothing, a mere idle Invention of his own. My Lord, upon this Evidence there is not any poſitive Proof of my doing an Overt-Act, by buying of Arms or Horſes, or writing Letters, or any thing of that Nature; and I hope if I ſpeak irregularly, your Lordſhip will pardon me; I am no Lawyer, and I have no Aſſiſtance but my own nonſenſical Notes to depend upon for my Defence. My Lord, he ſpeaks about Horſes that were to be provided, but there is no Proof of that; I never bought any Horſes, or borrowed any; nay, nor is there any Proof, that while this bloody Aſſaſſination that he owns himſelf to have contrived and carried on, was on foot, I had not ſo much as a Horſe any where; and that I ſhould be ſo vain to get Men to engage in ſuch an Expedition with me, and have never a Horſe myſelf, is very ſtrange. The Conſpiracy, he ſays, was depending a long while, and whenever it was to be put in Execution, we were to go expeditiouſly to work, leſt it ſhould be diſcover'd; and 'tis very ſtrange then that I ſhould never have provided the leaſt thing in the World to do it with! neither Arms, nor Horſe, nor any thing: For there is no Proof of any ſuch thing againſt me, but only Talk, as he is pleaſed to ſwear, to take my Life to ſave his own: And I hope your Lordſhip and the Court will declare to the Jury, that here is no Evidence of any Overt-Act againſt me.

My Lord, there is another Thing he ſays againſt me: He ſays he had a Note from me by the Name of *Robinſon*, to countermand the Orders upon the 15th: My Lord, The Truth of that would depend very much upon the producing of that Note, then it would be ſeen whether it was my Hand, and what it contained, and what it related to: For my Part, I utterly deny I ever ſent any ſuch Note wherein there was a Word of the King, or of any Fact of this Nature that was to be committed, or any thing relating to it, if it were true that I had written any Note to him at all; and I hope the Jury will conſider, and the Court will direct them ſo to do: For I know not that they are any more ſkill'd in the Law than myſelf, and therefore I hope your Lordſhip will give them ample and true Directions, what is Law and what is not Law, and what is Evidence and what is not Evidence; and this cannot be Evidence to affect me at all, there being nothing that doth appear, or is produced.

My Lord, he ſays, there were four that were to go with Sir *George Barcley*, that were to be appointed out of each Party; he does not ſay I named any, nor does he name any himſelf; but it ſeems they knew what was to be done; and truly if any thing was to be done, they knew it themſelves (and no Body elſe that I know of) who ſwear to ſave their Lives, and get a Reward. If the four were to be out of the Party, which he calls his own, he knows them beſt, and I believe the Party was his own, and the Plot his own too, and nobody's elſe; he does not ſay that I appointed any one, he only ſays there were four to be appointed out of a Party, which Party was *in Nubibus*, and ſo is the whole Deſign, unleſs it be in his Head, fram'd there by his own Invention, for it only exiſts there that I know of.

My Lord, theſe Obſervations I make upon Captain *Porter*'s Evidence: The next Witneſs is Mr. *De la Rue*, and he is a very good Evidence indeed, if Hear-ſay be to be believ'd; he ſays I was very ſhy of diſcourſing with him about it, that I told him it would come to Nothing, without ſaying what would come to Nothing, not that the Plot would come to Nothing, for there was nothing at all ſpoken of any Plot, much leſs of a Deſign to Aſſaſſinate the King. This is all that he ſays, as to me, of his own Knowledge, all the reſt relating to me is but what Captain *Porter* told him. But to begin with the Beginning of his Evidence, he ſays one Thing which is very odd, That at the *Roſe-Tavern*, the laſt Year, there was a Conſultation about carrying King *William* away into *France*, in a Veſſel alive, and that Sir *William Perkins* aſk'd him, whether he would go along with me to *Deal*, to procure a Veſſel to carry the King over: He might as well have aſk'd him to go with me to *Conſtantinople*, or any other Place in the World, as to *Deal*, and about any other Employment, as that. A pretty Sort of Thing, that I ſhould go to *Deal* to hire a Veſſel to carry the King over into *France*; I that know no Sea-Man, or any Maſter of a Veſſel at *Deal*, that I ſhould be employ'd to hire a Ship before the Deſign was form'd, as he ſays it was not come to an Head. If we had got the Prince of *Orange* into our Power: If we had King *William* in our Power, how was it poſſible we ſhould ever have carry'd him to *Deal?* I cannot but think any one would believe us Madmen to entertain ſuch a Chimera in our Heads. What nonſenſical Stories are all theſe, that we ſhould carry King *William* to *Deal*, and I hire a Ship to tranſport him into *France!* I hope the Jury, and all that hear it, will conſider what ridiculous Stuff theſe Men talk of, as Evidence againſt Men for their Lives. Then he talks of my coming in a Coach to the *Nagg's-head* Door, where I was very ſhy of letting him ſee me, and afterwards, when I came out, aſk'd him to go into the Company; but he was angry that they had deny'd to admit him before, and ſo would not go up: What a ſtrange Sort of a contradictory Story is all this! Here was a Conference, it ſeems, appointed the Night before to be at that Place, when Captain *Porter*, and Captain *King*, and Mr. *Knightley* were juſt come from viewing the Ground, and were to make their Report; and *Porter* told him of it, and yet they would not admit him, and I was ſhy of him, and yet aſk'd him to go up: What contradictory Nonſenſe is this! It muſt needs be looked upon as improbable or impoſſible to be true, that I ſhould aſk him to go up into ſuch a Company, where ſuch a mighty Conference was to be had about ſuch a great Tranſaction, when I had ſhewn myſelf apparently ſhy of him, by falling back in the Coach, as being unwilling to let him ſee me; I hope the Jury will conſider the Self-contradictorineſs and Improbability of ſuch Evidence. Then there is another Thing, and that is, what he ſays Captain *King* ſaid, he did not believe it would come to any thing, becauſe he did not like me as being no Soldier, for I was for keeping out of Danger, and having an eaſy Poſt: If he means I had no Mind to be in a Plot, he was in the Right of it; for no Man in his Senſes would ever be engaged in any ſuch deſperate Deſigns, where there is ſuch apparent Deſtruction in view: So I cannot apprehend what there is in that of any Objection againſt me, or any Proof that I had a Hand in this Plot, becauſe I deſired to keep out of Danger. It was ſaid, that I was to have attacked the King with Sir *George Barcley*; but Captain *Porter* ſays, we were to be together, to attack the Guards; and both can't be true, nor indeed is either of them true, but a Figment and Invention of their own: Then he ſays he aſk'd *Keyes* for a good Sword, and he told me I had a very

very good one: 'Tis true, I had a Sword, I always wore one, but it does not follow that that was to be employ'd upon such an Enterprize as this. And then he tells you a Story again of Captain *Porter*'s having a broad flaming two-edg'd Sword. But what is all this to the Purpose? Does this prove any Thing against me, that I consented to, or was engaged in, any such bloody Design as this? He saith that on *Wednesday* he came to me, and ask'd me of the Affair, how it went on; he doth not say what the Affair was, nor he doth not say it was about killing the King; nor indeed is it probable it should be, for he says I was always shy of him, and that he could never get any Intelligence but from Captain *Porter*. He saith I told him it was a Thing would not admit of being delay'd, and that only three People should know such a Thing; but still he doth not tell you what this Thing was, and therefore I do not apprehend how this should affect me, as Evidence of my intending to Assassinate the King. He saith he had it from Captain *Porter*, that Mr. *Chambers* was an orderly Man, a Word I do not understand, to convey Intelligence to me; and that *Durant* was an orderly Man, to convey Intelligence elsewhere: Still this is all but what Captain *Porter* told him, and there is no Proof that I sent Mr. *Chambers* any where; *Chambers*, I acknowledge I know, he is a poor Man, and my Lord Chief Justice *Treby*, I suppose, cannot but remember that he was in Prison, and try'd before him upon the Account of Piracy; I must needs say, I thought him an honest Man, because he had serv'd with me in *Ireland*: I knew he was in great want, and therefore gave him his Diet and Lodging; there is no Proof that I furnished him with Money, but I acknowledge I did with Bread and Drink, to keep him from Starving; that I think was an Act of Charity, but it cannot be interpreted, nor is there any Proof to warrant it, that it was with any ill Design, or that I gave it him to hire him or engage him to any such Purpose. My Lord, they would make it as if the Persons that were intended to be employ'd in this pretended Plot, were to be regular Troops, and to have Courts of Guard, and to be dispos'd of into Quarters, and this was to be done by these orderly Men: I profess I know not what to make of it, it is such a Medley, a Fancy, and a Chimera, that it is perfectly Unintelligible, whether these were to be General Officers, or Private Centinels, or what. Then, my Lord, he saith *Cranbourne* brought a List from me to Captain *Porter*, with *R. C.* at the Bottom: *First*, That he does not prove that it was my List, nor doth that *R. C.* being at the Bottom of the List make me a Partner in this Conspiracy. Then he saith, that *Cranbourne* came to the *Blue-Posts*, as from me, to acquaint them of the Disappointment, because the King did not go out that Day: Surely, my Lord, I need not trouble you with saying any thing to this, for it is all, as to me, but Hearsay; and what am I concern'd in that which other People talk amongst themselves? Tho' they do use my Name, how can I help that? My Lord, he saith himself that he intended to discover this Conspiracy a Year ago, but the Thing failing then, which how ridiculous it was I observed before, he let it alone for that Time; but when I met him at the *Nagg's-head* Door, and he was so angry for their not admitting him into their Company, which was three Weeks before this Design they talk of was to be executed, he had a Mind to go to the Secretary's, and get Warrants and Messengers to apprehend us; and he saith he hath often come to me, to ask about the Affair, as he calls it; but I was still reserved and shy, and told him nothing would come of it. From all this I would observe that I have very good Reason to look upon him to be no Evidence, not only for the same Reason that I objected against Mr. *Porter*, that by his own Acknowledgment he is *Particeps Criminis*, but his coming to me after he resolved to discover, plainly declares, that he set himself to be a Trapanner, and no Trapanner can, in the Judgment of any honest or understanding Man, be a credible Person, as an Evidence to take away any Man's Life: I am sure what he saith of my Shyness to converse with him, and his own frequent Attempts to converse with me, shews plainly he was willing to trapan me; for so he himself saith. He came to me several Times, and took me aside, to ask how the Affair went on, but he did it only to enable himself to make the better Discovery; which makes him ten thousand times worse, than if he had only gone at first and told what he pretends he knew, and afterwards forbore the Company. Besides, my Lord, as to trapanning, I have read in a Book of Sir *Robert Atkins*, that to be *Particeps Criminis*, proves a Person to be a bad Man, and consequently not so Credible, especially if it can appear the Witness has trapann'd the Prisoner into the committing the Crime; then the Witness will appear to be guilty of a far more higher Crime than the Prisoner, and therefore ought not to be believ'd as a credible Witness against the Prisoner, for he is a credible Witness that has the Credit of being a good and honest Man, which a Trapanner cannot have; and this Trapanning proves withal, that the Trapanner did bear a Spite and Malice against the Person trapanned, and intended to do him a Mischief, and design'd to take away his Life: Shall such a one, *says he*, be a credible Witness, and be believed against him? *God forbid!*

My Lord, as to Mr. *Pendergrass*, who is the next Witness, I do not take myself to be much concerned in all he saith. I think I have seen him but once of a great while, and that was on the *Wednesday* or *Thursday* before I was taken up; but, my Lord, I have this to say to his Evidence, I desire your Lordship to observe I was not in the Proclamation, though he was: They took Occasion to have me secured as a Colour, or to save Expences, I suppose, while they themselves went out of the Way, to have their Names put into the Proclamation; that somebody might colourably take them, and get the King's Money. All that he saith of me, is, that *Cranbourne* brought Messages from me: One Time I writ a Note, sign'd *R. Robinson*; another Time I sent a List subscribed *R. C.* and that *Porter* shew'd him them both; but all this is but Hear-say still out of the Mouth of *Porter*, and can be no Proof at all against me. He saith, upon the Disappointment he and they went to *Epsom*, which to me seems a very remarkable Thing; for if he say true, it is plain, this was before by him discover'd at Court; and to me it shews, that he had a strong Design of getting Money, and taking away People's Lives upon that Account; and that Capt. *Porter* was in the same Design: For *De la Rue* saith, Captain *Porter* ask'd him to go with them, as well as *Pendergrass*. Now, can it be supposed, that these three should agree to go together, unless they were in a Combination, as it appears they now are? And I cannot but think, the Court and the Jury will think it reasonable to believe: For if I was in a Plot of such a Nature as this, and should hurry out of Town after I had discover'd it, with three or four of the People that were concern'd in it, and some of them afterwards pretend to be Discoverers too, nobody in the World can believe but they contriv'd the Thing amongst themselves, and went out of Town only for a Colour, that they might be put in the Proclamation, and pretend to be taken; to entitle themselves to the Reward.

L. C. J. Really, Mr. *Charnock*, I am loth to interrupt you in any Part of your Defence, but I do not understand what you mean by this, and I very willingly would understand you if I could.

Mr. *Char.* My Lord, I say, I look upon it, that they were all combin'd together in a Design to get the King's Money, and take away our Lives; that *Porter* should desire them to go with him into the Country, and particularly Mr. *Pendergrass*, who discover'd this to the King, and then that he should agree to go with him.

L. C. J. Truly, I do not understand the Force of your Argument; that because upon the supposed Discovery Capt. *Porter* went to *Epsom*, and Mr. *Pendergrass* went with him, therefore this must be a Design between them to get the King's Money, I cannot any way see how that must follow.

Char. Pray, my Lord, to what End should he run out of Town, upon the Apprehension of the Discovery, and with Captain *Porter* too, when he actually had got the King's Promise that he should be safe, and not be a Witness, unless it were a Combination between them, in order to set up as Witnesses against us, to get the King's Money?

L. C. J. I'll tell you why he was willing to go with Captain *Porter*; because he had not a Mind that the Discovery he had made, should be any Way known to have come from him; for you see how unwilling he was to name Names, and so kept Captain *Porter* Company still, as his Friend, resolving not to be an Evidence against him.

Char. Well, my Lord, after all, I hope, what he saith cannot be look'd upon as any Evidence against me; because whatsoever he saith relating to me, is about the Notes and Messages that he saith were brought to Captain *Porter*, and all of it can amount at the utmost to Hear-say from other People's Mouths. My Lord, the last Evidence that I apprehend relates any Way to me, is that of Mr. *Bertham*, and he talks of what I should say to him upon the ninth of *February*, that I should take him into a back Room into my Lodgings, and there tell him, That there was something in Hand for the Restoring King *James*; but there was somewhat to be done first to take off the Spark, or I do not know what, nor do I believe any Body else doth know how to make any thing of it. It is a very improbable Thing, that this Matter which was to be to great a Secret, and which I should say, was not fit to be communicated to above three People at once, I should send for a private Trooper, for he was no otherwise, to communicate so great a Matter to him; besides that, I cannot, nor, I believe, can any Body else tell what to make of the Words, *Taking off the Spark*, how to construe that to make it an Evidence of an Intention to kill the King. It might be probable I might say there was a Noise that King *James* would come, for it hath been in the *Gazettes* and the publick Prints, that there was such an Expectation, and Preparation for it on the Coast of *France*; but it is not probable, I am sure it is not true, that I should say there was something to be done first, for the *taking off the Spark*. Evidence of a Thing of this Nature ought to be plain and clear, and distinct: He doth say nothing that I talk'd to him of killing the King, or of Assassinating him, or of my asking him to be one in any such Thing, and that I furnish'd him with Arms, and an Horse on any such Design, but only that he might ride out, and take the Air, and there he should meet with some of his Acquaintance: What unaccountable loose Stuff is all this! It is very strange, my Lord, that if I liked the Man so well, as I must do, if I would send for him to communicate a thing of this Nature to him, that I should not put it into a Method, that he might be one with us in the Execution of it: But there cannot be any Thing inferred of that Nature, for which we stand accused, from any Words that he saith were spoken. My Lord, he doth say, indeed, that he told me, that he had disposed of himself otherwise; but that is no more certain, nor can be referred to any particular Thing, than the rest: He might dispose of himself to a Friend, he might dispose of himself to his Wife; but what is all that to this Purpose? And he might, indeed, if King *James* came, dispose of himself to assist him, or to oppose him, or to let it alone; but all this is nothing to the Business for which we are here to be try'd; it's all loose, idle, impertinent Talk, and not at all to the Purpose. And then he saith, that afterwards, I met him at *Lincoln's-Inn* back Gate, and took him into *Lincoln's Inn*, and told him, there were Warrants out, and we had as good do the Business presently. My Lord, I do remember I met him at *Lincoln's-Inn* Gate, and it was upon *Saturday* the Day before I was taken up, and it was about Twelve a-Clock at Noon, and I did hear there were Warrants out, but there never was that Intimacy between him and me, that I should desire him to come to my Lodging, or that I should support him in any Sort. My Lord, I have made a few Remarks to your Lordship and the Jury, upon the Evidence; I am sensible I have given the Court a deal of Trouble, but I hope you will consider it is for my Life, and my All; and I hope you will be of Opinion, that the Evidence produced against me is frivolous and weak, and that the Witnesses have a very bad Cause of it, since all that they talk of, if it were true, is only a Discourse, and they are forced to supply in Words, what they want in Fact.

L. C. J. Have you any more to say, Sir?

Char. Yes, my Lord, I desire to take Notice to the Court and the Jury, that the Business of bare Words was never look'd upon in Law as an Overt-Act to prove a Man guilty of High-Treason; nor that several Persons met together doth prove a Conspiracy. These Persons proving that I met with them, doth not prove that I was concerned in the Assassination, nor that I consented to any such Thing; besides, my Lord, I am taxed in the Indictment with buying Arms and Horses for this Business; but there is not one Word of it proved, or of my riding out to view the Ground, nor any thing, that I was to be concern'd about this villainous Act.

My Lord, if I had bought any Arms, that had not been an Overt-Act of itself; it must be proved first that I bought them with such an Intent to employ them about such a Business; and it neither is, nor can be proved, that I furnish'd any Body with Horses or Arms: And therefore the bare Buying of Arms of itself, as far as I am informed of the Law, would be no Proof of an Overt-Act. To prove an Overt-Act of Treason by the buying of Arms, it must be prov'd that I declar'd some way that I bought them with such an Intent, or else it is no Proof at all; but now if you have no Evidence that I bought any Arms at all, I look upon it, that there is no Possibility to make that an Overt-Act. If you please, my Lord, to bear with me to give you the Trouble of reading some short Notes, which I have taken out of some Law-Books about Overt-Acts.

L. C. J. No, the Court won't think it any Trouble: Make your Defence as well as you can, and take your own Way.

Char. My Lord, I hope you will allow what hath been collected out of the Books of Law as to Overt-Acts: There is *Hale*'s *Pleas of the Crown* is positive in it, That an Overt-Act must be alledged in every Indictment, and proved; That compassing the Death of the King by bare Words, is no Overt-Act. Now, if bare Words be no Overt-Act, why then all the Conspiracy that is here proved, supposing all to be true that is said, it is no Overt-Act; for it is all but Words still. And bare Conspiring is no Overt-Act, according to my Lord *Coke*'s Opinion in his *Third Institutes*; and the utmost of all that any of them prove against me is, that I did say so and so, which is but bare Conspiring. Pray, my Lord, let me know upon what Law it is that I am indicted and try'd, I suppose it is upon 25 *Edw.* III.

L. C. J. Yes, you are, and only upon that Statute.

Char. My Lord *Coke*, in his *Third Institutes*, saith, The open Act must be manifestly proved. If divers conspire the Death of the King, and the Manner how, and thereupon provide Weapons, Powder, Poison, send Letters, or the like, for the Execution of the Conspiracy, or Preparation be made by some Overt-Act to depose the King, or take him by Force, or by strong Hand, or imprison him; these are sufficient Overt-Acts, to prove the compassing the King's Death. But by this it is plain, that bare Conspiring is not Treason, as wanting a sufficient Overt-Act to declare the Intention. Now, my Lord, I say, that in all this Evidence that hath been given against me, there is not one Overt-Act proved of my providing Arms, or sending Letters, or the like. And the same Page of the same Book, the *Third Institutes*, Chap. *High Treason*, upon the Words *prov able Attaint*, it must be by Overt-Act, it must be upon direct and manifest Proof, not upon conjectural Presumptions or Inferences, or Strains of Wit: So that the strongest Presumptions upon the whole Earth will never be able to make any Overt-Act, without plain and manifest Proof. And, my Lord, I do insist, here is not plain and manifest Proof, or any Overt-Act, but only Presumptions in the whole Scene of the Thing. I must beg the Favour of the Court as to one particular Thing: Your Lordship, no doubt, knows the Law very well. I am here an ignorant Man, unable to defend myself by the Forms of Law; but I hope your Lordship and the Court will not let me suffer any Damage upon that Account. You are always presumed to be of Counsel for the Prisoners; and I look upon it as assured, that you will do that Justice to Persons in our Circumstances, as truly to instruct the Jury how they shall behave themselves in Relation to this Matter that is now upon Enquiry before them. Particularly, my Lord, I desire they may be told plainly and truly, what is Proof of an Overt-Act, and what is not; and when your Lordship sums up the Evidence, you will tell the Jury directly and plainly, what is Legal Evidence, and what is not; and then what is sufficient Proof of any one Overt-Act or Species of Treason; and that you would not leave it to the Apprehension of the Jury, what they do believe, but inform them really and truly what is Legal Evidence, and what of that Sort hath been given To-day. My Lord, here is a strange Sort of Thing, a Conspiracy, which, consider'd in the general, hath neither Head nor Tail; how many there were to be is uncertain. In the Indictment is said, there were forty Men to do this Fact upon the King in his Coach, and for attacking the Guards. Can it be supposed, that any Man in his Senses would do such an Act as this, without Respect to have Security for himself and his Family, or those he is concerned for? I know not how great Wits these People be in other Things, but I am sure they shew no Wit in this, I look upon it to be so desperate a Thing. The Guards are at least treble the Number, and better appointed; and that forty should go to assault treble the Number, and in divided Bodies too, that were only to mix Fury and Malice with Resolution, to be torn in Pieces by the Mob upon an apparent visible Disappointment. And when we had done this, and made this Attempt, where were we to go? We had no *Asylum* that we can hear of, nor Castle or Fort to retire to, nor none that were to back or assist us; and I am sure no Man in his Wits would undertake a desperate Attempt without Assurance of a Retreat. If I was resolved to kill any Man, I would propose to myself some Place, to which I might repair for Shelter and Safety when I had done. If then we were in our Senses, it cannot be imagined we should ever engage in so apparently destructive a Design. We ought rather to have been confin'd to *Bedlam*, than any other Place, if we could be thought guilty of so much Rashness and Folly. My Lord, I pretend not to make any particular Reflections upon these Gentlemen that have given Evidence here; but only I must take leave to say in general, that there are none of them, but that if they have had any Fortunes in the World, their Circumstances as to that Matter are now much altered; and if any Persons will be Evidence against others for their Lives in Hopes to repair those Fortunes, and concerning Matters in which they were engaged themselves in, as they do acknowledge; and if it be true, it must be through the Desperateness of their Fortunes, it is the most barbarous and inhuman Sort of Evidence that ever was given by any that ever had any Sense of Honour, and must be a base Reflection upon any who pretend themselves to be Gentlemen: And I hope the King will think them upon that Account very little deserving Credit. My Lord, I hope your Lordship will please to consider, that what I have offer'd is but what my own sudden Thoughts could suggest to me out of the confused little Remarks I have been able to make upon the Evidence; and it is the more confused and immethodical, because I could have no Counsel to assist me. I would only put your Lordship in Mind, once more, of what I earnestly desire and insist upon from your Lordship, that you would tell the Jury plainly and truly what Evidence it is the Law requires to convict any Person of the Crime for which I stand accused; what Things are necessary to make up that Evidence, what is a Legal Proof of an Overt-Act, and what Overt-Acts have been plainly and manifestly proved against me in this Case, and not leave the Construction of the Evidence to the Apprehension or Inclination of the Jury. This is all the Favour that I have to beg of the Court, and I hope I need not doubt the Justice of the Jury.

L. C. J. Have you done, Sir?

Char. Yes, my Lord.

L. C. J. Then what say you, Mr. *King?*

King. My Lord, I must insist upon a great many Things that Mr. *Charnock* hath said. But as to what relates to myself, Captain *Porter* saith, I went with him and Mr. *Knightley* to view the Ground where this Design was to be executed. Truly, my Lord, I did go abroad with Captain *Porter* and Mr. *Knightley*; but it was merely to take the Air, and no other Thing. Truly, my Lord, I have not taken any Notes of the Evidence, nor have I any Counsel to assist me, and so I am not very capable of making any Defence.

L. C. J. Well, have you any more to say?

King. As to Mr. *De la Rue*, he doth not pretend to say, I did ever tell him of any thing of a Design of destroying the King: And as to the Sword he speaks of, he knows I always wore one, and ever had one.

L. C. J. Well, Is this all you have to say?

King. And as to Mr. *Pendergrass*, he saith, he saw me at the *Rose-Tavern* in *Covent-Garden*, where we discoursed something of the Matter; but he tells you not what that Matter was, nor what the Discourse was. And as to Mr. *Boyse*, he doth not tax me with any Design of killing the King: Nay, he saith, I did not mention any such Thing to him. And as to the Matter of an Overt-Act, what is an Overt-Act and what not, and what is good Proof of it, and what not, I must refer to your Lordship and the Court.

Char. My Lord, I beg your Pardon, there is one thing I forgot to offer to your Lordship; there is no Place laid in the Indictment, nor no set Number of Men ascertained.

L. C. J. At present you are out of Time, for that you might have spoke to it before the Evidence was given, or you may speak to it after the Verdict is brought in, if there be Occasion.

Char. My Lord, I am ignorant in the Forms of Law.

L. C. J. If you will observe any thing out of the Evidence, you may; now is the Time.

Char. My Lord, I think the Evidence is inconsistent with the Indictment: for the Indictment doth say positively, that there were Horses and Arms bought and provided. Now if this be an essential Overt-Act, as I apprehend it is, according to my Lord *Coke*, to prove the compassing the King's Death, then there hath been no Evidence to support this Indictment; for there is no Proof of the buying of any Horses or Arms.

L. C. J. They tell you there were forty provided.

Char. My Lord, I have taken some Notes, as well as I could, upon reading of the Indictment; and in the first place it is said, that it was agreed there should be forty Horsemen armed of us, *Robert Charnock*, *Edward King*, and *Thomas Keyes*; which I take to be Nonsense and impossible.

Mr. Att. Gen. But there is, *And others* in the Indictment too.

Char. It is *Quadragint' Homines equestres de ipso* Roberto Charnock.

L. C. J. And divers others, to the Jurors unknown. May not they make forty? Thirty-seven and you three will make forty.

Char. That *divers others* is so uncertain, that no one can tell whether it be five or five thousand; and I know not what will make an Indictment void, if Uncertainty will not.

L. C. J. But your Time of Exceptions to the Validity of the Indictment is not now; we are now only upon the Trial of the Fact.

Char. My Lord, I was advis'd by my Counsel, that if I could find a Flaw in the Indictment, I must mention it, and take the Advantage of it before the Summing up.

L. C. J. You were not well advised; for after the Jury is sworn, we are only to have Regard to the Fact; and we are now upon the Trial of the Fact; and the only Thing we have under Consideration upon the Fact and the Evidence is, Whether upon this Evidence that hath been given, you are guilty or not of the Fact that is charged upon you in the Indictment?

Char. My Lord, I crave your Pardon, and I hope you will take no Advantage of my Ignorance, not being used to these Proceedings.

L. C. J. As to what you said at first, that there was no Overt-Act proved because there is no Proof of buying Horses or Arms; it is true, that is one Overt-Act laid in the Indictment, and there is some Evidence given of it; but what that Evidence will amount unto will be a farther Consideration by and bye.

Char. There was another Observation, my Lord, that I have made upon the Indictment, that it is uncertain upon the Word *tunc*; there is no Time assigned, nor no Place: Pray what Time doth this *tunc* refer to?

Mr. Sol. Gen. When the King went out.

L. C. J. But these things are not proper now, I tell you we are upon the Fact. Mr. *King*, have you any more to say? because Mr. *Charnock* interrupted you.

King. My Lord, if there be any Objection that Mr. *Charnock* hath made, would be of any Advantage to me, I hope you will let me be heard by my Counsel, that I may have the Benefit of it.

L. C. J. I tell you, that is not proper now; you may have the Benefit of any Objection of that Nature, if there be any Occasion, after the Verdict: Now we are only considering the Evidence upon the Issue, Guilty or not Guilty; and you are now to apply yourselves to that.

King. My Lord, I think I have answered all the Evidence.

L. C. J. Well then, Mr. *Keyes*, What have you to say for yourself?

Keyes.

Keyes. My Lord, all that I have to say is, I was a Servant to Captain *Porter*, and I did nothing but by his Order.

L. C. J. Is that all you have to say?

Keyes. Yes, my Lord.

L. C. J. Then I must tell you, No Man is such a Servant, that the Commands of his Master can excuse him for committing High-Treason.

Keyes. I did but obey his Commands.

L. C. J. But I tell you again, No Man is so much under the Command of his Master, as that he ought to obey him, if he command him to commit High-Treason. It is proved you bought Horses, and he told you upon what Design, and you engaged in it.

Keyes. I did not hear any thing of it, my Lord. My Master was pleased to jest with me several times, and he might say a great many things that I did not much regard.

L. C. J. You were by when your Master, as you call him, promised Mr. *Pendergrass* his Musquetoon, and Mr. *King* told *Pendergrass*, he hoped he would not fear breaking the Glass Windows.

Keyes. Indeed I do not remember any such thing.

L. C. J. And there are several other Particulars sworn against you: But have you any thing more to say?

Keyes. Nothing; but that I did what my Master order'd me to do.

L. C. J. Have you all done, then? If you have any more to say, you must speak it now, because you cannot speak after the King's Counsel have summed up; they must have the last Word. Have you any Witnesses to call, or any thing more to say?

Char. No, my Lord, we have nothing more to say, but leave it to your Lordship entirely.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the King against the Prisoners at the Bar, and I think the Matter hath been fully proved as *Mr. Attorney* at first opened it; that there was a Design of an Invasion on this Kingdom from *France*, and of an Insurrection within this Kingdom, to abet that Invasion, and as an Inducement to both, of a barbarous and abominable Assassination upon the Person of the King, and that the Prisoners at the Bar had an Hand in this Conspiracy.

Now, Gentlemen, I must tell you, that for the two first Parts of this Design, the Invasion and the Insurrection, we have given you no other Evidence now, but some short Hints, that such a Thing was intended; and we did it purposely for this Reason, because the Prisoners, tho' they were concerned too in those other Parts of this Plot, yet they are not now indicted for that Matter, but only for a direct Conspiracy to murder and assassinate the King. We have abundance of Witnesses to prove the other Parts at several Times against a great many as well as them; but we confine ourselves now to this Particular, as it stands charged against these Persons in the Indictment.

Gentlemen, There is an Overt-Act alledged in the Indictment, as it by Law is necessary to do, to prove the Treason; which is, Compassing the Death of the King; and it is by Law a good Overt-Act, That they did at such a Place, that is to say, the Parish of St. *Clement*'s in the County of *Middlesex*, on the Tenth of *February* last, consult and agree to carry on such a Design: Now it is not material, as my Lords and Judges will tell you, in point of Law, to prove all the several Consultations to be in that Parish, nor to have been upon the Day alledged in the Indictment; for if it be any Day before or after the Times specified in the Indictment, so it be before the Indictment preferr'd, and if it be at any Place within the County wherein the Indictment is laid, it is sufficient; the Thing that is material to be proved is, Whether they did meet upon such a Design before the Indictment, within this County?

This Design, Gentlemen, we in Law call High-Treason; the highest Crime that our Law, or the Law of any other Government, takes notice of: And it very well deserves to go under that Name; for it tends to subvert the very Foundations of the Government, without which no Subject is safe, and to bring all into Confusion and Desolation, by taking away the Life of the King, who is the Head of this Government; which Life the Law makes sacred above all others, because without that be safe, there can be no Safety to any particular Person.

Gentlemen, We have proved this bloody Conspiracy most fully against all the Prisoners at the Bar: I will not take up so much of your Time, as to repeat every Particular of the Evidence that hath been given; but only shortly remind you of what hath been materially said against each of them by the Witnesses that have been produced.

Against Mr. *Charnock*, there is first Mr. *Porter*, who hath sworn, That he and others met, and consulted about this Design, agreed upon it, and on the Ways and Methods for carrying it on; and he names the Places where, and the Times when those Consultations were had: Then there is Mr. *De la Rue*, who saith, he asked Mr. *Charnock*, how the Affair went on? and he answered, He was afraid it would come to nothing. That shews he was willing it should come to something, tho' perhaps he might be fearful whether it would take place or no. Mr. *Pendergrass* saith, Mr. *Charnock* sent a Note to Mr. *Porter* to countermand the Orders for the 15th, subscribed by the Name of *Robinson*; but that is only a concurring Evidence to that of Captain *Porter*, who said before, he had such a Note; but *Bertham* tells you, That he asked him if he would be one in the Design to take off the Spark; and that after he heard Warrants were out, he would have had him joined in the putting it in immediate Execution, and assured him there would be Safety in so doing.

Against Mr. *King* there are the same Witnesses, Mr. *Porter* and Mr. *De la Rue*, who tell you of the Discourses at Captain *Porter*'s Lodgings, where Mr. *Pendergrass* was likewise, who tells you the Times, *viz.* the 15th and 22d of *February* last, the Days when this wicked Design was to have been put in Execution, and there they consulted about carrying it on. Mr. *Boyse* likewise tells you of the Discourse he had with *King*; he would not indeed directly tell him, what the Design was, but Mr. *Boyse* did suspect what it might be; for Mr. *King* told him Sir *George Barcley* was come, and Mr. *Boyse* should have a Horse, and make one, and it would soon be over.

Then for *Keyes*, there are three positive Witnesses against him; there's his Master, as he calls him, Captain *Porter*, who swears, That *Keyes* knew of it, and consented to it. Mr. *Pendergrass* saith, *Keyes* was one that met at Captain *Porter*'s the 15th of *February*, to put the Design in Execution that Day. *De la Rue* tells you, *Keyes* was in the Chamber at that time, and in other Places consulting about it, and so must needs know of it, and consent to it. So that, Gentlemen, if you believe these Witnesses, as I see no Reason offered to the contrary, we have most manifestly proved upon them all three the Matters charged in the Indictment.

As to what they speak of the Witnesses being Trapanners, and swearing them out of their Lives to save their own; it is plain the Prisoners designed to trapan the King out of his Life, and some the Prisoners would have trapann'd to have join'd with them in that Design, who honestly and honourably discover'd it, and now the Prisoners Danger is a Safety to the Nation.

Gentlemen, They argue against the Belief of this Conspiracy, from the Improbability that any Person should be so desperate to engage in so wicked a Design. Truly, had this been a Matter that had been only talked and discoursed of once, that might have been the better alledged; but when there have been so many Meetings at several Times and Places, and such Methods taken for the putting this Conspiracy in Execution, and after a Disappointment one Day, put off to another; nay, and as it hath been prov'd, it hath been a Project that hath been transacting for several Years, from one Year to another, and all this made as manifestly evident, as Proof by Testimony can make it; the Objection of Improbability will soon vanish into nothing; and I hope you will think, as I believe all the World doth, or will after this Trial, That there hath been such a barbarous, bloody Conspiracy, as in the Indictment is alledg'd, and that these Persons are Guilty of it, and that you will give your Verdict accordingly.

Mr. *Conyers.* My Lord, I would only add to what *Mr. Solicitor* hath said, some few Observations that have been omitted of the Evidence that hath been given against the Prisoners.

The Treason charged, is a Design of Assassinating the King's Person; the Overt-Acts laid in the Indictment are, several Meetings and Consultations in order to the bringing it to Effect, and the providing Men and Horses to put it in Execution.

This Charge we have fully proved against the several Prisoners at the Bar, by two Witnesses at the least, and it is manifest that they were all concern'd in the several Meetings and Consultations for the carrying on that Design.

As for Mr. *Charnock*, Mr. *Porter*'s Evidence is very full as to his providing Arms and Horses; and there is besides, Mr. *De la Rue*, who tho' he met him at the Tavern, and not being admitted at first, took it ill, yet afterwards at two Meetings he did discourse with him about it; and *Bertham* gives an Account, how he would engage him in it.

As to Mr. *King*, there is not only Captain *Porter*, who testifies, that he dined with him the 14th of *February*, where they did discourse of this intended Assassination, but *De la Rue* likewise, that said, there was a Meeting appointed for *Porter* and *King*, and another, to go and take a View of the Ground; and the Prisoner himself owns he did ride out with them, but he would have it only to take the Air; Captain *Porter* tells you, it was to see which was the most convenient Place, and that the Place pitched upon was the Lane between *Brentford* and *Turnham-Green*.

And for *Keyes*, there are two positive Witnesses, Capt. *Porter* and Mr. *De la Rue*, that he was at the *Blue Posts*, and at Mr. *Porter*'s Lodgings when this Matter was consulted of, and particularly that he came and gave an Account of the Disappointment the second Day, upon the Guards coming back.

Besides, Mr. *Porter* gives an Account in general, of several that were to provide Arms, Horses, and Men; and Mr. *Bertham* proves that Mr. *Charnock* told him, the Design was to take off the Spark, and then the Time would come, that King *James* would come back quietly. Mr. *Boyse* swears, *King* told him on the 14th of *February*, that he was to go out upon a Design the next Day, and that he should have a Horse provided; which next Day, the 15th, is by all the Witnesses agreed to be the first Time appointed for the Assassination; and Mr. *Bertham* adds, that he met with *Charnock* the 22d, who told him Warrants were out, and it was best to go and do the Business presently, and desired him to come to his Lodgings, and he went to his Lodgings, and found several Persons there.

Char. He does say no such Thing, Sir.

Mr. Att. Gen. He does say that Mr. *Charnock* desired him to come to his Lodgings.

Mr. *Conyers.* As I apprehend him, he says, he went thither in the Evening on the 22d.

Mr. Att. Gen. He says, Mr. *Charnock* would have had him come, but he did not; the Time that he was at his Lodging was before.

Mr. *Conyers.* My Lord, if I mistake, I beg Pardon of the Court, and of the Prisoner too.

L. C. J. As I take it, there is no coming to his Lodging at all, but the 9th or 10th of *February*.

Mr. Att. Gen. He says the ninth of *February* he met with *Trevor*, who carry'd him to *Charnock*'s Lodgings, and then he would have engaged him in the Design of Taking off the Spark; the Meeting of the 22d was afterwards in *Lincoln*'s-*Inn*, and there was no going to the Lodging that Day.

Mr. *Cooper.* My Lord, I am very loth to take up any of your Time; but I would beg the Favour to observe two or three Passages relating to this Matter, which have not been observed yet; and shall only mention so much as I think has been omitted.

The Defence that has been made, has been principally by Mr. *Charnock*; and upon his Defence, it seems, the rest do depend; therefore I would beg Leave to make some few Remarks upon the Defence that he hath made. He says, That all the Evidence is but Hearsay, as to him, and no Overt-Act of his own proved; but, my Lord, I question not, if the Evidence be looked into, it will appear sufficient not only to prove him Guilty beyond Contradiction of all that is charg'd upon him in the Indictment, but particularly, that he was the principal Agent (under Sir *George Barcley*) in carrying on this whole Conspiracy.

For Captain *Porter* tells you, That *Charnock* first acquainted him with Sir *George Barcley*'s coming over with the Commission; that *Charnock* brought

brought Sir *George Barcley* to the Lodgings, where they both lay; that they had several Meetings, at which he was always present, and a main Promoter of the Design; that he agreed to find a principal Quota of the Persons that were to be concerned; particularly, That he was to find eight Men, and seem'd always most zealous for the Execution of it.

Then as to Mr. *King*, it is plain, that *Knightley*, and Captain *Porter*, and he, went to view the Ground; and Mr. *De la Rue* tells you, what Report *King* made of that View; that with great Joy *King* acquainted him, they had found the rarest Place in the World for the Execution of their Design, a Wood hard by the King's House at *Richmond*; and then he opens the whole Manner of the Ambuscade, and the Design.

Charnock. It is at the Liberty of any Body to swear what they please; but I hope the Jury will consider the Nature of the Evidence.

Mr. *Cowp.* Mr. *De la Rue* tells you further, something more than Hearsay, as to Mr. *Charnock*; that he ask'd Mr. *Charnock* about the Matter, what was like to come of it? And he answered him, that he feared the Success of it; for that a Thing of such a Nature was not to be trusted to above three. Which could not refer to the intended Invasion and the Insurrection; for as to that, it is plain from the Nature of the Thing itself, that it must be communicated to a great many, or else they could not be ready to assist in it: And therefore it is evident, it was the Assassination which he was in haste to have executed, saying, it had been delay'd too long, and that was as dangerous as communicating it to too many.

My Lord, I shall make my Words good to you, and rather than take up your time in making Repetition of what has been said, I will chuse to break my Method, and omit what might be further observed: It is true, it was a Mistake of the Day as to *Bertham*'s Evidence of his going to *Charnock*'s Lodging, but that is not material; for it is in Proof he did go to his Lodgings the 8th or 9th of *February*, and there *Charnock* told him that King *James* was a-coming; but there was a Service to be done first, to take off the Spark, and then the King would come in quietly; if that Design took effect, it would answer his Expectation: He was to ride out to take the Air, and meet some of his Acquaintance, and after all was over, we should be very happy. The Words indeed were something dark, but yet the Intent and Meaning of them are pretty manifest, not only from the Words to take off the Spark; but because this Action, whatever it was, was to precede the Invasion of King *James* with the *French* Forces, and was to be done in order to it, and therefore could not be meant of it, nor of joining with it.

My Lord, I shall trouble you no further, but submit to your Direction.

L. C. J. Gentlemen of the Jury, these three Prisoners at the Bar *(viz.) Robert Charnock*, *Edward King*, and *Thomas Keyes* stand indicted of High-Treason, for conspiring, compassing and imagining the Death and Destruction of the King, and that in a very bloody and barbarous Manner, by Way of Assassination; and the Indictment charges them, that they did meet and consult with divers other Traitors unknown to the Jurors, and there did resolve upon this Assassination, and Horses and Arms were prepared and provided for the Execution of it.

The Question, Gentlemen, that you are to try is, Whether these Persons who stand now thus accused, are guilty of this Crime or not? And you have heard a very long Evidence; Five Witnesses have been produced, and they have given upon this Occasion a very large Account of the whole Transaction, which I will observe to you as briefly as I can.

In the first Place, Gentlemen, you are told, how there had been a Design forming, even for some Years, for the Restoring of the late King *James*, and the Depriving and Deposing of this King; it seems it was a Design before the Business of *Cape la Hogue*, which you remember very well was in the Year 1692, about the Time of the burning a great Part of the *French* Fleet by Admiral *Russel*; but this Design, though it met with several Disappointments, yet did not die, it had its Ebbings and its Flowings, sometimes it was higher, and at other times lower; and in Winter was Twelve Months it began to be more vigorously prosecuted than at any time before since the *La Hogue* Business, and then there was a Resolution fram'd of attempting the Person and Life of the King, which appears by Captain *Porter*'s and Mr. *De la Rue*'s Testimony. And great Hopes were conceiv'd amongst them, that it might be effected before the King went over into *Flanders*; but it seems they wanted a Commission from abroad, (which they thought neceessary as an Authority for them to act under) which not coming in time, the King went over to *Flanders*, and so for that time the Execution of it was deferred.

Gentlemen, after the King's Return from *Flanders*, the Prosecution of this Design was resumed, and Intimation was given, that a Commission was brought over by Sir *George Barcley* from King *James*, which was to make War upon the Person of King *William*, who was called therein, as you may suppose; the Prince of *Orange*: And you are told by Captain *Porter*, that at that time, he and Mr. *Charnock* lodged together in one House in *Norfolk-street*, and that Mr. *Charnock* told him Sir *George Barcley* was come with such a Commission from King *James*, and imparted to him the Design of Assassinating and Murdering the King, and that would be the readiest Way to bring Home King *James*: He asked Captain *Porter*, whether he would engage himself in the Matter. It seems Mr. *Porter* did freely and readily engage in it, and was in good earnest; and therefore there were several Meetings at several Places, in order to consult and contrive how they might bring it to pass.

Gentlemen, you are further informed, that there were several Meetings at the *Globe Tavern* in *Hatton-Garden*, another at the *Nagg's-head*, in St. *James's-street* in *Covent-Garden*, and at the *Sun-Tavern* in the *Strand*, and that two of the Prisoners at the Bar, Mr. *Charnock* and Mr. *King*, with divers others, were at those Meetings, and *Keyes* was at several of them, and there it was agreed and resolved, that the King should be murdered, as the best Way to bring in the late King.

This being settled and resolved upon as fit to be done, the next Consideration was, in what manner it might be effected; and two Ways were proposed, one by way of Ambuscade on the other Side of the Water, near the King's House at *Richmond*; the other in the Lane that leads from *Brentford* to *Turnham-Green*, upon the King's Return from *Richmond*, some Evening; for it seems it is usual for the King to go to a House he has on the other Side of the Water, to divert himself once a Week upon the *Saturday*, and to return in the Evening.

These two Places being proposed, the one on this, the other on the other Side of the Water, there was a Difference in Opinion among the Conspirators, which of the Places would be the best and most proper: And in order to settle that Matter, it was resolved upon, that some Persons should be sent to view the Ground in both Places, and make their Report to the rest; and the Men agreed upon, were Captain *Porter* and Mr. *Knightley*, to whom Mr. *King* added himself, and accordingly they did go out of Town together to take a View of these Places.

[*Here the Court was interrupted by Mrs.* King, *the Prisoner's Mother, who in a very outrageous, violent Manner, got into the Court; but being removed, the* Lord Chief Justice *proceeded.*]

L. C. J. Gentlemen, I was saying that this View was taken by those Persons that undertook it; and the Night of that Day they had viewed the Places, upon their Return, they made a Report to their Accomplices, and thereupon it was resolved to relinquish the Ambuscade, and that the Attack should be made in the Lane that leads from *Brentford* to *Turnham-Green*.

The Time that was fix'd upon for this Execution was *Saturday* the 15th of *February*: There were two Men that were appointed to lodge at *Kensington*, whom they called orderly Men, a Title that they gave them: These were to give Notice at what time the King and the Guards went out; the one was to give Notice first of the Guards going, the other was to give Notice when the King went: When Notice was brought them that the King was gone abroad, the Conspirators were to be ready to go after in small Numbers, and were to be quartered and dispersed in the several Inns about *Brentford* and *Turnham-Green*, to be gathered into the several Bodies, upon Notice of the King's Return; when the King came over, then they were to make the Attack in this Manner: Captain *Porter* and Mr. *Charnock*, with one *Rookwood* were to attack the Guards, and Sir *George Barcley*, and his Party, were to come up to the King's Coach, and fire into it, and kill the King, and every one that was in it; and of that Party Mr. *Pendergrass* was designed to be one, and he was to have had a Musquetoon from Captain *Porter*, that would carry seven or eight Bullets: These Conspirators, and the Persons that were to be concerned, were in all forty, or some few more in Number.

But, by great Providence, this bloody Design was discovered, as was told you, by one of the Witnesses, Mr. *Pendergrass*, a Day or two before it should have been put in Execution; and so his Majesty did forbear going out that *Saturday* the 15th. But they having Notice that the Guards were gone, and after that receiving an Account that the King did not go, it very much alarm'd these Conspirators; but notwithstanding this, as you have been told, they were resolved not to lay aside the Prosecution of this Design, but were rather bent upon executing it the next Opportunity that should offer itself; for which Purpose divers of the Conspirators did meet together, and did consult whether it was fit further to proceed; particularly upon the *Friday* the 21st Day of *February*, at the *Sun-Tavern* in the *Strand*, divers of them met, and there they had Discourse of the Matter, and were troubled at the Disappointment, and were resolved to pursue it, and for that purpose agreed to be in a Readiness upon the next Day, and as soon as they should have Notice that the King was gone from *Kensington*, they would prosecute it in the same Manner in which they had formerly agreed.

It should seem, some of the Men that they had engaged were gone off, and others were provided in their stead; but there was another full Discovery made, before that, by Mr. *De la Rue*, by which their wicked Purpose was a second Time disappointed.

Gentlemen, upon the Discovery of this Design, it was thought very fitting to take all possible Care, for preventing such a dismal Stroke, and for punishing such heinous Offenders; there was a Proclamation issued for the Apprehension of a great many of them that absconded, which had a very good effect, by the taking of several of them, besides those that were taken up by Warrants before; and these three Prisoners now at the Bar, are indicted for this horrid and traitorous Conspiracy, and for pursuing this wicked Design, and are now upon their Trial for it.

Now, Gentlemen, you have heard the Evidence, which you are to consider of in relation to these Prisoners, and how far they are affected by it. I must tell you, that Captain *Porter* gives a very full Evidence against all three; he tells you how and in what Manner they were all engaged, and what Parts they had all in the Prosecution of this bloody Enterprize. As for Mr. *Charnock*, he seems to have been a remarkable Person in almost all the Parts of it, a great Carrier-on and Promoter of it, was to be an Actor in it, and provide his Number of Men: and it seems he was a Person much trusted by Sir *George Barcley*; and he spoke to Mr. *Porter* of a Commission that Sir *George Barcley* brought with him from King *James*, which was to levy War upon the Person of King *William*, which it seems was understood to authorize them to Assassinate the King. Mr. *King* went to view the Ground, and *Charnock* and he were at the several Consultations, and *Keyes* was at *Porter*'s Lodgings, and at divers other Consults, when the carrying on of this Design of assassinating the King, was debated and resolved upon. Mr. *Porter*'s Evidence you have heard at large, and I doubt not you take good Notice of it, and the King's Counsel have repeated the most material Parts of it, therefore I need not do it again. And as to Mr. *Charnock*, you have heard what Evidence is given by *De la Rue* and *Bertham*; for though Mr. *Charnock* says, all that is testified by the other Witnesses is only Talk and Discourse, and that bare Words are not High-Treason, but there must be some Overt-Act; therefore you are here to consider particularly what the other Witnesses say against him, and whether another Overt-Act is not proved. *De la Rue* (who was one of the Discoverers, and

(as he tells you) he resolved so to be so soon as he could get a perfect Knowledge of the whole Design) does inform you, that between the 15th and 22d of *February*, he met Mr. *Charnock*, and enquired of him how the Business went; to which *Charnock* returned answer, That the Design did languish, saying, that People were not so warm as formerly, and did believe the King had Notice, for that he had not been abroad on *Saturday*; that too many were acquainted with it, and therefore thought it might come to nothing: But the main Business, which was the landing of King *James*, would be speedy; and though the Discourse may be reckon'd only Words, yet they do import, at least acknowledge, to the carrying on this Design before that time.

But then consider what you are told by *Bertham*, another of the Witnesses, that he being inform'd by *Trevor*, that Mr. *Charnock* would speak with him, he thereupon went to Mr. *Charnock*'s Lodgings, where *Charnock* took him aside into a back Room, and told him that King *James* was a-coming, and there were great Hopes of restoring him; but there was something to be done to facilitate it, which he would do well to join in: And when he asked what it was, *Charnock* told him, he must go abroad and take the Air, where he would meet with some of his Acquaintance; and there was no way to effect it, but by taking off the Spark; and by doing that Thing, it would most probably be brought about that King *James* should be restored. Now, though it was not directly said they were to kill the King, yet it is manifest what was meant by it: For the Taking off no one Person in *England*, besides King *William*, could conduce to the Return of the late King. And for his Encouragement, he told him further, that if *Bertham* would undertake the doing of it, it would answer his Expectations. And then you are told again by *Bertham*, that he met *Charnock*, at *Lincoln's-Inn-Gate*, upon that very Day that it was last to have been executed, which was the 22d of *February*, where *Charnock* told him he suspected a Discovery was made, and that there were Warrants out against them; and that therefore the best Way was, to go immediately and take him off, and then all would be well.

Now I must tell you, Gentlemen, that what he says, that bare Words are not Treason, is very true in some Cases; for loose Words spoken, without Relation to any Act or Design, are not Treason or an Overt-Act; but Arguments, and Words of Persuasion, to engage in such a Design or Resolution, and directing or proposing the best Way for effecting it, are Overt-Acts of High-Treason, as much as if two agree together to kill the King, though the Agreement be Verbal only, and not reduced to Writing: Likewise, consulting together for such a Purpose, is an Overt-Act of Treason. For it is the Imagination, the Compassing and Designing the Death of the King, that is the Treason. For the Law is very careful of the Person of the King, and hath fully provided for his Safety; and this Treason is the first Species mention'd in the Statute. But there is no Way of discovering those Compassings or Imaginations, in order to punish a Traitor, but by some external Act, that may be sufficient to manifest such an Intention and Purpose; and that which is a sufficient Manifestation of such a Design, is another Overt-Act: But there have been proved several Meetings, and Consultations and Proposals at those Meetings, about the Ways and Methods for bringing about the Design of Assassination. And it was never yet doubted, but to meet and consult how to kill the King, was an Overt-Act of High-Treason. Besides, Mr. *Charnock*'s endeavouring to engage *Bertham* in this Enterprize, and the Argument he used to persuade him to it, that it was a means to restore the late King, and telling him it would answer his Expectation, is another Overt-Act. And therefore, how far Mr. *Charnock* is Guilty of the Charge in the Indictment, you are to determine when you have well consider'd the Nature of the Evidence, and what Answer Mr. *Charnock* hath made to it; which shall be open'd to you by and bye.

Then, Gentlemen, concerning Mr. *King*, who is the next Man, he has these Witnesses against him: Captain *Porter* says, that he was very frequently at the Meetings and Consultations, and that he came to him when he and *Knightley* were to view the Ground, and desir'd to be one of them, and they went together, and did view the Ground; this was some Time before the 15th of *February*, in the same Week.

And you may also remember the Evidence given by Mr. *De la Rue*, That Mr. *King* told him about *November* or *December*, that a Major-General would come from *France*, and that Money was to be advanced; and that after Captain *Porter* and Mr. *King* told him, that the Major-General was come. On *Friday* the 7th of *February*, *King* said he was to go out of Town with *Knightley* and *Durant*, to know whether the King went to *Richmond* or *Hounslow*. Being inform'd the King had a Design to go to *Hounslow*, and be return'd on the *Sunday* following, Mr. *King* did say they had found out the rarest Place, and the fittest that could be for that Purpose, within a Quarter of a Mile of the King's House at *Richmond*; and that there was to be an Ambuscade, and asked the Witness whether he would be one in the Ambuscade; but he liked it not, but had rather attack the Guards. He had been at the *Dog-Tavern* with Mr. *King*, and discoursing about this Undertaking, Mr. *King* the Prisoner had told this Witness, that several of the Guards were come from *France*, and that several Conferences were had about taking off the King; and he did not approve of Mr. *Charnock*, in regard he did not talk like a Soldier, and was for an easy Post without Danger; and as for Captain *Porter*, he had another Objection against him, he had as much Fat in his Brains as he had in his Body; and so the one wanted Skill, and the other Wit. But still Mr. *King* owned his being concerned in the carrying on of this Design of Assassination: for after the Design of the Ambuscade was disapprov'd of, and agreed that the Guards should be attacked, and the King in his Coach, at *Turnham-Green*; he by Discourse with *De la Rue*, expresses his Consent to it; besides, he told *Pendergrass*, who was to be one, and to have *Porter*'s Gun to shoot the King, he hoped *Pendergrass* would not be afraid to break the Glass Windows.

Mr. *Keyes* stands upon it, for his Part, that he was only a Servant to Captain *Porter*, and if he had done any Thing amiss, it was no more than what his Master bid him do; and that he knew of no Design; and that it was a hard Thing that he should be troubled in this Matter; for if a Master send his Servant to buy Horses or Arms, if he does not know how they are to be employed, afterwards it doth appear they are to be employed in Assassinating the King, that the Servant should be punish'd for obeying his Master. But the Question is, Whether *Keyes* knew what the Design was? Captain *Porter* says, he did know when he hired the Horses for what Purpose they were to be used. And he says further, that he was with them at many of the Consults at the *Globe-Tavern* and other Places, where he did eat and drink with them, and was privy to the Design, and concerned in it.

Then, Gentlemen, by the other Evidence it is proved, that he was in Company several times when the Design was discoursed of, and that he was used as a Companion to Captain *Porter*, and used to sit and eat and drink with him and the rest of them at the same Table; and when they drank to the Restoration of the late King, and to the Squeezing of the rotten Orange, *Keyes* was there, and pledged the Health, which shews the Intention of the Man; and this was upon *Saturday* the 22d; and when News was brought that the Design was disappointed by the King's not going abroad that Day, he went out to get Intelligence, and brought in Word that the Guards were come home, and that all their Horses were in a Foam, and the King's Coaches returned to the *Mews*; all which is Evidence that he knew of the Design, and consented to it. So that I must leave it to you upon the whole, though there be a great deal more Evidence than I have mentioned; you are the Judges how far it amounts to prove them Guilty.

But then, Gentlemen, as to what they say, that the Witnesses do testify by Hearsay, that's not Evidence; but what they know themselves, or heard from the Prisoners; and so Mr. *Charnock* insists upon it, that what Mr. *De la Rue* says against him, is mostly what Captain *Porter* told him, and therefore cannot make a Proof, by two: It is true, and therefore I did omit repeating a great Part of what *De la Rue* said, because as to him it was for the most part Hearsay: But whatsoever Evidence has been given of any Fact done within the Witness's own Knowledge, or of any Consult or Discourse of the Prisoners themselves, that you are to take Notice of as good Evidence, and consider of it.

But then there is another thing that is objected against the Evidence, and that is, as to the Fairness and Credibility of it, because the Witnesses, especially Mr. *Porter*, by their own Acknowledgment, are involved in the same Crime, and therefore cannot be good Witnesses against others. Now, as to that Objection, I must tell you, first, that Prisoners under those Circumstances are good legal Witnesses, but their Credits, as in all other Cases, are left to your Consideration. But, Secondly, as to the Weight of this Objection against their Credit, you may consider that traitorous Conspiracies are Deeds of Darkness as well as Wickedness, the Discovery whereof can properly come only from the Conspirators themselves; such Evidence has always been allow'd as good Proof in all Ages; and they are the most proper Witnesses, for otherwise 'tis hardly possible, if not altogether impossible, to have a full Proof of such secret Contrivances; such Discoveries are to be encouraged in all Governments, without which there can be no Safety: And though Men have been guilty of such heinous Offences, in being Partakers or Promoters in such Designs, yet if they come in and repent, and give Testimonies thereof by discovering the Truth, great Credit ought to be given to them, for such Evidence was ever accounted good. Besides, as to two of them, *De la Rue* and *Pendergrass*, which were the first that discovered, before they were apprehended, or suspected themselves to be in Danger, and therefore do not swear to save their own Lives, but resolved upon it to save the Life of the King. And Mr. *Pendergrass* had not any Design to be an Evidence, who though he discover'd it almost as early as he knew it, yet refused to tell the Names, upon a Principle of Honour, till he had the King's Word that he should not be press'd to come in as a Witness; and he tells you himself the Reason why he refused then, and why he comes in now, because Captain *Porter* was his Friend, to whom he was obliged, and he never intended at first to discover his Name, nor afterwards to be Evidence against him; but upon Captain *Porter*'s being taken, and discovering himself and his Witness, he thought that he was absolved from all that Obligation, and therefore resolved to appear as a Witness against the rest: And this does not depend only upon the Credit of *Pendergrass*, but also upon the Testimony of my Lord *Portland*, and my Lord *Cutts*, who have given you a full Account of the Manner of it.

And Mr. *De la Rue* tells you, That it was his Design at first, even a Year ago, if the Conspiracy had so far proceeded as to be ready to be put in Execution, he would have endeavoured to have prevented the Mischief by acquainting the King with it; and he gives you an Account how he revealed it to Brigadier *Lewson*, and to my Lord *Portland*, and after to the King, which is confirmed by my Lord *Portland*; so that these are Witnesses beyond all Exception, and if such Evidence as this be not allowed to be good, the Government can never be secure against such villainous Enterprizes and wicked Machinations.

Gentlemen, This is not trapanning, for it doth not appear by any Evidence, nor have I heard the Prisoners pretend that these Persons did go about to seduce them into the Design, but indeed were endeavoured to be seduced into it themselves; and though they kept them Company afterwards, yet it was only with a Purpose to acquaint themselves with the real Intentions of these wicked Men, which is Lawful and Just in order to the making a full Discovery of their so dangerous a Villainy; and therefore they ought to receive all Countenance for doing so great a Service to the Government, without undergoing the Imputation of being Trapanners.

Gentlemen, there is no more occurs to me at present that is material to be observed or taken Notice of; I leave it to you, you have heard what the Witnesses say against the Prisoners, you have heard what the Prisoners have said for themselves, you are the Judges of this Fact; if you are not satisfied that here has been sufficient Evidence given to prove them Guilty, you will acquit them; but if you are satisfied, that upon the Evidence and all the Circumstances of this Case, that they are Guilty, I suppose you will discharge your Consciences, and give your Verdict accordingly.

Then

Then the Jury withdrew to conſider of the Evidence, and in leſs than half an Hour returned, and found all the three Priſoners Guilty of the High-Treaſon for which they were Indicted, and the Court adjourned 'till ſix a-Clock that Evening.

Poſt Meridiem eodem Die.

ABOUT Seven a-Clock the Lord Mayor, and the Common Serjeant, with as many of the Court as would make a *Quorum*, came upon the Bench, and by Proclamation in uſual Form the Court was reſumed, and the Priſoners called to the Bar to their Judgment.

Cl. of Arraignments. Robert Charnock, hold up thy Hand (*Which he did*). You ſtand convicted of High Treaſon, for Conſpiring the Death of our Sovereign Lord the King by Aſſaſſination, What can you ſay for yourſelf, why the Court ſhould not give Judgment upon you to die according to the Law?

The Jaylor firſt made him to kneel; and then, when he roſe up, he ſpoke as follows.

Charnock. Sir, I have a great deal to ſay, if I knew when was the proper Time to apply myſelf to the ſaying what I have to ſay.

Mr. Com. Serj. You are now called to, to know what you have to ſay.

Char. Sir, I would put this Queſtion, becauſe I am ignorant in Forms of Law, Whether it be practicable for me to ſay any thing before Judgment or not? For I have no Pardon to plead to hinder the Judgment; and therefore I would know, if it be practicable to ſay any thing before Judgment?

Mr. Com. Serj. Yes, Sir, it muſt be before Judgment; becauſe what you are called to, and aſked now, is what you have to ſay in Arreſt of Judgment.

Char. I have many Things to ſay as to Obſervations I made out of the Indictment, and upon my Trial, if this be my Time to offer them.

Mr. C. Serj. Yes, Sir, it is your only Time.

Char. Then, Sir, I think the Fact is ill laid: We are indicted here for High Treaſon, in Conſpiring the Death of the King, and no Overt-Act is proved againſt me; I ſpeak for myſelf, I ſuppoſe theſe Gentlemen will ſpeak for themſelves.

Mr. C. Serj. At preſent you are the only Perſon that is aſked the Queſtion; therefore pray go on, and ſay what you have to ſay in Arreſt of Judgment. You ſay the Indictment is ill laid, wherein is it ſo?

Char. I do find fault with the Indictment, becauſe it is laid for Aſſaſſinating the King; and all that is proved againſt me, was, That I was in Company where ſuch a Thing was diſcours'd of: Now I am adviſed, and my own Reaſon tells me, that being in Company is no Proof of my giving my Conſent to the Thing; and without my Conſenting, there can be no Overt-Act to make me guilty of the Treaſon. It is ſaid, *that I and my Accomplices*, though there are none named but us Three, *did meet together, and conſult of this Matter, and that we bought and provided Horſes and Arms:* Which I take to be the only Overt-Act. And of all theſe Things there is not one Tittle proved; and therefore, with Submiſſion to the Court, the Indictment is naught in that reſpect. And this, I think, I may ſpeak, not only for my own Sake, but for the Sake of theſe Gentlemen that ſtand by me; if there be nothing proved againſt us of an Overt-Act, as laid in the Indictment, we ought not to be condemned.

Mr. Com. Serj. Look you, Mr, *Charnock*, you move nothing againſt the Indictments, but only run into the Proof: That Matter is quite at an End, and we cannot enter into any Debate about it; you have had a fair and a legal Trial, and upon that Trial the Jury has found you Guilty.

Char. I have not had a fair and an equal Trial, Sir.

Mr. Com. Serj. Yes, you have had both a fair and a legal, and an equal Trial.

Char. If you pleaſe to leave out the Word *Legal*, becauſe it perhaps may be according to the ſtrict Forms of Law: But I ſay it was not a fair and an equal Trial, becauſe in the laſt Act of Parliament, which was made for regulating Trials in Caſes of Treaſon, the Equity and Reaſonableneſs of a Priſoner's having that which was denied me, that is a Copy of the Indictment, and Counſel, is laid down as the Ground and Reaſon of making the Act; and without that it never had been made: It is in the Preamble of the Act, which I have look'd upon ſince I went out of the Court; and though as to the Time of the Commencement, there is a certain Day prefix'd, yet the Equity of the Act is always the ſame, and that Equity I take myſelf to be intitled unto; and therefore being denied the Benefit of it, I think I had not an equal and a fair Trial.

Mr. Com. Serj. Sir, you have very unreaſonably objected this Matter of this Act of Parliament at your Arraignment, and upon your Trial, and now; but your Objection is of no Moment or Validity in the World: For the Act is to commence *in futuro*, and you are tried according to the Courſe of Common-Law before that Act can take Place; and it is the Common-Law only that this Court can proceed by, and you be tried by.

Char. Sir, I inſiſt not upon the Law itſelf, but only upon the Equity of it, and the Reaſonableneſs of the thing.

Mr. Com. Serj. Courts of Juſtice are to go according to Rules of Law, and that is equal that is according to thoſe Rules; I ſay again, Sir, you have had a fair, a legal, and an equal Trial, and have been treated with all the Candor and Temper that I believe was ever ſhewn to any Perſons in your Condition.

Char. I had not Counſel allowed me to aſſiſt me.

Mr. Com. Serj. The Law allows it you not; if it had, you ſhould have had it.

Char. Then my Counſel were ignorant People, to inſtruct and adviſe me, that by the Equity of this Act I ought to have it.

Mr. Com. Serj. It was never practicable before, nor can be, 'till the Time that this Act takes Place.

Char. Sir, I cannot argue with the Court in Matters of Law; but as to the Evidence, I ſay, it did not come up to the Indictment.

Mr. Com. Serj. If you have any thing to except againſt the Indictment, that is very proper for you to do, and if you will propoſe it, we will hear you.

Char. Sir, I find fault with the Indictment in ſeveral Particulars; all the Facts are laid in the Pariſh of St. *Clement Danes*, and there is not one Fact proved to be done there.

Mr. Com. Serj. It is not material that the Facts ſhould be proved to be done in the particular Pariſh laid in the Indictment; it is ſufficient, if they be proved to be done in the County.

Char. There is not one Fact proved to be done in that Pariſh.

Mr. Com. Serj. All that is againſt the Evidence, which we cannot at all take Notice of after the Verdict.

Char. I inſiſted upon ſeveral Things, whereby it was impoſſible that the Evidence could be true, and mentioned ſeveral Things, wherein the Indictment was erroneous, and the Evidence not conſiſtent with it, or at leaſt not of ſuch Validity as to affect me; all which Things, if I might have had Counſel to argue for me in Point of Law, (and I look upon it as a very great Hardſhip that it was denied me,) as likewiſe that my Lord Chief Juſtice over-rul'd what I offer'd about Trapanners, as I take theſe Witneſſes to be, out of Sir *Robert Atkins*'s Book, and what I quoted out of my Lord *Hale*'s Pleas of the Crown, and *Coke*'s Inſtitutes.

Mr. Com. Serj. Mr. *Charnock*, If you pleaſe to offer any Point of Law to the Court to ſtop Judgment, we are ready to hear it; but you ought not to reflect upon the Court.

Char. Where a Man is dying, ſure he may have Leave to take Notice of what Hardſhips he has lain under.

Mr. Com. Serj. Pray, Sir, hear me; No Men that ever ſtood in your Place have had more Indulgence and Favour ſhew'd them, nor, I believe, ſo much neither. Thoſe of us that are here, and were at your Trial, do think you do very much amiſs, to make any Reflections upon the Court, after you were ſo fairly dealt with. If you have any thing that is material to offer in Arreſt of Judgment, pray let us hear it: But we muſt over-rule all Diſcourſes of this Nature, it is a vain ſort of Diſcourſe, and will be of no Uſe or Service to you at all.

Char. Truly, I know not what it is poſſible for me to urge which you will think to be material, if I cannot urge falſe *Latin* and Inconſiſtencies. There have been heretofore Arreſts of Judgment, and that muſt ſure have been upon ſome Error or other.

Mr. Com. Serj. It is true, but you aſſign none; you abound in Words, but will not offer any thing that is fit for you to offer.

Char. Sir, I aſſign this particularly as an Error, and if it be not, I cannot tell what is: I am upon my laſt Legs, and ſtand here for my Life, and ought to be allowed all legal Advantages. One particular thing is this, Whether the Scene of the Fact being laid to be at the Pariſh of St. *Clement Danes*, there ought not to be Proof that ſuch Facts were done there; and if ſo, Whether it be an not an Error, that there was no Proof of any one Fact done there? And then the next thing is, We are charged to have bought Horſes and Arms in the Indictment, and there was no Proof of any Horſes or Arms bought; I am ſure as to me there was not.

Mr. Com. Serj. I told you before, all this is to no Purpoſe; you enter into the Evidence, which is Matter of Fact, which is all over, and we cannot enter into any Conſideration of it, therefore pray do not ſpend our Time: but if you have any thing that is an Objection to the Frame of the Indictment, let us hear it.

Char. Then I think that the Indictment is uncertain; it ſays, *quadraginta Homines equeſtres aut circiter de ipſis* Roberto Charnock, Edwardo King, & Thoma Keyes; this is either not true, or it is Nonſenſe: For if there be forty Horſemen, or thereabouts, of *Robert Charnock*, *Edward King*, and *Thomas Keyes*, that cannot be true, for they can't make forty; and if you take in the *aliis Proditoribus ignotis*, that will make it uncertain, and that Uncertainty will make the Indictment void.

Mr. Com. Serj. I thought my Lord Chief Juſtice had ſatisfied you as to that Objection; you repeat but part of the Sentence: It is ſaid, *de ipſis* Roberto Charnock, & *prædictis aliis Proditoribus ignotis*, *ac aliis*, that is certain enough, I thought we ſhould have heard no more of that frivolous Objection, but you had been ſatisfied with the Judge's Anſwer to it.

Char. I am ſatisfied in Point of Fact that they conſtrued it ſo; but theſe are the Words of the Indictment as they were read to me.

Mr. Com. Serj. You ſhall have the Words read to you again. Read them.

Cl. of Arraignments. *Quod quadraginta Homines Equeſtres aut eo circiter de ipſis* Roberto Charnock, Edwardo King, & Thoma Keyes, & *prædictis aliis Proditoribus ignotis*, *ac aliis.*

Mr. Com. Serj. You took but Part of the Sentence, or elſe you could never have made that Objection.

Char. Then, Sir, here is *tunc & ibidem*, what is that.

Mr. Com. Serj. You can eaſily tell that ſure; it is *then and there.*

Char. What, *ibidiem?* What word is that?

Mr. Com. Serj. It is the beſt Word that could be uſed; what Word would you have had?

Char. *Tunc & ibi*, is *then and there.*

Mr. Com. Serj. No, *ibidem* is a better Word, and is always uſed in our Pleadings at Law.

Char. Then I have only this in general to ſay; Whether it be poſſible for a Man that is ignorant in Forms of Law to defend himſelf without Counſel? I muſt deſire Counſel to look into the Indictment and to aſſiſt me.

Mr. Com. Serj. That is what we cannot allow by Law, unleſs you offer ſomething that may be ſuch an Objection as the Court ſhall think fit to have argued by Counſel.

Char. But how ſhall I that am ignorant in the Law, know how to offer you that which you will think fit to hear Counſel to?

Mr. Com. Serj. You may offer any thing that you think is an Exception, and the Court will conſider of it; for I think it is my Duty, and every Man's

Man's that has the Honour to ſit here by the King's Commiſſion, to lay as much Weight upon any Objection that the Priſoner does offer, as it will bear; but if nothing be offer'd that is of the leaſt Weight or Moment, we being to do our Duty equally between the King and the Priſoner, we cannot allow Counſel when there is nothing before us to allow it upon.

Char. You will not, it ſeems, let me have ſuch Aſſiſtance, as I may offer you ſomething material.

Mr. C. Serj. You know well enough we cannot do it; pray do not ſpend our Time to no Purpoſe.

Char. Nay, Sir, if you be in Haſte, I will not trouble you any longer.

Mr. C. Serj. You have no Reaſon to ſay we are in Haſte; I am ſure you have had all the Indulgence and Patience that could be; you are at Liberty to offer any thing that you can, but to ſpend the Time of the Court in bare Words is not reaſonable.

Char. The Law was never my Practice, Sir, nor Study: I perceive, whatſoever I offer ſignifies nothing; therefore I beg your Pardon for the Trouble I have given you; I ſhall not attempt to offer any thing further.

Mr. C. Serj. You may offer what you will, we will hear you.

Char. Sir, I perceive whatſoever I ſay is unacceptable, and ſo I had as good let it alone.

Mr. C. Serj. You ſhall be heard to ſay whatever you think is for your Intereſt to ſay.

Char. I thought theſe Things were for my Intereſt to offer; but I ſee it is to no Purpoſe; therefore I have no more to ſay; I have done.

Mr. C. Serj. You may offer what you will, and you ſhall be heard with all the Patience and Candour imaginable.

Char. I ſee it is impoſſible for me to offer any thing that the Court will think material; therefore it is in vain for me to ſpeak, and trouble myſelf and the Court with what will be of no Uſe to me.

Cl. of Arraignments. Edward King, hold up thy Hand (*Which he did*). You ſtand convicted of the ſame High-Treaſon: What can you ſay for yourſelf, why the Court ſhould not give Judgment upon you to die according to Law?

(*Then he was made to kneel, and riſe up again.*)

King. What Mr. *Charnock* has ſaid, all of it I do imagine to be material; and ſince he is not to be heard, I have done; I can ſay no more.

Cl. of Ar. Thomas Keyes, hold up your Hand: You are in the ſame Caſe with the Priſoner that went laſt before you: What can you ſay for yourſelf, why the Court ſhould not give Judgment upon you to die according to the Law?

(*He was made to kneel, and riſe again.*)

Keyes. Sir, I have had no Counſel, nor no Aſſiſtance ſince I have been in Priſon.

Mr. C. Serj. That you alledged upon your Trial, and you were then told you might have had Counſel, if you had thought fit; for you had an Order for it, and you come too late to offer any thing of that Nature now. But the Queſtion that is now aſked you is, What have you to ſay for yourſelf, why Judgment ſhould not paſs upon you?

Keyes. I was only a Servant.

Mr. C. Serj. You have been told, that will not excuſe a Man in ſuch a Caſe.

Keyes. I cannot help it, Sir, I have done; I hope you will take care of my Wife and Children when I am gone.

(*Then Proclamation was made for Silence, whilſt Judgment was in giving; which the* Common Serjeant, *ſitting down upon the Bench, pronounced thus:*)

Mr. C. Serj. Robert Charnock, *Edward King*, and *Thomas Keyes*, the Priſoners at the Bar: You have been ſeverally indicted for High-Treaſon; you have pleaded Not Guilty, and put yourſelves, for your Trial, upon the Country, which Country have found you Guilty: You have had the Benefit of a fair, lawful, indifferent, and equal Trial, according to the Laws of this Land; thoſe very Laws, which you are charged in this Indictment to have conſpired to ſubvert. It is a Crime of the higheſt Nature that the Law knows: You are Gentlemen of liberal Education, and I hope this will bring you to ſome Reflection, both upon the State of your own Caſe, and the Blackneſs of your Offence, in the Time you have to live, which I fear is but ſhort: It is certainly the heighnouſeſt Crime that any Perſons can be guilty of; the Murdering of a Prince in cold Blood, and involving your Country in Slaughter and Confuſion. I have nothing more to do, but to pronounce the Judgment that the Law has provided for ſuch Offenders, and which the Court doth award:

That you go from hence to the Place from whence you came; and that from thence you be drawn upon a Hurdle to the Place of Execution, where you are ſeverally to be Hanged by the Neck, and cut down alive; your Bowels and Privy Members to be cut out from your Bodies, and to be Burnt in your View; your Heads to be cut off, your Bodies reſpectively to be divided into Four Parts; which Heads and Quarters are to be at the King's Diſpoſal: And God have Mercy upon your Souls.

Char. Sir, I deſire we may have the Favour to have our Friends and Relations come to us while we are in Priſon.

Mr. C. Serj. You ſhall have all the Liberty of your Friends and Relations coming to you, that you can reaſonably deſire.

Char. And I hope we ſhall have no hard Uſage in Priſon.

Mr. C. Serj. No, God forbid you ſhould! You may aſſure yourſelf you ſhall have none.

(*Then the Seſſions of Peace for* London, *and of Goal-Delivery of* Newgate *for* London *and* Middleſex, *were adjourn'd unto* Saturday *the* 21*ſt of* March *following.*)

Accordingly on *Wedneſday* the 18th of *March*, 169⅝, they were all three drawn from *Newgate* to *Tyburn* on Sledges, where they deliver'd the following Papers to the Sheriff:

Mr. Charnock's *Paper.*

THAT I might avoid Diſtractions, and be compos'd as much as is poſſible at the Time of my Execution, I thought it much more proper to communicate this to the Sheriffs, than to give myſelf the Uneaſineſs of ſpeaking, leaving it to them to publiſh (if they ſhould think convenient) for the Satisfaction of the World; and in what I have to ſay, I have taken as much Care as I could to be ſhort, that I might not loſe Time in my greateſt Concern.

As concerning an Invaſion intended by King *James* upon *England*, there was certain Intelligence of it from abroad, I preſume every Body was ſatisfy'd, and to the facilitating of which, I own that myſelf and ſome others did agree upon the Undertaking to attack the Prince of *Orange* and his Guards, for which I am now to ſuffer; but I think myſelf obliged, by all the Ties imaginable both of Conſcience and Honour, to declare, that as for any Order or Commiſſion of King *James*'s for aſſaſſinating the Prince of *Orange*, I never ſaw nor knew of any, but have had frequent Aſſurances of his having rejected ſuch Propoſals when they have been offered.

I confeſs, I did hear that there was a Commiſſion arrived for levying of War; and which was natural to believe, if the King was in ſuch a Readineſs to come over as was reported; but if there was any ſuch Authority as that, I declare I never ſaw it.

As to what regards the Body of the *Roman* Catholicks, I muſt do them this Juſtice, and which I dare be poſitive in, that they had no Manner of Knowledge of this Deſign; nor do I believe it was communicated to any other Party of ſuch as are reputed the King's Friends, but carried on merely by a ſmall Number, without the Advice, Conſent, or Privity of any Parties whatſoever.

I aſk Forgiveneſs of all the World for what Offences or Injuries I have done to them; and I am (I bleſs Almighty God) in perfect Charity with all Mankind.

ROBERT CHARNOCK.

Mr. King's *Paper.*

I AM now within a few Moments of Eternity, brought to this Place by the juſt Hand of God, in Puniſhment of all my Crimes, but particularly of that of which I have been lately arraign'd, and for which I ſtand here condemned; but I hope that Goodneſs of God, which has given me a Senſe of my Wickedneſs, will accept my Repentance, and ſhew Mercy on me; which I hope to obtain, through the Paſſion and Merits of my Redeemer, upon whom I entirely caſt myſelf.

And that I may find his Mercy, I think myſelf obliged to do Juſtice to my Neighbour, that ſo none may ſuffer wrongfully on my Account. And, therefore, as I am ſoon to anſwer the Truth of what I ſay before the Tribunal of God,

Firſt, I declare, that I never ſaw any Order or Commiſſion for King *James*'s promoting the Aſſaſſination, for which I am condemned; neither do I know of any ſuch Order or Commiſſion.

Secondly, That this Deſign was not undertaken with any general Knowledge or Approbation of any Body of Men, either Catholick or Proteſtant.

Laſtly, That I did not engage in it on Preſumption of any King-killing Principles that could juſtify ſuch an Undertaking, but was drawn into it by my own Raſhneſs and Paſſion; for which, and all other Sins, I heartily beſeech God to forgive me.

And I hope, that ſuch who think the Misfortune of their Impriſonment or Trouble is deriv'd from my having been engaged in this Enterprize, or ſuch to whom it has any ways given Scandal, that they will admit me to their Pardon, as I freely and heartily forgive all Mankind. In this Diſpoſition of a ſincere Repentance, and true Charity, I commend my Soul into the Hands of God, and hope to find Mercy from him. And for this I beg all your Prayers.

EDWARD KING.

Mr. Keyes's *Paper.*

I AM going to appear before the living God; I truſt in his Mercy, that he will forgive all my Sins committed to this laſt Moment of my Life. God is juſt in all his Judgments, and I accept of this Death as the Puniſhment of my Iniquities. I forgive all my Enemies, and hope, through a hearty Repentance, and the Merits of my Saviour, to obtain Mercy.

Have Mercy on me, O Father of Mercy, and thro' thy only Son forgive me all my Sins.

THOMAS KEYES.

After which they were executed as Traitors, and their Quarters expoſed about the City.

CLIV. *The Trial of Sir* JOHN FREIND, *Knight, at the* Old-Baily, *for* High-Treaſon, March 23. 1695. 8 WILL. III.

Monday, March 23. 1695.

At the Seſſions-Houſe in the Old-Baily, *this Day came on the Trial of Sir* John Freind, *Knight, for High-Treaſon, upon an Indictment found by the Grand Jury for the City of* London, *upon the Seſſions of* Oyer *and* Terminer *and Gaol-Delivery of* Newgate, *on* Saturday *the 21ſt Inſtant.*

Clerk of Arraignments.

CRYER, make Proclamation.

Cryer. Oyez, Oyez, Oyez, All Manner of Perſons that have any thing more to do at this general Seſſions of the Peace, Seſſions of *Oyer* and *Terminer*, holden for the City of *London*, and Gaol-Delivery of *Newgate*, holden for the City of *London*, and County of *Middleſex*, adjourned over to this Day; Draw near, and give your Attendance, for now they will proceed to the Pleas of the Crown for the ſaid City and County; and God ſave King *William*.

Cl. of Ar. Make Proclamation again.

Cryer. Oyez, You good Men of the City of *London*, ſummoned to appear here this Day, to try between our Sovereign Lord the King and the Priſoner that is to be at the Bar; anſwer to your Names as you ſhall be called, every Man at the firſt Call, upon Pain and Peril that will fall thereon.

Then the Petty Jury were all called over, and the Appearances of thoſe that anſwered to the Call were recorded.

About Ten a-Clock the Lord Chief Juſtice Holt, *the Lord Chief Juſtice* Treby, *Mr. Juſtice* Nevill, *and Mr. Juſtice* Rokeby, *came into the Court; and there being a great Confluence of the Nobility and Gentry there preſent, the Priſoner was order'd to be brought to the Bar: Which was done accordingly.*

Cl. of Ar. Sir *John Freind*, hold up thy Hand.

Freind. My Lord, I humbly move that I may have one *William Courtney* (who is to be a principal Witneſs for me at my Trial; and is now a Priſoner in the *Gatehouſe*) ſent for.

* Sir *John Holt.* * *L. C. J.* Is he your Witneſs, Sir *John?*

Freind. Yes, my Lord, *William Courtney* is his Name.

L. C. J. Sir *John*, why did not you ſend, and deſire this before?

Freind. My Lord, I did not hear of him while laſt Night; and I humbly beſeech your Lordſhip, that you will pleaſe to let him be ſent for.

The Judges conſulted among themſelves.

L. C. J. Look you, Sir *John Freind*, I'll tell, if you'll appoint your Agent to come hither, you ſhall have an *Habeas Corpus ad teſtificandum:* But indeed you might have ſent this Morning, and then the Writ might have been got ready.

Freind. My Lord, I did not know ſo much; for it was laſt Night before I underſtood that he was to be a Witneſs.

L. C. J. You might have ſent laſt Night, or this Morning, and you ſhould have had a Warrant for the Writ.

Freind. I aſſure your Lordſhip, I did not know ſo much.

L. C. J. Well, ſend your Agent, or your Sollicitor, and you ſhall have a Warrant for the Writ.

Freind. I beſeech your Lordſhip, that he may be ſent for, and that the Meſſenger may make Haſte.

L. C. J. Let your Sollicitor come to my Clerk, and he ſhall have it.

Freind. My Lord, if you pleaſe to give a Rule of Court for it, I ſuppoſe it may be done preſently.

L. C. J. No, no, Sir *John*, it muſt be by Writ; the Keeper of the *Gatehouſe* elſe cannot bring him.

Freind. My Lord, that will be a long time before it can be done; I deſire nothing but that I may have him here to give his Evidence for me.

L. C. J. It will be got ready preſently; I believe he will be here Time enough for you to make uſe of his Teſtimony.

Freind. But, my Lord, ſuppoſe he ſhould not be here: It would be a great Hindrance to me, and a great Injury to my Trial.

L. C. J. No, no, Sir *John*, you need not fear any thing of that Nature, we are not in ſuch Haſte; we will not ſpur you on: But the Warrant ſhall be made; and do you make what Haſte you can to get the Writ, and your Witneſs brought.

[*The Lord Chief Juſtice gave order to Mr.* Maſon *his Clerk, to prepare a Warrant for an* Habeas Corpus, *directed for the Keeper of the* Gatehouſe, *to bring* William Courtney *immediately hither to give Evidence.*]

Cl. of Ar. Sir *John Freind*, hold up thy Hand. [*Which he did.*

You ſtand indicted in *London* by the Name of Sir *John Freind*, late of *London*, Kt. for that, Whereas there had been for a long time, and yet is, an open, and notoriouſly publick, and moſt ſharp and cruel War by Land, and by Sea, had, carried on, and proſecuted by *Lewis* the *French* King, againſt the moſt Serene, moſt Illuſtrious, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland* King, Defender of the Faith, *&c.* All which time the ſaid *Lewis* the *French* King, and his Subjects were, and yet are Enemies of our ſaid Lord the King that now is, and his Subjects. You the ſaid Sir *John Freind*, a Subject of our ſaid Sovereign Lord the King that now is, of this Kingdom of *England*, well knowing the Premiſes, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traitor againſt the ſaid moſt Serene, moſt Clement, and moſt Excellent Prince, our ſaid Sovereign Lord *William* the Third, now King of *England*, *&c.* your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and the true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Sovereign Lord the King that now is, towards him our ſaid Sovereign Lord the King ſhould and of right ought to bear withdrawing, and intending utterly to extinguiſh, and contriving, and with all your Strength purpoſing, deſigning, and endeavouring the Government of this Kingdom of *England*, under our ſaid Sovereign Lord the King that now is of Right, duly, happily, and very well Eſtabliſhed, altogether to Subvert, Change, and Alter, and his Faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and moſt miſerable Slavery to the aforeſaid *French* King to ſubdue and bring; the firſt Day of *July*, in the ſeventh Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at *London*, in the Pariſh of St. *Peter Cornhill*, in the Ward of *Lime-ſtreet*, falſly, malicioufly, deviliſhly, and traitorouſly, did compaſs, imagine, contrive, purpoſe, and intend our ſaid Sovereign Lord the King that now is, then your Supreme, True, Natural, Rightful, and Lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England* to depoſe, caſt down, and utterly to deprive; and our ſaid Sovereign Lord the King to Death and final Deſtruction to put and bring; and the aforeſaid *Lewis* the *French* King, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to invade, fight with, overcome, and ſubdue, to move, incite, procure, and help, and a miſerable Slaughter among the Faithful Subjects of him our ſaid Sovereign Lord the King, throughout his whole Kingdom of *England*, to make and cauſe; and that you the ſaid Sir *John Freind* to the aforeſaid Enemies of our ſaid Lord the King that now is, then and there during the War aforeſaid, Traiterouſly were adhering and aſſiſting; and the ſame your moſt impious, wicked and deviliſh Treaſons, and traitorous Compaſſings, Intentions, and Purpoſes aforeſaid to fulfil, perfect, and bring to effect; and in Proſecution, Performance, and Execution of that traitorous Adheſion, you the ſaid Sir *John Freind*, as ſuch a falſe Traitor, during the War aforeſaid, to wit, the ſame firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in *London* aforeſaid, falſly, malicioufly, adviſedly, ſecretly, and traitorouſly, and with Force and Arms, *&c.* with one *Robert Charnock* (late of High-Treaſon, in contriving and conſpiring the Death of our ſaid Sovereign Lord the King that now is, duly convicted and attainted), and with divers other falſe Traitors to the Jurors unknown, did meet, propoſe, treat, conſult, conſent, and agree to procure from the aforeſaid *Lewis* the *French* King, of his Subjects, Forces, and Soldiers, then and yet Enemies of our ſaid Sovereign Lord the King that now is, great Numbers of Soldiers and armed Men this Kingdom of *England* to invade and fight with, and to levy, procure, and prepare great Numbers of armed Men, and Troops and Legions againſt our ſaid Lord the King that now is, to riſe up and be formed, and with thoſe Enemies, at and upon ſuch their Invaſion and Entry into this Kingdom of *England*, to join and unite, Rebellion and War againſt him our ſaid Lord the King, within this Kingdom of *England*, to make, levy, and wage, him our ſaid Lord the King ſo as aforeſaid to depoſe, and him to kill and murder; and moreover with the ſaid falſe Traitors, the ſame firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, Traitorouſly you did conſult, conſent, and agree to ſend the aforeſaid *Robert Charnock* as a Meſſenger from you the ſaid Sir *John Freind*, and the ſame other Traitors unknown, unto and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propoſe to him, and deſire of him to obtain of the aforeſaid *French* King the Soldiers and armed Men aforeſaid, for the Invaſion aforeſaid to be made; and Intelligence and Notice of ſuch their traitorous Intentions, and Adheſions, and all the Premiſes unto the ſaid late King *James* the Second, and the ſaid other Enemies and their Adherents, to give and exhibit, and them to inform of other particular Things and Circumſtances thereunto relating; as alſo Intelligence from them of the ſaid intended Invaſion, and other Things and Circumſtances concerning the Premiſes to receive, and the ſame to you the ſaid Sir *John Freind*, and the ſaid other Traitors in this Kingdom of *England*, to ſignify, report and declare, in Aſſiſtance, Animation, and Aid of the ſaid Enemies of our ſaid Lord the King that now is, in the War aforeſaid, and to incite and procure thoſe Enemies the more readily and boldly to invade this Kingdom of *England*; and the Treaſons and traitorous Contrivances, Compaſſings, Imaginations, and Purpoſes of you the ſaid Sir *John Freind* aforeſaid, to perfect and fulfil; and all the Premiſes the ſooner to execute, manage and perform, you the ſaid Sir *John Friend*, during the War aforeſaid, ſo as aforeſaid continued, *to wit*, the ſame firſt Day of *July*, in the aboveſaid ſeventh Year of the Reign of our ſaid Lord the King that now is, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, falſly and traitorouſly did procure and obtain to yourſelf, and did receive

ceive and accept of a certain Commiſſion or Writing purporting itſelf to be a Commiſſion under and from the aforeſaid *James* the Second, late King of *England*, to conſtitute you, the ſaid Sir *John Freind*, to be a Colonel of Horſe in the Army by you and the other falſe Traitors againſt our ſaid Lord the King that now is, within this Kingdom of *England* to be levied and formed; and in purſuance of the ſaid pretended Commiſſion by you the ſaid Sir *John Freind* ſo obtained and accepted of, and your Treaſons and all your traiterous Intentions aforeſaid the ſooner to execute, perform, fulfil, and perfect, you the ſaid Sir *John Freind* afterwards, to wit, the ſame firſt Day of *July*, in the ſeventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, Falſly, Maliciouſly, Adviſedly, Secretly, and Traitorouſly, divers Soldiers, and armed Men, and ready to be armed, with Force and Arms, *&c.* to raiſe, and liſt, and War and Rebellion againſt our ſaid Lord the King, within this Kingdom of *England* to make and wage; and to and with the ſaid Enemies of our ſaid Lord the King, Foreigners and Strangers, Subjects and Soldiers of the ſaid *Lewis* the *French* King, being about to invade this Kingdom of *England*, at and upon their Invaſion and Entry into this ſame Kingdom, then ſhortly expected to be made, themſelves together with you the ſaid Sir *John Freind* to join and unite, and in Troops and Legions to form, did raiſe, liſt, and retain, and did procure to be raiſed, liſted, and retained; and divers Sums of Money, in and about the raiſing, liſting, and retaining of the aforeſaid Soldiers, and Men armed, and ready to be armed upon the Account aforeſaid, upon the aforeſaid firſt Day of *July*, in the ſeventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, falſly, maliciouſly, and traitorouſly, did give and pay, and cauſe to be paid; and thoſe Soldiers and Men, for the Treaſons, Intentions, and Purpoſes aforeſaid, then and there, and long after you had in readineſs. As alſo the ſame firſt Day of *July*, in the ſeventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, divers Horſes, and very many Arms, Guns, Carbines, Piſtols, Swords, and other Weapons, Ammunition, and warlike Things, and military Inſtruments, falſly, maliciouſly, ſecretly, and traitorouſly you did obtain, buy, gather, and procure, and cauſe to be bought, gathered, obtained and procured, and in your Cuſtody had and detained, to that Intent to uſe the ſame in the ſaid Invaſion, War and Rebellion, againſt our ſaid Sovereign Lord the King that now is, Him our ſaid Lord the King of and from the Regal State, Crown and Command of this Kingdom of *England* to depoſe, caſt down and deprive, and him to kill and murder, and all the Treaſons, Intentions, Contrivances and Purpoſes of you the ſaid Sir *John Freind*, as aforeſaid, to fulfil, perfect, and fully to bring to effect; againſt the Duty of your Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity; as alſo againſt the Form of the Statute in this Caſe made and provided.

What ſay'ſt thou, Sir *John Freind*, Art thou Guilty of this High Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Freind. Not Guilty, my Lord.

Cl. of Ar. Culprit, How wilt thou be tried?

Freind. By God and my Country.

Cl. of Ar. God ſend thee a good Deliverance.

Freind. I don't know any thing of it, I am as innocent as the Child unborn.

The Warrant for the Habeas Corpus *was ſigned by the Lord Chief Juſtice* Holt, *and delivered to the Priſoner, who ſent it away to the* Crown-Office *by his Sollicitor, to get the Writ ſealed.*

Freind. My Lord, I have ſomething to move, if your Lordſhip pleaſe to hear me, and the reſt of my Lords the Judges: That if any Matter of Law doth ariſe upon my Trial, I may be heard by my Counſel, that you may not deſtroy me without Law.

L. C. Juſt. Look you, Sir *John Freind*, if any Matter of Law do ariſe at your Trial, and you will tell us what that Matter of Law is, and the Court ſee that it is a Matter of Doubt, we can, and ought, and no queſtion ſhall aſſign you Counſel; but that is time enough when ſuch Matter does ariſe.

Freind. My Lord, It is well known to your Lordſhip, and all the Court, that I am not a Lawyer; but I hope, as you are of Counſel for the King as Judges of Law, ſo you will be of Counſel for me; for I am not a Lawyer, and cannot know whether any Matter that ariſes be Law or no; and therefore I humbly beſeech your Lordſhip to be ſo juſt and kind, as to tell me whether it be Law or not Law, and I ſubmit myſelf to your Lordſhip's Direction.

L. C. J. Sir *John Freind*, We are bound to tell you when any thing of that Nature appears before us, and to let you have all the Benefit of the Law that poſſibly you can have; for we are obliged to be indifferent between the King and you.

Freind. My Lord, I don't queſtion it. I deſire alſo I may have Pen, Ink, and Paper.

L. C. Juſt. Yes, yes, by all means. (*And he had them.*)

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez: You good Men of the City of *London*, ſummoned to appear here this Day, to try between our Sovereign Lord the King and the Priſoner that is at the Bar, who have been called, and made Default, anſwer to your Names, and ſave your Iſſues.

[*Then the Defaulters were call'd over.*]

Cl. of Ar. You the Priſoner at the Bar, theſe Men that you ſhall hear call'd, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, before they be ſworn.

Cryer. Call *Thomas Clark.*

Freind. Pray, Sir, how many may I challenge?

L. C. J. Look you, Sir *John*, you may challenge, that is, except againſt 35, without ſhewing any Cauſe: If you don't like them to be of the Jury, you may refuſe them; and as many others as you have Cauſe to except againſt.

Freind. My Lord, I humbly beſeech you, that becauſe perhaps I may miſtake in numbering, that I may have timely Notice before the 35 be excepted againſt, or elſe it may occaſion me a great deal of Prejudice.

L. C. J. Sir, the Clerk ſhall take care of that, he ſhall inform you how many you challenge, and you ſhall receive no Prejudice of that Kind, or by any Slip in Point of Form.

Cl. of Ar. Cryer, call *Thomas Clark.* (*Who appeared.*)

Freind. Pray, Sir, muſt I not ſee the Gentleman?

L. C. J. Yes, yes, by all Means. (*He was ſhewn to him.*)

Freind. You may ſwear Mr. *Clark*; I do not except againſt him. I deſire but honeſt Gentlemen, and I ſhall come off, I warrant you: I am as innocent as the Child unborn.

L. C. J. Swear Mr. *Clark.*

Cl. of Ar. Hold him the Book; (*which was done*) look upon the Priſoner: You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and Priſoner at the Bar, whom you ſhall have in Charge, according to your Evidence. *So help you God.*

Cl. of Ar. Nathan Green.—Freind. I except againſt him.

Cl. of Ar. Thomas Emms.

Freind. I accept of him for a Juryman, I have nothing to object againſt him. (*He was ſworn.*)

Cl. of Ar. Francis Byer.

Freind. Pray let me ſee him (*He was ſhewn to him*). I do except againſt him, I challenge him.

Cl. of Ar. Benjamin Dry.—Freind. I except againſt him.

Cl. of Ar. James Demew.

Freind. I accept him, I have nothing to ſay againſt him, I would have him to be a Juryman.

Mr. *Demew.* My Lord, I am not a Freeholder.

L. C. J. Sir *John*, do you challenge him peremptorily, or do you challenge him for Cauſe?

Freind. My Lord, I do not challenge him at all, I accept of him.

* *Mr. Att. Gen.* If he have no Freehold, we that are for the King will except againſt him; for I would not have any Body that is not a Freeholder ſerve upon the Jury. * Sir *Thomas Trevor.*

Cl. of Ar. Henry Hunter.

Freind. Pray, my Lord, is this Gentleman that was called before laid aſide? He is not one that I challenge.

L. C. J. No, no, he is challeng'd by the King's Counſel, as no Freeholder.

Freind. Then he is only ſet aſide, I ſuppoſe; I ſpeak it for this Reaſon, I would not be miſtaken in my Number.

L. C. J. Care ſhall be taken of all that; he is not to be reckoned as one that you challenged, he is challenged for want of Freehold by the King's Counſel.

Cl. of Ar. What ſay you to Mr. *Hunter?*

Freind. I accept of Mr. *Hunter*, let him be ſwore. (*Which was done.*)

Cl. of Ar. John Cox.

Mr. *Cox.* My Lord, I have no Freehold in *London.*

Mr. Att. Gen. Then let him be ſet aſide.

Cl. of Ar. George Bedington —Freind. I except againſt him.

Cl. of Ar. John Hedges.—Freind. I except againſt him.

Cl. of Ar. You challenge him, Sir, do you?—*Freind.* Yes, yes, I do.

Cl. of Ar. John James.—Freind. I challenge him.

Cl. of Ar. Thomas Poole.—Freind. I accept of him. (*He was ſworn.*)

Cl. of Ar. Peter Parker.—Freind. I accept of him. (*He was ſworn.*)

Cl. of Ar. George Grove.

Freind. I except againſt him, for I have him not in my Pannel.

L. C. J. How comes that?

Freind. I can't tell, my Lord; I have been kept alone while *Saturday* laſt, only that worthy Gentleman (bowing to Mr. *Baker*, the Proſecutor for the King) was with me to give me Notice of my Trial before.

Cl. of Ar. Nathaniel Wyerſdale.—Freind. I challenge him.

Cl. of Ar. Samuel Blewitt.—Freind. I challenge him.

Cl. of Ar. James Bodington.—Freind. I challenge him.

Cl. of Ar. John Wolfe.—Freind. Sir, I do aſſure you I have him not in my Pannel, upon my Word. I challenge him.

Cl. of Ar. Samuel Jackſon.—Fr. I accept of him. (*He was ſworn.*)

Cl. of Ar. Nathaniel Long.—Fr. I accept of him. (*He was ſworn.*)

Cl. of Ar. Richard Chiſwell.—Freind. I challenge him.

Cl. of Ar. George Child.—Freind. I accept of him. (*He was ſworn.*)

Cl. of Ar. William Walker.—Freind. I accept of him. (*He was ſworn.*)

Cl. of Ar. John Wills.—Freind. I challenge him.

Cl. of Ar. John Hibbert.—Freind. I challenge him.

Cl. of Ar. John Pettit.—Freind. I challenge him.

Cl. of Ar. James Robinſon.

Fr. Sir, he is not in my Pannel, upon my Word.

Cl. of Ar. He is in the Original Pannel.

Mr. Sheriff *Buckingham.* My Lord, here is the Original Pannel, and here's his Name here; and there is not a Perſon in this Pannel, but what was originally put in, except it be about five or ſix at the End, and this is none of them.

Freind. I challenge him.

Cl. of Ar. Thomas Hollis. (*He did not appear.*)

L. C. J. Pray, Sir *John*, who had you that Copy from? Who gave it you?—*Freind.* Mr. *Solliciter.*

Mr. *Tretman.* My Lord, he had none from me, I am ſure: I received the Pannel from the Sheriff, but nobody, from Sir *John*, was ever with me for a Copy.

Freind. My Lord, my Sollicitor brought it to me on *Saturday* Night.

L. C. J. Who is your Sollicitor that gave you that Copy?

Freind. His Name is Mr. *Burleigh*, my Lord.

L. C. J. Where is he? Let's ſee this Mr. *Burleigh.*

Freind. My Lord, he is gone to the Crown-Office, it ſeems, for the *Habeas Corpus.*

Mr. Juſt. *Rokeby.* It is your own Sollicitor that has put the Abuſe on you, if it be ſo.

Cl. of Ar. Thomas Hollis. (*He did not appear.*)

L. C. J. Pray, Sir *John Freind*, how many have you in all?

Fr. In Number, my Lord? Would you have me tell you how many I have in Number?—*L. C. J.* Aye, in Number in your Copy of the Pannel.

Mr. Sheriff *Buckingham.* In the Pannel there are above Fourſcore.

Freind. I have Seventy-one, my Lord.

[*Then* Thomas Hollis *appeared.*]

Cl. of Ar,

Cl. of Ar. Do you challenge him, Sir?

Mr. Sh. *Buckingham.* Pray let the Secondary produce his Pannel that he had from my Brother and me, and I am sure the Court will find they were all named in that Pannel.

Mr. *Trotman.* My Lord, I have the Pannel, but they never came to me for a Copy, as I expected: I had got one ready; if Sir *John Freind*, or any Person for him, had sent to me, they might have had it.

Mr. Sh. *Buckingham.* And these People that are not in Sir *John Freind*'s Pannel, are none of the Half-Dozen that were added, when we came to the Knowledge of them that they were Freeholders.

L. C. J. When were they added, Sir?

Mr. Sh. *Buck.* They were added on *Friday* in the Afternoon, and it seems he never came for the Pannel to the proper Officer; and those that he objects against were not added, but are in the original Pannel.

L. C. J. Truly, I can't see any body is to blame in this Matter but your own Sollicitor.

Mr. *Trotman.* My Lord, I assure you I had made a Copy, and wonder'd I did not hear of them: I do not know where he got this Copy.

L. C. J. Treby. In Truth, if you would not send to the proper Officer for a Copy, when you might have had it, you must be content with what you have; for nobody is bound to give you a Copy, unless you ask for it.

L. C. J. Well, what say you to *Thomas Hollis?*

Fr. I challenge him, my Lord, for he is not in my Pannel.

Cl. of Ar. John Sherbrook.——*Fr.* I accept of him. (*He was sworn.*)

Cl. of Ar. James Blackwell.

Fr. He is not in my Pannel, upon my Word, my Lord.

L. C. J. I can't help it, he is in the Sheriff's Pannel that is returned here.——*Fr.* I challenge him.

Cl. of Ar. Thomas Gardner.------*Fr.* I accept of him.

Mr. *Gardner.* My Lord, I am no Freeholder in the City.

Mr. Justice *Rokeby.* Mr. *Gardner*, have you not lately conveyed away your Freehold?------Mr. *Gard.* No, indeed, my Lord, I never had any.

Cl. of Ar. William Prince.----*Fr.* I accept of him. (*He was sworn.*)

Cl. of Ar. John Simons.-----*Fr.* I challenge him.

Cl. of Ar. Robert White.------*Fr.* I challenge him.

Cl. of Ar. Joseph Morewood.

Fr. I accept him; his Name is *John*, I suppose, for so it is in my Pannel.------*Cl. of Ar.* No, it is *Joseph.*

Mr. *Morewood.* My Name is *Joseph.*

Fr. Well, Sir, I accept of you, I don't question but you are an honest Man. (*He was sworn.*)

Cl. of Ar. Cryer, countez. *Thomas Clark.*

Cryer. One, &c. (*So of the rest to the last.*)

Cl. of Ar. Joseph Morewood.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Jury were these:

Thomas Clark,	*Peter Parker,*	*William Walker,*
Thomas Emms,	*Samuel Jackson,*	*John Sherbrook,*
Henry Hunter,	*Nathaniel Long,*	*William Prince,* and
Thomas Poole,	*George Child,*	*Joseph Morewood.*

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez. If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney General, or this Inquest now to be taken, of the High-Treason whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance; and all Jurymen of *London* that have been called, and have appeared, and are not sworn, may depart the Court.

Cl. of Ar. Sir *John Freind*, hold up thy Hand (*Which he did*). You that are sworn, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of Sir *John Freind*, late of *London*, Knight (*prout* in the Indictment, *mutatis mutandis*), and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereupon hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are; your Charge is to enquire, Whether he be Guilty of the High-Treason whereof he stands indicted, or Not Guilty? If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the Time of the High-Treason committed, or at any Time since: If you find him Not Guilty, you are to enquire if he fled for it: If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty: If you find him Not Guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. *Mountague.* May it please your Lordship, and you Gentlemen of the Jury: This is an Indictment of High-Treason, that is brought against Sir *John Freind*, the Prisoner at the Bar, for associating with, and aiding the King's Enemies, with a Design to procure an Invasion from *France*, and to raise a Rebellion within this Kingdom; and this was to depose the King, and to restore the late King *James*; and in order to the effecting these his wicked Purposes, the Indictment sets forth, That the first of *July* last he did meet, and consult, and agree with one Mr. *Charnock* (a Gentleman since tried, convicted and attainted of High-Treason), how they should procure an Army from *France*, to come and invade this Kingdom; and should raise a sufficient Number of Men to facilitate the Landing of the *French*: And the Indictment particularly charges the Prisoner at the Bar with sending Mr. *Charnock* into *France*, to the late King *James*, to acquaint him with the Design, and to desire him to procure a great Number of Forces from the *French* King, to come here, and land within this Kingdom; And the Indictment does likewise charge him with procuring and receiving a Commission from the late King *James* to constitute him, the Prisoner at the Bar, a Colonel of Horse; and likewise with laying out, and expending, and paying several Sums of Money in listing and keeping Soldiers and Men in Pay under him, which were to be in his Regiment; and with laying out several Sums of Money in buying Arms and Horses for this Invasion and Rebellion that was thus designed to be made, and raised within this Kingdom. To this, Gentlemen, he has pleaded Not Guilty: We shall call our Witnesses and prove the Fact, and we do not doubt but you will find him so.

Freind. Prove this if you can; it cannot be.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury: The Prisoner at the Bar, Sir *John Freind*, stands indicted of High-Treason, in compassing and imagining the Death of the King, and likewise in adhering to the King's Enemies.

Gentlemen, the Overt-Acts laid in the Indictment to prove this Treason, are these:

That the Prisoner at the Bar did accept a Commission from the late King *James*, to raise a Regiment of Horse in this Kingdom, in order to join with the *French* when they invaded it; and there were several Meetings and Consultations between him and several others whom you will hear named by the Witnesses; upon which it was resolved to send a Messenger, one *Charnock*, into *France*, to desire the late King *James* to prevail with the *French* King to get a Number of Men, in all 10,000, with an Assurance that they would assist him with a Number of Horse when he came: And in Pursuance of this Design, the Prisoner at the Bar did raise Men, and pay some Sums of Money for their Subsistence, and listed, and had them in Readiness; and provided Horses and Arms. These are the Overt-Acts laid in the Indictment; the Evidence that will be produc'd to you, to prove this Treason, and these Overt-Acts, will be in this Manner.

Gentlemen, you will see by the Evidence, that there has been a Design and Conspiracy on Foot for several Years to assassinate the King's Person, and to have an Invasion from *France* at that Time, by armed Force here to subdue this Kingdom. The Prisoner at the Bar, Sir *John Freind*, I think about two Years ago had a Commission sent him from the late King *James*, to raise a Regiment of Horse: There was several other Commissions sent likewise, but one was sent to the Prisoner, which he accepted of; and in Pursuance of it, he appointed several Officers, and listed several Men for that Purpose, and expended several Sums of Money for the raising and subsisting of them.

Gentlemen, you will hear that his Lieutenant-Colonel was to be one *Blaire*, and his Major was to be one *Slater*; and this *Slater*'s Father was a Clergyman, and he undertook to bring in a Troop of Clergymen that had refused to take the Oaths. One of his Captains was one *Evans*; one *Richardson* was another; and there were several other Officers whom you will hear named by the Witnesses, that were appointed, and engag'd to make up the Regiment.

Gentlemen, you will hear further by the Witnesses, that about *May* or *June* last, they having raised a considerable Number of Men, there were several Meetings had between the Prisoner at the Bar and several other Persons, in order to send some Person over to get Forces from *France*, to invade this Kingdom. The first Meeting that you will hear of, was at the *Old King*'s-*Head* Tavern in *Leadenhall-Street*, and there were present the Prisoner at the Bar, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Perkins*, Mr. *Charnock* (who was lately condemned and executed for the Design of murdering the King), Mr. *Porter*, and one *Cook*. At that Meeting you will hear what their Debates were, and what their Resolutions: After several Debates, who they should send, they resolved to send Mr. *Charnock*, to go into *France*, to desire the late King *James* to get 10,000 Men of the *French* Troops to land upon our Coasts, about 8000 Foot, and the rest Horse and Dragoons: And they did impower him in their Names to assure the late King *James*, that they would, whenever he landed with his *French* Troops, be ready to assist him with near Two Thousand Horse among them.

Upon this, Gentlemen, Mr. *Charnock* undertook to go upon this Message: But about a Week after they met again, for he was unwilling to go upon such an Errand, without having a full Resolution and Assurance from these Gentlemen that were thus engaged, that he might satisfy the late King what they would certainly do. So they met again about a Week after, and that was at a Tavern in St. *James*'s-*Street*, near Sir *John Fenwick*'s Lodgings, one Mrs. *Montjoy*'s; there was the Prisoner at the Bar, my Lord of *Aylesbury*, and most of the same Company that were at the Meeting before: And Mr. *Charnock* desired to know, if they did agree to what had been proposed and resolved on before; for he was unwilling, and did not care to go without a full Assurance of the Performance. They did all agree, and desired that he would go with all Speed, and that he should assure King *James*, they would be ready to meet him, if they had Notice where he would land.

Pray, Gentlemen, observe the Time when these Meetings were. It was in *May* or *June* last, soon after the King was gone to *Flanders*; and they thought this a fit Opportunity, when the King's Forces were drawn out of *England* into *Flanders*, for carrying on the Campaign; then was the proper Time, according as they discoursed the Matter, the People being, as they said, generally dissatisfied, and but few Forces in *England* to oppose them.

Mr. *Charnock* accordingly went over into *France*, and about a Month after return'd again, and acquainted them that he had told King *James* their Resolution, and how they would assist him, and what they desired of him; and, in short, had delivered his Message: But what King *James* told him, he thank'd them very much for their Kindness and Readiness to assist him; but at that Time the *French* King could not spare any Forces, nor could it be all that Summer, and so there was nothing to be done; and thereupon it rested till the last Winter.

Then, Gentlemen, you will hear, that the last Winter the Design was renewed again, about *January* last: For Sir *George Barcley* came over from the late King, being a Lieutenant in his Guards there, and then they entered into a Conspiracy to assassinate the King; and that was to be done first, to facilitate the Invasion, which was to follow immediately upon the Execution of the Assassination: For they thought they could have no Assurance of Success in their Invasion, as long as the King lived; and I hope every one will take Notice, how precious that Life is to us, when it is so apparent to all the World, that our Enemies cannot

cannot hope for any Succeſs to their Enterprizes and Deſigns to deſtroy us, but by taking that Life away.

Gentlemen, this very Conſpiracy, you will hear, the Priſoner at the Bar was acquainted with, and privy to, even this Aſſaſſination; tho' indeed you will hear he did not much approve of it, becauſe he thought it would be a Diſſervice to the late King's Affairs; but he was at ſeveral Meetings with Mr. *Porter*, and Mr. *Charnock*, and Sir *William Perkins*, and ſeveral others that were Conſpirators in that Deſign, and was acquainted with it, as you will hear by the Evidence.

Gentlemen, you will hear further, that about *January* laſt, the Invaſion being intended to be quickly made, the Priſoner at the Bar, Sir *John Freind*, had frequent Meetings with *Blair*, that was Lieutenant-Colonel, and other Officers, to conſider and prepare how to be in a Readineſs. About that Time the Priſoner at the Bar, Captain *Blair*, and one Captain *Ridley*, met at a Place in *Exchange-Alley*, and there they diſcourſed among one another; and there *Ridley* ſaid, there was a conſiderable *Roman Catholick* that was ſent to King *James*, and he would bring the laſt Orders; and Sir *John Freind* ſaid he knew of it very well, it was ſo, and he hoped he ſhou'd have them brought very quickly.

At another Time, the Priſoner at the Bar, and *Blair* his Lieutenant-Colonel, met at *Jonathan*'s Coffee-Houſe, and the Priſoner took him up in his Coach, and carried him along with him, and there they had a great Diſcourſe of the Affairs of the Regiment. The Priſoner at the Bar, Sir *John Freind*, told *Blair* they muſt be very good Huſbands of their Money: For if the Invaſion ſhould miſcarry, he ſhould not have Money enough to carry on his Trade, but he would take Care about ſome Officers that had not Money to mount themſelves; but a great many were to prepare for themſelves at their own Charges, and for thoſe that were to be under them. They had likewiſe then ſome Diſcourſe about the *Thoulon* Fleet coming about, and that he thought it not adviſeable 'till the *Theulon* Fleet came round. He ſaid he would not put a Foot in the Stirrup 'till that were done; and that he would keep out of the Way 'till all was in a Readineſs, and adviſed Captain *Blair* to do ſo too.

Gentlemen, you will find it further proved, that about *May* laſt, the Priſoner at the Bar paid 20 *l.* to this Captain *Blair*, who had laid out Monies in the Affairs of the Regiment, and this was to reimburſe him what he had ſo laid out; and it was in this Manner: You have all heard, I ſuppoſe, of one Colonel *Parker*, who being taken upon his coming over from *France*, was a Priſoner in the *Tower*, but made his Eſcape from thence, to which Eſcape the Priſoner at the Bar was privy. This Eſcape coſt 300 *l.* as you will hear, and the Priſoner laid down 100 *l.* of it. But this was to be repay'd him again: But how was it? There was one *Johnſon* a Prieſt, a Conſpirator likewiſe in this Deſign of Aſſaſſinating the King, and he undertook and promiſed, that the late King ſhould pay this 100 *l.* And accordingly one *Piggot* went over into *France*, and had this 100 *l.* paid him by King *James*, to repay it to Sir *John Freind:* But he thought fit to keep the Money, and Sir *John Freind* cou'd not get it of him, and he durſt not aſk it, becauſe he knew the Conſideration was not fit to be made publick. But he told Captain *Blair*, I cannot pay you the Money out of my own Pocket; but *Piggott* ought to pay me, who has receiv'd this Money of mine. If you will prevail with *Johnſon*, who got this Money from the late King to be paid to *Piggott*, to perſuade *Piggott* to pay 20 *l.* I will allow it in Part of the Money he is to pay me, and you ſhall have it. Captain *Blair* did prevail with *Johnſon* to perſuade *Piggott* to pay this 20 *l.* and Captain *Blair* did receive it, and Sir *John Freind* did agree to allow it to *Piggott* out of the 100 *l.* due to him.

Gentlemen, at another Time, about *Chriſtmas* laſt, there was another 20 *l.* paid by Sir *John Freind*'s Order and Direction, by *Piggott* to *Blair*, upon the ſame Account, by the Mediation of *Johnſon* the Prieſt; and this was paid and allow'd, as being laid out in the Affairs of the Regiment before, he being intruſted as Lieutenant Colonel, to look after the Regiment.

Gentlemen, I have now open'd the Subſtance of the Evidence; the Particulars you will hear from the Witneſſes themſelves. If I have open'd it amiſs, you will take Care, when the Witneſſes are produced, to obſerve what they ſay, who will tell you what really was done, and will rectify any Miſtake of mine: For I would have no ſuch Miſtake do the Priſoner at the Bar any Prejudice.

Mr. Sol. Gen. [Sir *John Hawles.*] Gentlemen, Mr. *Attorney* has open'd the Nature and Courſe of our Evidence ſo fully, that I ſhall make no Repetition of any of the Particulars; but call our Witneſſes, and prove it in Order as it hath been open'd. And firſt, we call Captain *George Porter.*

(Who came in.)

Freind. My Lord, before Mr. *Porter* is ſworn, I deſire to know whether he is a Roman Catholick, or a Proteſtant?

L. C. J. Why do you deſire that? Is not a Roman Catholick a Witneſs? Though he be a Roman Catholick, that's no Objection to his being a Witneſs.

Freind My Lord, I deſire to aſk him the Queſtion, whether he be a Roman Catholick or no?

L. C. J. Sir *John Freind*, it is not a proper Queſtion.

Freind. My Lord, a Man ought to know what Profeſſion they are of, that are Witneſſes againſt him for his Life.

L. C. J. Will you aſk him whether he be a Chriſtian or no?

Fr. My Lord, I deſire to know whether he be a Papiſt or a Proteſtant.

Mr. Att. Gen. If Mr. *Porter* be willing to tell you, he may; but it is not a proper Queſtion.

L. C. J. Eſpecially before he is ſworn; he is not intitled to aſk any Queſtions whatever, till he be ſworn.

Freind. My Lord, I beſeech you let me have the Queſtion anſwered.

Mr. Sol. Gen. Sure you don't conſider, that the Anſwer to that Queſtion is to accuſe himſelf; you don't conſider the Conſequences of it.

Freind. Pray, my Lord, let me have my Right.

L. C. J. The Queſtion is, Whether it is your Right or no?

Freind. My Lord, I would not trouble the Court if I could help it, but my Life and All is at Stake, and I muſt make the beſt Defence I can.

L. C. J. Indeed your Queſtion is improper in itſelf; but if he have a Mind to tell you, and anſwer voluntarily, he may.

Freind. I humbly beg your Lordſhip that he may anſwer the Queſtion.

L. C. J. I cannot ſee you have a Right to have this Queſtion anſwered you.

Freind. Mr. *Porter*, you are a Gentleman, and I deſire you will anſwer, Whether you be a Roman Catholick or not?

Mr. Sol. Gen. Before he does anſwer, I deſire he may be acquainted with the Danger: He was bred a Proteſtant, no doubt, and then turning Roman Catholick, he ſubjects himſelf to a very ſevere Penalty.

L. C. J. Sir *John Freind*, I told you your Queſtion was not proper to be aſk'd.

Freind. Pray, my Lord, let him anſwer the Queſtion, it will be of great Uſe to me in my Trial; pray let me have my Right.

L. C. J. You ſhall have all the Right done you that can be; but in the firſt Place, if a Man be a Roman Catholick, notwithſtanding his Religion, he is a good Witneſs: And beſides that, it may be, his anſwering the Queſtion may ſubject him to ſeveral Penalties; at leaſt he is liable to Proſecution upon ſeveral Acts of Parliament that are very penal; and therefore it is by no Means to be aſk'd.

Freind. My Lord, I pray only that he may anſwer the Queſtion.

L. C. J. No Man is bound to anſwer any Queſtion that tends to make him accuſe himſelf, or ſubject him to any Penalties.

Freind. My Lord, I do with Submiſſion deſire it, and it is no great Matter for him to ſay whether he be Papiſt or Proteſtant.

L. C. J. If it be no great Matter, then why do you inſiſt upon it? But perhaps it may be a great Matter in the Conſequence of it to him; a Man, therefore, is not obliged to anſwer any ſuch Queſtions.

Freind. I beſeech your Lordſhip, let him anſwer the Queſtion.

L. C. J. You have my Opinion; if you will, you ſhall have the Opinions of the reſt of the Judges: My Opinion is, That the Queſtion ought not to be anſwer'd.

L. C. J. Treby. Since your Lordſhip's Pleaſure is, That we ſhould deliver our Opinions upon this Point, I muſt declare, I am of the ſame Opinion, That no Man is bound to anſwer any Queſtions that will ſubject him to a Penalty, or to Infamy. If you ſhould aſk him, whether he were a Deer-ſtealer, or whether he were a Vagabond, or any other Thing that will ſubject him to Puniſhment, either by Statute or by Common-Law, whether he be guilty of a Petty Larceny, or the like, the Law does not oblige him to anſwer any ſuch Queſtions.

Fr. Well, I hope the Jury will conſider it, that he will not anſwer the Queſtion; and therefore they are to take it for granted that he is ſo.

L. C. J. Treby. And now to this preſent Purpoſe, to aſk a Man whether he be a *Popiſh* Recuſant, is to ſubject him to Danger: For when you aſk him that Queſtion, if he were not bred up in that Religion, then for him to own himſelf of that Religion now, is to own as great a Crime as that you are charged with. If it were not ſo, but he was always bred in that Religion, yet there are very great Penalties that he is ſubject to, as, the Confiſcation of two third Parts of his Eſtate, and ſeveral other Things that he may be liable to, if he ſhould diſcloſe that upon his Anſwer to the Queſtion, which without this Diſcovery could not be prov'd, perhaps. We muſt keep the Law ſteady and even between the Priſoner and the Witneſs.

Mr. Juſt. *Nevil.* I am of the ſame Opinion, it does ſubject him to a Penalty; and unleſs he will voluntarily anſwer it of himſelf, I think it cannot be demanded of him: For he may ſubject himſelf to a Proſecution by it.

Mr. Juſt. *Rokeby.* I think, it is not a Queſtion that can of Right be impoſed upon him; he may anſwer it, if he will; but he is under no Obligation to anſwer it, becauſe it may tend to accuſe himſelf of a Crime for which he may be proſecuted, and likewiſe will ſubject him to other Penalties, which the Law cannot compel him to ſubject himſelf to.

(Then Captain Porter *was ſworn.)*

Freind. I hope, Gentlemen of the Jury, you'll conſider this.

Mr. Sol. Gen. Mr. *Porter*, do you know Sir *John Freind*, the Priſoner at the Bar?

Capt. *Porter.* Yes, Sir.

Mr. Sol. Gen. Pray then will you give my Lords and the Jury an Account what Meetings you have had with him, where thoſe Meetings were, and when, and what paſs'd between you, about inviting the *French* over hither, or for a Riſing here?

Capt. *Porter.* My Lord, about the latter End of *May* laſt, or the Beginning of *June*, we had two Meetings; one was at the *King's-head* in *Leadenhall-ſtreet*, and the other at Mrs. *Mountjoy*'s in St. *James*'s-*ſtreet*. At the firſt Meeting there were preſent my Lord of *Aileſbury*, my Lord of *Montgomery*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Mr. *Cook*, Captain *Charnock*, and myſelf; after Dinner Mr. *Goodman* came in: Now at both thoſe Meetings it was conſulted of, and agreed, to ſend Captain *Charnock* into *France* to King *James*, to deſire him to borrow of the *French* King 10000 Men to come over hither, 8000 Foot, 1000 Horſe, and 1000 Dragoons. Captain *Charnock* ſaid, he did not care to go upon a fooliſh Meſſage, and therefore deſired to know what they would have him to acquaint King *James* with, and aſſure him of. They all agreed to meet the King whenever they had Notice of his Landing, with a Body of 2000 Horſe; of which every one in particular was to bring their *Quota* where-ever he would appoint.

Mr. Att. Gen. When was the ſecond Meeting?

Capt. *Porter.* That was at Mrs. *Mountjoy*'s.

Mr. Att. Gen. But I aſk you when it was? How long after the firſt?

Capt. *Porter.* I believe it was about a Fortnight after, or ſo.

Mr. Att. Gen. What was that Meeting for?

Capt. *Porter.* The ſecond Meeting was to confirm the firſt. Captain *Charnock* informed me, that he was to go within three or four Days, and therefore deſired to have a Meeting before he went.

Mr. Att. Gen. What Diſcourſe was there at that ſecond Meeting? What Occaſion was there for it?

Capt. *Port.* Capt. *Charnock* desired the Meeting once more before he went, to see whether we all kept our Resolution.

Mr. Sol. Gen. Pray, what do you know of Sir *John Freind*'s agreeing to raise a Regiment of Horse?

Capt. *Port.* I know nothing of that Matter, but what I have heard several People talk; but I have heard him say, he would be as ready as any Man, whenever the King came; and I have heard from Capt. *Charnock*, and from Sir *William Perkyns*, that he had a Commission to be a Colonel of Horse.

Mr. Att. Gen. Pray, Sir, upon that second Meeting, who were present?

Capt. *Port.* I told you, Sir, the Prisoner at the Bar was present at both Meetings.

Mr. Sol. Gen. Who else were there?

Capt. *Port.* My Lord of *Ailesbury*, Sir *William Perkyns*, Capt. *Charnock*, and I cannot tell whether my Lord *Montgomery* and Mr. *Goodman* were there; Mr. *Cook* and myself were there; but the Prisoner at the Bar I am sure was there.

Mr. Sol. Gen. Pray, Capt. *Porter*, will you remember and recollect yourself, who were at the first Meeting?

Capt. *Port.* I have named them already, Sir.

Mr. Sol. Gen. Name them again then.

Capt. *Port.* My Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Perkyns*, Sir *John Fenwick*, Capt. *Charnock*, Mr. *Cook*, and myself; we dined there, and after Dinner Mr. *Goodman* came in.

Mr. Att. Gen. Pray, Sir, when did you see Mr. *Charnock* after this, and what Discourse had you with him about his Journey, and the Success of it?

Capt. *Porter.* I never saw him till 3 or 4 Days after our Riot Business in *Drury-lane*, upon the Account of which I had been a Prisoner in *Newgate*.

Mr. Att. Gen. Well, and what did he say to you?

Capt. *Porter.* He told me that he had been in *France*, but that King *James* told him, the *French* King could not spare so many Men that Year; and withal, that he had been with Sir *John Freind*, and the several other Persons, with Messages from the King; but I do not know whether he had been there or no, only as he told me, that he had been, and brought that Answer.

Mr. Att. Gen. Pray now tell us, what other Meetings you have had about this Matter this Winter?

Capt. *Porter.* I was once with Sir *George Barcley* and Sir *John Freind*, at the *Nagg*'s-*head* in St. *James*'s-*street*; I cannot tell what Discourse they had; they whispered among themselves.

Mr. Att. Gen. Who else was there?

Capt. *Port.* There was Sir *George Barcley*, Sir *William Perkyns*, myself, Mr. *Ferguson*, and one *Humes*.

L. C. J. Where was that, do you say?

Capt. *Port.* At the *Nagg*'s-*head* in St. *James*'s-*street*.

Mr. Att. Gen. Was there any Body else there that you can remember?

Capt. *Port.* Capt. *Charnock* came in after Dinner, but I cannot say he din'd there.

Mr. Att. Gen. And who else do you remember?

Capt. *Port.* There came in one *Harrison* after Dinner; he is a reputed *Romish* Priest, and goes by the Name of *Johnson*.

Mr. *Mountague.* Pray, Capt. *Porter*, what was that Meeting for?

Capt. *Port.* They had several Whisperings among themselves, but what they discoursed of I cannot tell.

Mr. *Mountague.* Pray, did Sir *John Freind* say any Thing that you heard at that Meeting?

Capt. *Port.* Sir *George Barcley* did say, that some People that were not so violent had written over into *France* to stop this Business; upon which, said I, I hope you will have no Letter To-night. Upon which Sir *John Freind* said, is there any thing that is hid behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

Mr. Att. Gen. If Sir *John Freind* has a mind to ask him any Questions, he may.

L. C. J. Pray, Capt. *Porter*, let me ask you this Question, Did all that were present at the first Meeting, at the *King*'s-*head* in *Leadenhall-street*, agree to send Mr. *Charnock* into *France* to the late King?

Capt. *Port.* Yes, my Lord.

L. C. J. All of them?

Capt. *Port.* Yes; we desir'd Captain *Charnock* to answer to the King for us that we would meet him at the Head of 2000 Horse.

L. C. J. Did Sir *John Freind* agree to it?

Capt. *Port.* Yes, I do positively affirm he did.

L. C. J. Then the second Meeting, which, you say, was at Mrs. *Mountjoy*'s, what was said then?

Capt. *Port.* We did agree all, That Capt. *Charnock* should goon with the Message that was resolved upon at the first Meeting, and we would go on with the Business; and he said he would go away in two or three Days.

Mr. Att. Gen. Will Sir *John Freind* ask him any Questions?

Fr. I will only ask him, if they have done, whether he has any thing more to say?-----Capt. *Port.* No, Sir.

L. C. J. The King's Counsel have done with him.

Fr. Then, my Lord, I will hear all they can say, and when I have heard the whole Evidence, I shall know how to answer to it.

L. C. J. Before you go, Captain *Porter*, I would ask you, What Answer Mr. *Charnock* brought back from *France?*

Capt. *Port.* I say, I did not meet with Captain *Charnock*, 'till after I came out of *Newgate* for the Riot Business; and then he told me, he had been there, and he had acquainted the several Gentlemen with the Messages he had brought from King *James*, who thank'd them for their Kindnesses; but the *French* King could not spare so many Men that Year.

Mr. Sol. Gen. Then the next that we call is *Brice Blair* (*Who was sworn*). Pray, Sir, do you know the Prisoner at the Bar, Sir *John Freind?*

Capt. *Blair.* Yes, my Lord; and I am very sorry to come on such an Account as I do now against him. I am sorry for it with all my Heart----

Mr. Att. Gen. Well, Sir, pray will you give an Account what you know of Sir *John Freind*'s having a Commission from the late King to be a Colonel of Horse, and when it was, and how? Pray tell my Lord and the Jury the whole Matter.

Capt. *Blair.* All that I can say to this Business is written in my Paper, and I refer to my Paper.

Mr. Att. Gen. You must not refer to your Paper, Sir, you must tell all what you know.

L. C. J. He may look upon any Paper to refresh his Memory.

Capt. *Bl.* I did see the Commission, Sir, and I did read it.

Mr. Att. Gen. What Commission was it, Sir?

Capt. *Bl.* It was a Commission from King *James* to Sir *John Freind*.

Mr. Att. Gen. Where did you see it, Sir?

Capt. *Bl.* I saw it in his Lodgings at the *Strand*, when he lived near the *Strand*, in *Surrey-street*.

Mr. Att. Gen. Who shew'd it you?---Capt. *Bl.* He shew'd it me himself.

Mr. Att. Gen. What was it for?

Capt. *Bl.* It was for raising a Regiment of Horse.

Mr. Att. Gen. When was it that you did see it? How along ago was it?

Capt. *Bl.* It is well near two Years ago, or thereabouts, as I remember.

Mr. Att. Gen. Who was to have been Colonel of that Regiment?

Capt. *Bl.* He was nominated to be Colonel of it himself in the Commission.

L. C. J. Who was the Commission directed to?

Capt. *Bl.* It was directed to him, to Sir *John Freind*.

L. C. J. Well, and what was done upon it? Who were to be the Officers?

Capt. *Bl.* He promised me to be his Lieutenant-Colonel; and I had the same from Mr. *Harrison*, and there were several Letters that I saw, that came from my Lord *Melford* and Secretary *Caroll*, who were with King *James*.

Mr. Att. Gen. What other Officers were there appointed?

Capt. *Bl.* There was one *Richardson* was to be one of his Captains, and there was one Mr. *Fisher* was to be another, and one *Hall* another; *Fisher* was to be his eldest Captain, and one Capt. *Evans* was to be his Captain-Lieutenant, and one Captain *Vernatti* was to be another.

Mr. Att. Gen. Do you remember who was to be his Major?

Capt. *Bl.* No, Sir, I think I cannot be positive as to that. I spoke to Capt. *Barnesley*, that had been a Lieutenant in King *James*'s Service, to be a Lieutenant, and sometimes he accepted, and sometimes he refused it.

Mr. Att. Gen. Pray, what did you do as Lieutenant-Colonel upon this Matter?

Capt. *Bl.* I endeavour'd all I could to get Officers for them, and to raise Troops. I endeavour'd to get what Men I could myself.

Mr. Sol. Gen. Pray what did you do? What Officers did you procure for him?----- Capt. *Bl.* I told you *Vernatti* and *Fisher*, and one Mr. *Hall* that lives at *Deal*.

Mr. Att. Gen. What Troops did you get under you? Did you engage any to serve under you?

Capt. *Bl.* What? I myself, Sir, do you mean?

Mr. Att. Gen. Yes, I do.

Capt. *Bl.* Yes, Sir, I did.

Mr. Att. Gen. Can you name any of them?

Capt. *Bl.* Yes, Sir, if I make use of my Paper.

Mr. Sol. Gen. You may make use of your Paper to refresh your Memory.

Capt. *Bl.* There is a Paper of Names that I gave in before the Council.

L. C. J. Mr. *Baker*, have you his Paper there? Let him see it to refresh his Memory.

Mr. *Baker.* I have none of the Papers, my Lord; they are all sent before the Council.

Mr. Att. Gen. Pray, Sir, can you tell who was to have been your Lieutenant in your Troop?-----Capt. *Bl.* One Mr. *Bertham*.

Mr. *Mountague.* You say, Sir, you were constituted Lieutenant-Colonel; pray, who constituted you, and made you so?

Capt. *Bl.* I had only a Promise of it from Sir *John Freind*.

Mr. Att. Gen. Pray, did you lay out any Monies for Sir *John Freind?* or did he ever pay you any Money afterwards?

Capt. *Bl.* Yes, I have had several small Sums of Money from Sir *John Freind*.

Mr. Att. Gen. Pray, what was it for?-----Capt. *Bl.* It was to drink with the Men that belonged to the Regiment, and encourage them.

Mr. Att. Gen. Pray, did Mr. *Piggott* pay you any Sums of Money? and by whose Order?--------Capt. *Bl.* Yes, he paid me first 20*l.* and afterwards he paid me another 20*l.*

Mr. Att. Gen. By whose Order was that, Sir?

Capt. *Bl.* It was by the Order of Sir *John Freind*.

Mr. Att. Gen. Pray, Sir, How do you know that Sir *John Freind* order'd him to pay it you?

Capt. *Bl.* Because it was the Money that *Piggott* had received to repay Sir *John Freind* what he had advanced for the furthering of *Parker*'s Escape out of the *Tower*.

Mr. Att. Gen. How do you know that he advanced any Money for procuring *Parker*'s Escape?

Capt. *Bl.* He told me so himself.

Mr. Att. Gen. How much did Sir *John Freind* say he advanced for that Purpose?----Capt. *Bl.* He told me 100*l.*

Mr. Att. Gen. How did he tell you he was to be paid it again?

Capt. *Bl.* He told me that King *James* ordered the Payment of it at *France*, when *Piggott* went over, which was immediately afterwards; and I had of that, first 20*l.* and afterwards 20*l.* by the Order of Sir *John Freind*.

Mr. Sol. Gen. Pray, Sir, did Sir *John Freind* tell you what *Piggott* had received in *France?*

Capt. *Bl.* Yes, he said *Piggott* had received 100*l.* in *France*; and he did not pay it him, but if I could get 20*l.* of him, he would allow it.

Mr. Att. Gen. Pray about what Time was it that the first 20*l.* was received?----Capt. *Bl.* I have set it down in my Paper; there it is.

Mr. Att. Gen. But can't you tell about what Time it was?

Capt. *Bl.* It was about last *May* or *June*, the first 20*l.* was paid.

Mr. Att. Gen. When was the last 20*l.* paid?

Capt. *Bl.* It was after I was sick, about *Michaelmas*.

Mr. *Cowper.* Pray, Sir, Who was by when the last 20*l.* was paid?

Capt. *Bl.* Mr. *Piggott* paid me the last 5*l.* of it, (for I received it at several Payments from Mr. *Piggott*) but the last 5*l.* was before Sir *John Freind*, at *Jonathan*'s Coffee-House.

Mr. Sol. Gen.

Mr. Sol. Gen. Pray, do you know any thing of Sir *John Freind*'s Receiving any Letter from King *James?*

Capt. *Bl.* Yes; he told me he had a Letter from King *James.*

Mr. Sol. Gen. How long ago was that?

Capt. *Bl.* Truly, I cannot tell.

Mr. Sol. Gen. I don't ask you the preciſe Day, but was it within a Twelvemonth?---Capt. *Bl.* Yes, I believe it might be thereabouts.

Fr. My Lord, I deſire he may ſpeak out; for I don't hear half he ſays.

L. C. J. Repeat it to him again.

Capt. *Bl.* Sir, you told me you had received a Letter from King *James.*

Freind. My Lord, I ſhall anſwer to all this afterwards.

Mr. Sol. Gen. Pray, had you at any Time any Diſcourſe with Sir *John Freind* about one *Slater?*-----Capt. *Bl.* Yes, I had.

Mr. Sol. Gen. Pray tell what that was.

Capt. *Bl.* He told me he was to bring him in ſeveral Officers; and that he had intended to make two Lieutenant-Colonels, whereof Captain *Slater* was to be one; but when he ſaw I was not ſatisfied with that, he ſaid he ſhould command a Troop of non-ſwearing Parſons, and they ſhould be an independent Troop.

Mr. Sol. Gen. You ſay that *Slater* was to command that Troop?

Capt. *Bl.* Yes, and it was to be an independent Troop.

Mr. Att. Gen. I think you ſay, that he and you met at *Jonathan*'s Coffee-Houſe?-----Capt. *Bl.* Yes, we did ſo.

Mr. Att. Gen. Pray what Diſcourſe had you there?

Capt. *Bl.* I called him aſide, and deſired to ſpeak to him; and it was when Mr. *Fiſher* told me of this Plot, and deſired me to ſpeak to him, a little before this horrible Conſpiracy broke out. And I told him what I heard from *Fiſher*, and from *Harriſon* the Prieſt about it; and he told me that he had heard of it, and he was afraid it would ruin King *James*, and his Affairs.

Mr. Att. Gen. What was it that you told him you had heard?

Capt. *Bl.* This laſt horrid Thing, the Conſpiracy againſt the King's Life.

Mr. *Cowper.* Was it before it broke out that he told you he knew of it?

Capt. *Bl.* Yes, it was ſhortly before it broke out.

Mr. Att. Gen. Pray, did you meet with him again? And did he carry you in his Coach at any Time?

Capt. *Bl.* Yes, he did, Sir.

Mr. Att. Gen. What Diſcourſe had you then, when you was with him in the Coach?

Capt. *Bl.* He took me in his Coach to St. *Martin's-le-Grand*, and, ſays he, I will do nothing 'till the *Thoulon* Fleet meet with the *Breſt* Fleet; at that Time, perhaps, we ſhall be all taken up; but, ſays he, you may ſculk about the Town better than I can; and therefore I'll keep myſelf private; and we muſt be as good Husbands of our Money as we can; for Money will be very ſcarce. What do you think you ſhall need, ſays he? Truly, Sir, ſays I, I can't tell; that muſt be according as I am mounted. For I found I had a few indigent Officers at that Time.

Mr. Att. Gen. Pray, what were you to do?

Capt. *Bl.* We were to ſculk up and down; and when he asked me what Money I ſhould need, I told him I could not tell; for there were ſeveral indigent Officers, moſt of which begg'd at that Time; and here is a Letter that I had from Sir *John Freind*, to confirm my receiving Money from him.

Mr. Att. Gen. Is that Sir *John Freind*'s own Hand?

Capt. *Bl.* Yes, Sir, it is.

Mr. Att. Gen. Then put it in. Give it hither.

(*It was delivered in to the Attorney-General.*)

Mr. Sol. Gen. Pray, what have you heard Sir *John Freind* ſay of Sir *John Fenwick*'s being concerned in this Matter?

Capt. *Bl.* I heard him ſay, that he believed that he ſhould command the Party that he was engaged in, and that Sir *John Fenwick* had Four Troops of Horſe, that lay near *Reading*, to be employ'd.

Mr. Sol. Gen. For what Purpoſe?

Capt. *Bl.* To be in Readineſs upon the Deſcent.

Freind. Gentlemen of the Jury, I can't hear a Word; I hope you hear.

Mr. Att. Gen. Pray, Sir, look upon that Letter; you ſay you had that Letter from Sir *John Freind*, pray, who is that *H.* mentioned in it?

Capt. *Bl.* It means *Harriſon*, alias *Johnſon*, the Prieſt.

Mr. Att. Gen. Pray, what was that Letter written for?

Capt. *Bl.* It was about the laſt 20*l.* that I was to receive from *Piggott.*

Mr. Att. Gen. Is that Sir *John Freind*'s Hand?

Capt. *Bl.* Yes, I think ſo.

Mr. Att. Gen. Have you ſeen Sir *John Freind* write?

Capt. *Bl.* Yes, I have ſeen him write, and I think it is the ſame Hand.

Mr. Att. Gen. Then we deſire it may be read.

Then a Juryman deſired he might be asked, Whether he ſaw Sir John Freind *write that Letter?*

L. C. J. What ſay you, did you ſee him write that Letter?

Capt. *Bl.* No, my Lord; it came to my Lodging.

Mr. Att. Gen. Did he ever own to you he had writ you ſuch a Letter?

Capt. *Bl.* Yes, he did.

Mr. Att. Gen. Pray, let it be read; read it all, for it is but ſhort.

Cl. of Ar. reads:

For Captain Blair, *Theſe.*

Tueſday Morning.

SIR,

"YOU may much wonder you have not received an Anſwer of yours before now: I have been afflicted with the Gout in my Hand and Foot, that I have not been able to put Pen to Paper; (I thank God) I am ſomewhat better, and do hope to be in *London* a *Thurſday* next, about the Hour of Twelve, at *Jonathan*'s Coffee-Houſe, if the Weather do not prevent me; if it do, I ſhall not come before *Monday* following: I do deſire you for to meet me about that Hour; for it is not convenient for to write a Note to Mr. *H.* for ſome Reaſons I ſhall give you when I ſee you. I wiſh you good Health. I am,

SIR,

Your affectionate Friend and Servant, JOHN FREIND.

Juryman. Pray, Sir, what Date is it of?

Cl. of Ar. It has no Date but *Tueſday* Morning.

Mr. Att. Gen. Did Sir *John Freind* meet you on the *Thurſday*, according to this Letter?

Juryman. My Lord, I deſire he may be asked, How this Letter came to him, whether by the Penny Poſt, or how?

Capt. *Bl.* I don't know, I believe it was by a Porter: It came firſt to me when I was in Bed, and my Wife brought it up to me.

Mr. Att. Gen. Pray, Sir, anſwer my Queſtion. Did Sir *John Freind* afterwards meet you at *Jonathan*'s Coffee-Houſe, according to this Letter?

Capt. *Bl.* Yes, Sir, he did.

Mr. Att. Gen. And did you there ſpeak about the Buſineſs that's contained in that Letter?

Capt. *Bl.* Yes, Sir; and accordingly I had the Order.

Mr. Att. Gen. What Order?-----Capt. *Bl.* An Order for the 20*l.*

Mr. Sol. Gen. Captain *Blair*, do you remember that you dined with Sir *John Freind* near the *Exchange*, in *January* laſt?

Capt. *Bl.* Yes, I think I did, Sir.

Mr. Sol. Gen. What Diſcourſe was there between you then? Who was with you beſides you Two?

Capt. *Bl.* I muſt refer that to my Paper.

Mr. Sol. Gen. Well then, what Diſcourſe was between you and Sir *John Freind* there?

Capt. *Bl.* It is down in my Paper.

Mr. Sol. Gen. Do you know one Capt. *Ridley?*

Capt. *Bl.* Yes, Sir.

Mr. Sol. Gen. Was he at any Time preſent when you and the Priſoner at the Bar were together.

Freind. My Lord, I cannot hear a Word he ſays.

L. C. J. Here is a great Noiſe indeed, and he, it ſeems, is not well, and ſpeaks but low; pray, order Silence in the Court.

(*Which was done by Proclamation.*)

L. C. J. Look ye, Sir *John Freind*, he ſpeaks of a Letter that you ſent to him that bears Date ſome *Tueſday* Morning, that you would be in Town, and meet him at *Jonathan*'s Coffee-Houſe upon *Thurſday* following, at Twelve a-Clock; and that Letter was read, and he ſays he met you accordingly, and there was Order taken for the Payment of the laſt 20*l.* This is that he ſays: Did you hear it?

Freind. No, my Lord, I did not.

L. C. J. That is what he ſaid. Then go on: You ſay he met you at *Jonathan*'s Coffee-Houſe according to that Letter?

Capt. *Bl.* Yes, my Lord.

L. C. J. What was done there, when you met?

Capt. *Bl.* Nothing but the Order.

L. C. J. Who did he give the Order to?

Capt. *Bl.* He gave the Order to *Harriſon.*

L. C. J. Why, was *Harriſon* there?

Capt. *Bl.* Yes, he came there before I came away.

L. C. J. But you ſay he gave the Order to *Harriſon?*

Capt. *Bl.* Yes, my Lord.

L. C. J. What was the Order for?

Capt. *Bl.* It was to pay me that Money.

L. C. J. What Money was that?

Capt. *Bl.* It was the laſt 20*l.*

Mr. Att. Gen. Was the 20*l.* paid you afterwards?

Capt. *Bl.* Yes, Sir.

Mr. Att. Gen. Who paid it?

Capt. *Bl.* Mr. *Piggott*; he paid me the laſt 5*l.* of it before Sir *John Freind*'s Face.

L. C. J. Was this the firſt 20*l.* or the laſt, do you ſay?

Capt. *Bl.* It was the laſt.

L. C. J. What was this Money paid for?

Capt. *Bl.* I believe it was to ſupport me to go about the Buſineſs of the Regiment.

L. C. J. You believe; that's not enough: But are you ſure it was ſo?

Capt. *Bl.* Yes, I am ſure it was for that.

L. C. J. Had you ever demanded Money of him before?

Capt. *Bl.* Yes, I had.

L. C. J. For what was that Money that you demanded?

Capt. *Bl.* It was to drink with the Men that were brought in; to cheriſh, and keep them together.

L. C. J. To what Purpoſe were thoſe Men kept together?

Capt. *Bl.* They were for his Regiment.

Mr. Sol. Gen. Pray, had Sir *John Freind* any Occaſion to pay you any Money upon any other Account?

Capt. *Bl.* No, Sir, not out of that 100*l.*

Mr. *Cowper.* You do not underſtand the Queſtion. Had you any Dealings with Sir *John Freind*, but about this Matter concerning the Regiment?-----Capt. *Bl.* No, never in all my Life.

Mr. Att. Gen. Well, Sir, do you remember your meeting with Sir *John Freind* when one *Ridley* was there?

Capt. *Bl.* Yes, it was at the Chop-houſe,

Mr. Att. Gen. Give an Account what paſs'd there.

Capt. *Bl.* Mr. *Ridley* ſaid, A Gentleman was lately gone over to *France*, about Ten Days before; and Mr. *Ridley* ſaid, he was a very ſenſible Gentleman, a Roman-Catholick, an ancient Man, about Threeſcore Years of Age, what he was, I can't tell: He ſaid, he believed he ſhould bring the laſt Orders.

Mr. Att. Gen. What did Sir *John Freind* ſay?

Capt. *Bl.* Sir *John Freind* ſaid, He knew of it; but he named no more.

Mr. Sol. Gen. What was the Effect of thoſe Orders, as you underſtood?

Capt. *Bl.* I cannot tell that, Sir, indeed.

Mr. Sol. Gen. Did you know Mr. *Charnock?*---Capt. *Bl.* Yes, I did.

Mr. Sol. Gen. What do you know of his going to *France?*

Capt. *Bl.* I met him upon the *Exchange* the laſt Summer, and I told him, I expected not to have ſeen him here at that Time, I thought he had been abroad; he told me he was come from *France*; but who ſent him I cannot tell, I do not know, upon my Life.

Mr. Sol. Gen. Pray what has Sir *John Freind* ſaid to you about *Ferguſon?* Whether was not he to have been an Officer in his Regiment?

Capt. *Bl.* No; but Sir *John Freind* ſaid, he would join; and Mr. *Ferguſon* himſelf has told me ſo.

Mr. Att. Gen. When did he tell you ſo?

Capt. *Bl.* A good while ago.

Mr. Att. Gen. How long ago?

Capt.

Capt. *Bl.* Two Years ago, and above.

Mr. Sol. Gen. Did Sir *John Freind* tell you any thing about *Ferguſon*, that he would bring in any Men?

Capt. *Bl.* Yes, he ſaid he would bring in a great many.

Mr. Att. Gen. Will the Priſoner aſk him any Queſtions?

L. C. J. Sir *John Freind*, will you aſk this Witneſs any Queſtions?

Freind. Yes, my Lord, I ſhall by and bye, if they have done with him.

L. C. J. Yes, they have done with him.

(*Then he pauſed, and peruſed his Papers.*)

Freind. Firſt, as to the Commiſſion you charge me with, that I ſhould receive a Commiſſion from King *James*; I deſire to know, whether it was ſigned, or ſealed, and what Date it was?

Capt. *Bl.* I cannot tell the Date, indeed, Sir *John*; for I never thought to come here upon ſuch an Account as this: But I think it was in Paper, ſigned above *James Rex*, and below, By his Majeſty's Command, *Melford*; and a little Seal upon the Margin.

Freind. This is the hardeſt Thing in the World upon a Man; here you have charg'd me with Money to ſubſiſt and encourage Soldiers.

Capt. *Bl.* Yes, Sir.

Freind. I would only ſay this: You were recommended to me for a very honeſt Man, and you have come to me ſeveral Times, and told me, Sir, my Neceſſities are very great, I am ready to ſtarve, I have a great Charge; for God's Sake, will you be pleaſed to beſtow ſomething upon me, to relieve my Neceſſities? It's true, I have given you Money ſeveral Times, but I never gave it for any other Uſe but Charity; God knows my Heart. I deſire you to conſider with yourſelf, and anſwer it. There is a God above, where you muſt give an Account as well as I, and I hope you will conſider of it. Pray declare the Truth, Whether you have not writ thoſe Lines to me ſeveral Times, that you were ready to ſtarve, and begg'd of me to relieve your Neceſſities?

Capt. *Bl.* I have ſo, Sir, I acknowledge it.

Freind. Pray take me right, and was not that Money I gave you, only upon pure Charity?

Capt. *Bl.* Yes, you did give me Charity, but I had expended ſo much Money in your Buſineſs, that reduced me to that, God knows my Heart. I have laid out many a Pound upon this Affair.

Freind. It is the hardeſt Thing in the World; this is a Roman Catholick too.

Capt. *Bl.* I am ſure it coſt me many a Pound more than ever I had of you.

Freind. You ſay you liſted a great many Men, who were the Men? What are their Names? Who were they for?

Capt. *Bl.* I have given a Liſt of them to the Counſel.

Freind. Who are they? for God knows, I know nothing of them.

L. C. J. You have a Liſt there, let it be produc'd.

Capt. *Bl.* I gave it to the Counſel; and, Sir *John*, I brought in ſeveral Officers to you.

Mr. Att. Gen. Remember, and name as many as you can.

Capt. *Bl.* I have named the Officers already.

Mr. Att. Gen. Name them again.

Capt. *Bl.* Did not I bring Captain *Fiſher* to you? and did not you promiſe to make him your eldeſt Captain?

Freind. No, you never did.

L. C. J. Theſe are Queſtions of your own aſking, ſo you muſt hear him.

Capt. *Bl.* I brought Captain *Fiſher* to you, and accordingly we dined at Captain *Simens*'s; and there was Captain *Ridley*, Mr. *Richardſon*, and Mr. *Fiſher* and you talked together, and you liſtned to him, and in my own Hearing you promiſed he ſhould be eldeſt Captain, upon Condition that he would bring in a Troop; and this is true, ſo help me God.

Freind. Pray, where are your Men? and what are your Men that you liſted?

Capt. *Bl.* I never ſpoke of Liſting, I only ſpoke of Encouraging.

Freind. Did not you ſay you had liſted a great many Men for to be of my Regiment?———Capt. *Bl.* No, Sir, I did not.

Mr. Att. Gen. I think you do miſtake, Sir *John*; he did not ſay Liſt.

Capt. *Bl.* I had Money from you upon the Account of Encouraging, and Treating, and Drinking with a great many of the Men: And you ſaid it was impoſſible to keep them together, but that I muſt have Money to treat them, and drink with them; but you deſired me to be as good a Huſband as I could.

Freind. I never ſaid ſo; theſe are very hard Things upon me.

Capt *Bl.* Did not I bring Captain *Cole* and Captain *Neale* to you, and his Brother-in-Law Mr. *Robinſon*, and Mr. *Gellibrand*? and did not we dine together?

Freind. I know nothing of all this, I declare to you.

L. C. J. If you will aſk him any more Queſtions, do.

Capt. *Bl.* I brought thoſe three Gentlemen, and we dined together.

L. C. J. Where did you dine then?

Capt. *Bl.* At *Hackney*, when Sir *John* lived there, at his own Houſe.

Freind. When was it?

Capt. *Bl.* It is above a Year ago. Pray, Sir *John*, don't think to daſh me out of Countenance, tho' I am very ill; I ſpeak nothing but the Truth, and therefore I will not be daſh'd out of Countenance. You know what I ſay to be true; you then drank a Glaſs of Wine to Capt. *Cole*: And did not you promiſe him, becauſe he was one of your Mother's Name, that he ſhould have a Place in the Exciſe next one of the Commiſſioners? Says I, Sir *John*, what will you give me? O, ſays he, you ſhall have the Regiment, Man. This was before *Robinſon*, his Mother-in-Law, and Mr. *Gellibrand*.

L. C. J. Who was to have the Place in the Exciſe?

Capt. *Bl.* Captain *Cole*.

Freind. I know not a Word of all this.

Mr. J. *Rokeby.* Captain *Blair*, be not daſh'd, but ſpeak the Truth, and you need fear nothing.

Capt. *Bl.* This, I ſay, was before Mr. *Robinſon* and Mr. *Gellibrand*.

Freind. I don't know *Gellibrand*, nor none of them.

L. C. J. Was that *Cole* to be any thing in the Regiment?

Capt. *Bl.* Yes, he was to have been a Captain, and to bring in a Troop.

Mr. Att. Gen. Sir *John*, will you aſk him any more Queſtions?

Freind. No, I muſt depend upon the Jury, for I cannot remember half what he has ſaid.

Mr. Sol. Gen. Do you remember any Diſcourſe between you and him, about ſome briſk Men that were to follow him?

L. C. J. But before you aſk him, *Mr. Sollicitor*, we muſt know whether he will aſk him any more Queſtions, for he is now his Witneſs. Do you aſk him any more Queſtions, Sir *John*?

Freind. I can aſk about no more than what I hear.

L. C. J. But aſk him what you will.

Freind. My Lord, I have not heard half what he has ſaid, I hope the Jury will take Care in it.

L. C. J. Some Part of it was twice repeated to you.

Freind. As to that, my Lord, I would aſk him a Queſtion or two. Was that my Letter?------Capt. *Bl.* Yes, it was.

Freind. Did you ſee me write it?

Capt. *Bl.* No, it came to my Hands by a Porter, as I believe, when I was in Bed; my Wife brought it up to me.

Freind. What was that Letter for?

Capt. *Bl.* In order to pay the laſt 20 *l.* and I did ſee a Return of a Letter that you writ to King *James*.

Mr. Att. Gen. Who ſhewed you that Letter to King *James*?

Capt. *Bl.* He ſhewed it me himſelf.----*L. C. J.* How long ago is that?

Capt. *Bl.* A Year and a half ago, as near as I can remember.

L. C. J. Did he ſay any thing of an Anſwer he had to it?

Capt. *Bl.* Yes; but I cannot remember what it was directly.

Juryman. He was pleaſed to ſay, he ſaw a Letter from King *James*.

L. C. J. No, no, Sir, it was a Letter to King *James*.

Juryman. My Lord, I deſire he may be aſk'd, if he knows the Contents of that Letter?

L. C. J. Did you ſee him write the Letter, or did he ſhew you the Letter he had writ?

Capt. *Bl.* I did not ſee him write the Letter, I ſee his Hand to the Letter, and he ſhewed me the Letter, that he ſaid he had written to King *James*; and there is this particular Paſſage to confirm it, it was at Mr. *Piggott*'s Mother's Houſe; I dined with him there that Day, and when he ſhewed me the Letter, I told him I was ſo well pleaſed with the Penning it, that I believed Mr. *Ferguſon* had a Hand in it; and he was very angry, that I ſhould think he was not able to write, and did not write the Letter himſelf.

Juryman. My Lord, ſince it ſeems he peruſed the Letter, I deſire he may be aſked, whether he can remember the Contents of that Letter, or any of it?

Capt. *Bl.* Really, my Lord, I cannot tell that particularly: But I am apt to think it was about the Buſineſs of the King, and about the Regiment.------*L. C. J.* Can you tell truly any of the Contents of it?

Capt. *Bl.* That it was about the Affairs of the Regiment, I am poſitive.

Mr. *Cowper.* My Lord, before he goes away (that the Jury may not go away with a Miſtake), I deſire it may be obſerved, he does not ſay, he ſaw Sir *John Freind* write the Letter.

L. C. J. No, no, but that he ſhewed it him himſelf.

Freind. When was that Letter writ that I ſhewed to you?

Capt. *Bl.* It was about a Year and a half ago.

Freind. I declare in the Preſence of God, I never writ one.

Juryman. He ſays you ſhew'd him the Letter, therefore it is very fit we ſhould ſee it.

L. C. J. Nay, Sir, you muſt not talk to the Priſoner; if you have any Queſtions to aſk, you muſt propoſe them to the Court.

Freind. I declare in the Preſence of God, I never writ any ſuch Letter as this he now charges me with.

Capt. *Bl.* And I do declare in the Preſence of God, you ſhewed me ſuch a Letter.

Freind. Yes, you may; but I am a Proteſtant, you are a Papiſt; you may do any thing.

Mr. Att. Gen. You may aſk any Queſtions of him, Sir *John*, but you muſt not rail at the Witneſs.

Freind. But when you charge me with the writing of a Letter to King *James*, I ought to ſpeak to it. It ſeems, I am not to aſk whether he is a *Papiſt*.

Mr. Att. Gen. He ſays, you ſhew'd him a Letter, that you ſaid you had written to King *James*, which he read, and liked the Penning of it ſo well, that he thought *Ferguſon* had a Hand in it; at which you were offended, that he ſhould think you could not write ſuch a Letter yourſelf.

Freind. I declare in the Preſence of God, I never writ any ſuch Letter.

Mr. Att. Gen. I ſuppoſe you'll diſprove him by and bye.

Freind. I can have no Witneſſes to this Matter.

Mr. Att. Gen. And you can't expect your own Denial ſhould go for Proof. If you will aſk him no more Queſtions, let him go down and eaſe himſelf.

Freind. He muſt not be aſked whether he is a *Papiſt*; but I hope you will take Notice, Countrymen, that theſe Witneſſes are *Papiſts*, and they think they merit Heaven by ſwearing againſt Proteſtants, whom they call *Hereticks*.

L. C. J. Indeed, Sir *John*, I don't hear you: Pray ſpeak ſo loud that the Court may hear what you ſay.

Freind. I will, my Lord; I ſay he is a *Roman* Catholick, and I have Witneſſes to ſwear he is ſo; and deſire I may prove that he is a *Roman* Catholick, and therefore he is not to be heard againſt a Proteſtant.

Mr. Att. Gen. Then the next Witneſs we call is Mr. *Bertham*.

(*Who was ſworn.*)

Freind. But I have not done with Mr. *Porter*.

L. C. J. Well, you ſhall have him by and bye; let the King's Counſel go on in their Method.

Mr. Att. Gen. Pray, Mr. *Bertham*, do you know Captain *Blair* that was here juſt now? ——— *Bertham.* Yes.

Mr. Att. Gen. How long have you known him?

Bertham. About Eight or Nine Years.

Mr. Att. Gen. What Diſcourſe have you had with him about any Regiment that was to be raiſed for the late King *James*?

Bertham. Captain *Blair* had told me for two Years laſt paſt, that Sir *John Freind* was to have a Regiment of Horſe, that were to be raiſed, and lie poſted about the Town; and Captain *Blair* was to be Lieutenant-Colonel to the Regiment, and I was to be Lieutenant to Captain *Blair* in his Troop.

Mr. Att. Gen. My Lord, we only call him to confirm what Captain *Blair* has ſaid, that he was to be his Lieutenant, and that this was talked of

two

two Years before. Did he tell you Sir *John Freind* was to have a Regiment of Horſe?

Bert. Yes, Sir, and he obliged me to bring in as many Men and Horſes as I could into this Regiment, and he told me Capt. *Fiſher*, Capt. *Vernatti*, and Capt. *Cole* were to be Captains in the Regiment.

L. C. J. And what were you to be? —— *Bertham.* A Lieutenant.

L. C. J. To whom?

Bert. To Captain *Blair*; he has told me ſo ſeveral Times, and talked to me about the Affairs of the Regiment a great deal, that I cannot now remember, relating to that Purpoſe.

L. C. J. This is no Evidence againſt Sir *John Freind*: he is only called to confirm the Teſtimony of Captain *Blair*; that *Blair* ſpoke of it long before he gave his Evidence, and ſo it is not a new thing now invented by him.

Mr. *Sol. Gen.* Sir *John Freind* did aſk what Men he had engaged, and among others, he named this Mr. *Bertham* to be his own Lieutenant, and he now tells you *Blair* promiſed him ſo to be two Years ago, and then told him Sir *John Freind* was to have a Regiment.

Freind. Do you know me, Sir?

Bert. No, Sir, I never was in your Company in my Life; I only tell you what I have heard from Captain *Blair*; I do not know that ever I ſaw your Face.

L. C. J. His Evidence, Sir *John Freind*, hurts you not, as to any particular Thing that he knows againſt you; he is only brought to confirm what Captain *Blair* ſaid, that he was to be his Lieutenant in his Troop.

Mr. *Att. Gen.* Then, my Lord, we leave it here.

L. C. J. Look ye, Sir *John Freind*, the King's Counſel have done, and now you may ſpeak, and ſay what you have a Mind to ſay in your own Defence.

Mr. *J. Rokeby.* And call what Witneſſes you have a Mind to call.

Freind. My Lord, in the firſt Place, I deſire to know whether Mr. *Courtney* is come.

L. C. J. Your Sollicitor can beſt tell that.

Freind. I perceive he is not come.

L. C. J. Well, go on: I ſuppoſe he will not be long before he comes, we will ſtay for him.

Freind. My Lord, I muſt wait for my Witneſs: But in the mean Time, as to Mr. *Porter*'s Evidence, I own I was at the Meeting at the *King*'s *Head* in *Leadenhall-Street*; I declare I was at that Place, and there were ſome Gentlemen there, but how many or whom I cannot ſay; but I declare there was not one Word ſpoken there of any raiſing of Men, nor any thing of that Nature, that he ſpeaks of, but only we were drinking a Glaſs of Wine, and eating a Diſh of Meat together, and Sir *John Fenwick* at that Time coming in, ſaid to us, I deſire you to come to our End of the Town, and take a Diſh of Meat with us. And there was nothing ſpoke of any Thing relating to the Government. Gentlemen, theſe are Papiſts, and I am a Proteſtant, they don't care what they ſay, for they think they merit Heaven by deſtroying Proteſtants; and they are not to be believed: and that is the Reaſon that I was not to aſk them the Queſtion, for by Law they are not Witneſſes, and for that I appeal to your Lordſhip.

L. C. J. H. Why are they not Witneſſes?

Freind. Nay, I appeal to your Lordſhip.

L. C. J. H. Truly I think they are Witneſſes, I know nothing to the contrary.

Freind. My Lord, Papiſts are not good Witneſſes againſt Proteſtants for this Reaſon that I ſhall tell you; I am adviſed, my Lord, that a Papiſt is not a good Witneſs to prove a Proteſtant a Traytor within the *Stat.* of 25 of *Ed.* 3.

L. C. J. H. Who ſays ſo?

Freind. My Lord, I deſire to know whether there is ſuch a Statute?

L. C. J. H. Yes, no doubt of it, there is ſuch a Statute as that of the 25 of *Ed.* 3. about Treaſons.

Freind. Pray, my Lord, does not that make it ſo?

L. C. J. H. No indeed, I know no ſuch Thing.

Mr. *Sol. Gen.* That cannot be, my Lord, that any ſuch Thing ſhould be, for all were Papiſts then, there was no ſuch Thing as a Proteſtant in the Time of *Ed.* 3.

Freind. My Lord, there is the Statute of the Third of *James* the Firſt, *Cap.* 4th. and other Statutes made in the Time of King *Charles* the Second, particularly in the 30th Year of his Reign *Cap.* 2d. whereby it is plain they are not to be believed againſt Proteſtants, becauſe they believe them Guilty of damnable *Hereſy*; and by thoſe Statutes they are reputed infamous.

L. C. J. Where is your Statute?

Freind. My Lord, I have no Statute-Book, I deſire it may be inquired into, this Advice was given me by my Lawyer; I am no Lawyer myſelf: there is the Statute of 3 *James* the Firſt, *Cap.* 4. and the next is 30 *Car.* 2. *Cap.* 2.

L. C. J. Well, the Statute-Book ſhall be looked into.

Freind. My Lord, the Perſon is not come, who is to give Evidence againſt Captain *Blair*; the principal Witneſs, he is a Priſoner at the *Gatehouſe*, and your Lordſhip was pleaſed to ſay you would have Patience till he came.

L. C. J. Yes, yes, we will ſtay a while.

Freind. I pray, my Lord, do, for it will be very material for me.

L. C. J. Treby. Have you any thing to fill up the Time with in the mean Time? (Then *William Courtney* appeared.)

L. C. J. Is your Sollicitor returned with this *Habeas Corpus?*

Freind. I believe he is in or about the Court, but I cannot get him to me, the Crowd is ſo great. (After much ado *Courtney* came in.)

L. C. J. Is this the Witneſs you would have?

Freind. Yes, my Lord, it is.

L. C. J. Then what do you ſay to him?

Freind. My Lord, muſt I aſk him the Queſtions?

L. C. J. Yes, you muſt propoſe your Queſtions to the Court, and they will aſk them of the Witneſſes. If this be the Perſon you ſpeak of, you had beſt examine him.

Freind. Mr. *Courtney*, I deſire you would ſpeak what you know of Captain *Blair.*

Courtney. Gentlemen, I have been a Priſoner in the *Gate-houſe* about a Month, and while I was there Captain *Blair* at the ſame Time came in as a Priſoner, as mentioned in the Proclamation; being my old Acquaintance, (I was in Bed, being in upon ſome other Accounts) and when they told me Captain *Blair* was brought in, I deſired him to come into my Chamber. I told him I was ſorry to ſee him there; I told him I hoped he was none of thoſe concerned in this Plot; he ſaid he was in the Proclamation, but that he was innocent, and knew nothing of the Plot, nor of the Aſſaſſination, nor any thing like it; there were ſeveral other Perſons in that Place at the ſame Time, and he ſaid he was as innocent as the Child unborn:

Freind. Did he mention any thing of me then?

Courtney. At that Time he ſaid nothing of you.

Freind. Pray, Sir, do you believe he is a *Roman Catholick?*

Courtney. I do not know his Religion indeed.

Freind. But don't you know him to be a *Roman Catholick?*

Courtney. He bore the Character of one, but I never ſaw him at any Church.

Mr. *J. Rokeby.* Pray, Sir, how long have you known Captain *Blair?*

Courtney. By ſight, I have known him 6 or 7 Years.

Mr. *J. Rokeby.* Pray, upon what Account did you call him Captain?

Courtney. It was a common Name among all the Company: he was called ſo.

L. C. J. What, all the Time that you knew him?

Courtney. Yes, all the Time that I knew him, I knew no other Name that he had.

Freind. But did you not hear that he was reputed to be a *Roman Catholick?*

Courtney. I have heard that Character of him among thoſe that I have known, but I have very little Knowledge of his Religion.

L. C. J. Is this what you can ſay?

Courtney. There are ſeveral others that were Witneſſes of this, as well as I; I never ſaw you, Sir *John Friend*, before in my Life, to my Knowledge, nor ever ſpoke to you.

Freind. Sir, a Note was ſent to me, that you could do me ſome Service, and that was the Reaſon I ſent for you. I deſire Mr. *Carpenter*, Mr. *King*, and Mr. *Payne* may be called.

L. C. J. Have you done with this Man then?

Freind. Do you know Captain *Porter*, Sir? ——*Courtney.* Yes, I do, Sir.

Freind. Sir, do you know him to be a Roman Catholick?

Courtney. Sir, I have heard that he has ſuch a Character.

L. C. J. What Character has he?

Courtney. That he is a Roman Catholick.

L. C. J. That's only by Hear-ſay.

Freind. My Lord, I have done with this Man.

L. C. J. If you have done with him, then the Keeper may carry him back again.

Courtney. Sir, I have ſomething elſe to ſay.

Freind. My Lord, he ſays he has ſomething elſe to ſay.

L. C. J. Then ſet him up again: *(which was done.)* Well, Sir, what is it you have more to ſay?

Courtney. Two or three Days after that Time, there was a Priſoner then in the Gate-houſe, who was an Enſign in the Army, was reading the Flying-Poſt in my Chamber, and in that Flying-Poſt, there was News that Capt. *Blair* was making a great Diſcovery, and that he had accus'd Sir *John Freind*, for having received a Commiſſion for a Regiment in which he was to be a Lieutenant Colonel, and ſaid a great deal about that Regiment, how he had received Subſiſtence Money for them from Sir *John Freind.* A little after Captain *Blair* came into the Room, and aſk'd me if I had got the News? I told him yes; and Captain *Blair* then aſk'd what was the Import of it? I told him it was there, that he was making a great Diſcovery, and particularly, that he was to be Lieutenant Colonel to Sir *John Freind*, and had received Subſiſtence Money from Sir *John Freind* for the Men of the Regiment. Captain *Blair* anſwer'd, that they might put what they would in the News, but he knew nothing of it, nor did he receive any Money: And this was a great Surprize upon me, and upon thoſe others that heard him, when we were told he was to be the main Evidence againſt Sir *John Freind.*

Freind. Well, Sir, do you know any thing elſe?

Courtney. Captain *Blair* was bemoaning himſelf afterwards, that he went againſt his Conſcience in this Thing; and his Wife told me, that he was very much concerned, becauſe he was going to do this againſt his Conſcience, and ſhe was ſure it would break his Heart.

Freind. Do you know any Thing more?

Courtney. And he told me in his Chamber upon *Friday* Night laſt, about Nine a-Clock I came to ſee him, he lay upon his Bed very ill, and his Wife was with him; I ask'd him how he did? and he clapt his Hands, and ſaid he was very ill. Pray, ſaid I, what ails you? Sure you have gotten ſome very great cold. Oh! no, ſays he, Life is ſweet, I don't know what it is I ail, but were it not for Life, I ſhould never do what I do.

L. C. J. Did he tell you, he went againſt his Conſcience?

Courtney. His Wife and he ſpoke at firſt, that he went againſt his Conſcience, and he believed his Conſcience was in a miſerable State; and this I ſpoke innocently among ſome of the Priſoners, and I did not know that it was taken Notice of, but it ſeems ſome Body has acquainted Sir *John Freind*, and ſo I am brought here; I know nothing of being a Witneſs, I aſſure you.

Mr. Juſt. *Rokeby.* Pray, who were preſent when this Diſcourſe was between you and *Blair?* You ſay there were two other Perſons preſent when this Diſcourſe was between you, and Captain *Blair*, and his Wife: Who were thoſe two Perſons?

Courtney. What Diſcourſe do you ſpeak of, my Lord?

L. C. J. You ſaid there were two Perſons in your Chamber.

Courtney. Does your Lordſhip mean at the Reading of the *Flying-Poſt?*

L. C. J. Yes.

Courtney. My Lord, this Gentleman that I was ſpeaking of, was lying down upon the Bed, and Captain *Blair* came into my Room, juſt after the News was read, and aſk'd me if I had got the News? I told him, yes; he aſk'd me what was the Import of it? I told him, they ſaid he was making a great Diſcovery, and particularly againſt Sir *John Freind.*

L. C. J. Well, and who were there then?

Courtney. This Enſign that is now a Priſoner in the *Gate-houſe*, who I ſuppoſe can ſay the ſame Thing.

Mr. *Att. Gen.* Pray, my Lord, let Mr. *Blair* be called while he is here, and let him know what this Witneſs ſays, that the Court and Jury may know what he has to ſay to it.

L. C. J. Yes, pray let Mr. *Blair* be brought in again. *(Which was done.)*

L. C. J. Treby. Now, let Mr. *Courtney* repeat what he ſaid now before about Captain *Blair*'s Declarations to him.

Courtney. My Lord, I tell your Lordſhip, there was one *Tooley* a Priſoner in

in the *Gate-houſe*, when he heard the *Flying-Poſt* cry'd, bought it, or it was order'd to be bought; and it being brought into my Chamber, I deſir'd him to read it, and I was walking about the Room: In the mean Time Capt. *Blair* came in, and aſk'd if we had got the News? We ſaid yes; and he aſk'd what News there was in it? I reply'd, it is ſaid that you are making a great Diſcovery, that you were to be Lieutenant Colonel to Sir *John Freind*, and had received a great deal of Subſiſtence Money for the Regiment: Says he, They may put what they will in their News, but I know of no Regiment, nor of any Subſiſtence, nor of any Commiſſion. The Man that read the Book will ſay the ſame that I do.

Mr. *Att. Gen.* When was this?

Courtney. This was one Day when the *Flying-Poſt* came out, the laſt *Saturday* but one I think.

L. C J. But you talk'd of ſomething he ſhould ſay to you of going againſt his Conſcience.

Courtney. That was upon *Friday* Night laſt, I came to ſee Capt. *Blair*, and his Wife was with him, and Captain *Blair* was very ill, and clapping his Hands, and groaning, and moving himſelf, and in a very miſerable Condition, truly, I thought he was giving up the Ghoſt. I aſk'd him upon what Account he was ſo ſad? and told him I thought he had got ſome great Cold: He told me No. Well, ſaid I, Captain *Blair*, I underſtand you are going To-morrow to *Hicks's-Hall*, and I pray God direct you. *Says he ſeveral Times*, I pray God direct us all, Life is ſweet. Oh! ſays his Wife, dear Sir, he would never do it, but to ſave his Life; but it goes againſt his Conſcience: So ſaid I to him, you have had the Character of an honeſt Gentleman; I hope you will ſhew yourſelf ſuch, and I pray God direct you: I wiſh no Man's Blood may lie at your Door. Says he, I am an unfortunate Man; that is the thing that troubles me; or ſomething to that Purpoſe; which ſhewed all the Remorſe of Conſcience which could be in the World. I ſpoke of this innocently among the Priſoners, and it ſeems, it was communicated to Sir *John Freind*, and ſo I am brought here to teſtify it.

Mr. *Att. Gen.* Pray what ſay you to this, Capt. *Blair?* You hear what he ſays; do you give an Account what you know of it.

L. C. J. You hear what Diſcourſe he ſays he had with you; What ſay you to it?

Capt. *Bl.* My Lord, this Gentleman crowded himſelf in upon me; my Wife was with me, and he told me he had a Cup of Brandy, which would be good for me if I had a Cold. God knows my Heart, I deſired no Company might come to me. Says he, Capt. *Blair*, I have heard you have been an honeſt Gentleman all along; and you are going to *Hicks's-Hall* To-morrow; (and a great deal of ſuch Diſcourſe as that,) and I pray God Almighty direct you! That's all that I know paſs'd. I was very ill, very ſick, as I am far from being well now; but as for any thing of Remorſe of Conſcience, as I hope for Mercy and Salvation, I never expreſſed any ſuch thing to him.

L. C. J. Did your Wife ſay, that you were troubled, that you were going to do that which went againſt Conſcience, and you would not do it, but to ſave your Life?——Capt. *Bl.* No, I am ſure ſhe did not.

L. C. J. Did that Gentleman thruſt himſelf into your Company, or did you deſire him for to come to you?

Capt. *Bl.* No, he thruſt himſelf into the Room.

Courtney. The Sink was hard by, and I heard Captain *Blair* groan, and ſo I went in to ſee him; every Body had Acceſs to him.

Capt. *Bl.* Pray, where is the Keeper?

Keeper. Here I am, Sir.

Capt. *Bl.* Did not I beg of you for God's Sake, that no one ſhould come to me but my Wife?

Mr. *Att. Gen.* If the Keeper of the *Gate-houſe* be there, pray ſwear him.

(The Keeper of the Gate-houſe was ſworn.)

Mr. *Sol. Gen.* What do you ſay as to Captain *Blair*'s deſiring that no Body ſhould come to him, but his Wife?

Keeper. No body was to come to him unleſs they forced themſelves upon him.

Mr. *Sol. Gen.* Do you know of that Man's coming to him?

Keeper. No, Sir, I know nothing of it.

Capt. *Bl.* I always deſir'd to have the Door lockt with the Key on the Inſide, that no Body might come to me, but whom I had a Mind to.

Keeper. He did ſo, becauſe he was ill, and no Body did come to him that I know of.

Capt. *Bl.* My Wife being with me came to me to the Bedſide, while this Man was with me, and I was lying upon my Back; and ſaid ſhe, For Chriſt Jeſus's Sake, dear *Blair*, do not ſpeak any thing.

L. C. J. When was this?

Capt. *Bl.* When this Gentleman was with me, ſhe deſired me not to ſay any thing before him; becauſe, ſaid ſhe, I do not know but he may be a Trepan.

Courtney. Upon the Word of an honeſt Man, and my Reputation is as dear to me, as yours is to you, ſhe ſaid nothing of that. She told me, you were going to do that which was againſt your Conſcience, and you would not do it but to ſave your Life.

Mr. *Att. Gen.* Pray what is this Man committed for, you Keeper?

Keep. He is committed for Suſpicion of Treaſon.

Courtney. I have been taken up five times upon Suſpicion, and this laſt Time I was committed to the *Gate-houſe*.

Mr. *Att. Gen.* Where do you live, Sir?

Courtney. In *Old Southampton Buildings*.

Mr. *Att. Gen.* How long have you lived there?

Courtney. I have lodged there about four Years and an Half; there are ſeveral Perſons can come and give a Teſtimony of me.

Mr. *Sol. Gen.* How came you, Sir, to be brought as a Witneſs here?

Courtney. I was ſurpriz'd at it: for my part what I did was by way of Pity, ſeeing him in ſuch a Condition; I pitied your Soul, becauſe you and your Wife both ſhewed ſo much Trouble and Remorſe of Conſcience: As for Sir *John Freind*, I never ſaw him till To-day in all my Life, that I know of.

Mr. *Att. Gen.* What Countryman are you, Sir?

Courtney. I am an *Iriſhman* born.

Mr. *Att. Gen.* Have you any Eſtate in *Ireland?*

Courtney. No, Sir, I have not.

Mr. *Sol. Gen.* Pray, how came you to go to Mr. *Blair?*

Court. I have known him a long Time; I have been often in his Company at the Coffee-houſe; I cannot ſay I am intimately acquainted with Capt. *Blair*, but only as I have ſeen him in the Coffee-houſe a great many Times.

Mr. *Sol. Gen.* But I aſk you how you came to go to him; becauſe it ſeems he deſired nobody ſhould come to him but his Wife?

Courtney. He may ſay what he pleaſes; for he lay firſt in one Room, and then in another, and he could never go to the neceſſary Houſe, but he muſt go thorow my Room; but if you pleaſe to ſend for Mr. *Tooley* and Capt. *Courtney*, they will ſay and ſwear that theſe Things paſs'd in their Preſence, or to the ſame Purpoſe, except what paſs'd between him and me in his own Chamber. Enſign *Tooley* did read the Paper of the *Flying-Poſt*; and as for what he ſaid of his knowing nothing of the Plot, it was talked of up and down the Priſon, and ſo it came to me; and I invited him into my Chamber as my old Acquaintance; though I was not very familiar with him; and as he declared, he knew nothing of the Matter.

L. C. J. You hear what he ſays; Capt. *Blair*, did you tell him you knew nothing of the Plot?

Capt. *Bl.* Yes, I believe I might at firſt; as we were talking when I firſt came in, and I told him the Truth: for I was innocent as to the Aſſaſſination, for indeed I was ſo; and as to the Invaſion there was only ſome general Diſcourſe, and I was not willing to explain myſelf among ſuch People as they were, when they aſked me any Queſtions about it: I had to do with the King and Counſel.

L. C. J. Sir *John Freind*, have you any more Witneſſes to examine?

Freind. Yes, my Lord, I deſire Mr. *King* may be called.

(Which was done, and he appeared.)

L. C. J. There he is, Sir, what would you aſk him?

Fr. I deſire to know of him, whether he does not know Capt. *Blair* and Capt. *Porter* to be Roman Catholicks, and whether he does not know me to be a Proteſtant.

King. I am of Opinion Mr. *Porter* is a Papiſt; he was always taken to be ſo at *Epſom*, where I uſed to go, and where he uſed to go, and he was never looked upon as a Proteſtant.

L. C. J. And what do you take Sir *John Freind* to be?

King. I take Sir *John Freind* to be a Proteſtant; ſo he is, and ſo he ever was.

Fr. But when you have been in my Company, and they have been ſpeaking of the Government, what have I ſaid or done?

King. Whenever they ſtarted any reflecting Words upon the Government, he was uſed to ſay, Forbear, I do not admit of any ſuch Diſcourſe.

Mr. *Att. Gen.* How long have you known him?

King. He has been my Acquaintance this fifteen Years, and married a Relation of my Wife's Huſband. *(At which there was very great Laughing.)*

King. I mean her former Huſband.

L. C. J. He has reconcil'd the Matter very well for this Point; for he tells you he meant her firſt Huſband.

Freind. Ay, my Lord, no doubt of it, he will recover it; it was her former Huſband. Mr. *King*, don't you mean it was her former Huſband?

King. Yes, Sir, I have told you it was ſo; her former Huſband's Name was *Thomas Caſe*.

L. C. J. Mr. *Tanner*, you are to look upon two Statutes, the one is 3 *Jac.* 1. *Cap.* 4. and the 30th *Car.* 2. *Cap.* 2.

King. My Lord, I have heard him ſay, if I had not taken the Oaths to King *James*, which Oaths are binding to my Conſcience, I could as freely take the Oaths to the preſent Government, as any Man in *England*; but I will live peaceably and quietly under the Government: but becauſe I do not take the Oaths, I am double taxed, and I will pay it.

Freind. My Lord, I deſire Capt. *Kaines* may be call'd. *(Who appeared.)*

L. C. J. What do you aſk him, Sir?

Fr. Capt. *Kaines*, I deſire to know of you, whether Mr. *Porter* and Mr. *Blair* are Roman Catholicks; and I deſire you to ſpeak as to myſelf, what I am.

Kaines. They are ſo reputed to be at *Epſom*; it was always ſo reported there; and I have been acquainted with Sir *John Freind* ſeveral Years, being concern'd together in the Train'd-bands of the Tower-Hamlets, and I have been in his Company ſeveral Times ſince the King came in, and never heard him give any reflecting Language againſt the Government in my Life.

L. C. J. Have you done with him, Sir?

Freind. My Lord, I did not hear him; but I ſuppoſe he has declar'd, as to Capt. *Porter* and Capt. *Blair*, that they are Catholicks.

L. C. J. He ſays, *Porter* and *Blair* are reputed Papiſts; and he has known you a long time, and been concern'd with you in the Train'd-bands, and never heard you reflect upon the Government ſince the King came in.

Fr. My Lord, I deſire to know, whether he believes me to be a Proteſtant?

Kaines. I did always take Sir *John Freind* to be a Proteſtant.

Fr. Then, next, I deſire Mr. *Carpenter* may be call'd. *(Who appeared.)*

L. C. J. What do you aſk him, Sir?

Fr. I deſire, Mr. *Carpenter*, that you will acquaint the Court, whether you know Capt. *Porter* to be a Roman Catholick, and what you know of me?

Carpenter. I have been at *Epſom* ſeveral Summers, and uſually am there in Summer-time, and he was ſo reputed there: But as to Sir *John Freind*, I have known him above theſe twenty Years; I keep a Brew-houſe, as he does, and we have been concerned together, and have had ſeveral Occaſions, upon the Account of Trade, to meet him upon Particulars of Appraiſement, when any Partners came in, and I never knew him but very orderly and civil; I never heard him reflect any thing upon the Government, but was always peaceable and quiet: He was always looked upon as a Proteſtant, and went to Church. That's all that I can ſay.

Freind. My Lord, as to the Statute-Book, will your Lordſhip pleaſe that the Statute-Book be ſent for?

L. C. J. Yes, yes, we do not forget it. Have you any more Witneſſes? Call all your Witneſſes, and we will conſider of that afterwards.

Fr. I deſire Mr. *Hawkins* may be called. *(Who appeared.)*

L. C. J. What ſay you to this Gentleman?

Fr. I deſire you, Mr. *Hawkins*, to give an Account what I am; whether you know me to be a Roman Catholick or a Proteſtant?

Hawkins. I have known Sir *John Freind* theſe twenty odd Years, and have had Dealings with him many times before the Change of Government, and ſince, I never heard him reflect upon the Government; nor never heard him to ſpeak ſlightly of it: And as to his being of the Proteſtant Religion, I do know as much as any Man, as much as another; I alway believed him to be a Proteſtant of the Church of *England*, as good as any Man alive; he always went to Church.

L. C. J. What, ſince the Revolution?

Hawkins. I have not been ſo converſant with him ſince that, becauſe I went

I went out of Town, and liv'd out of Town; but I believe there are thoſe at *Hackney*, that can give an Account of that Matter.

Fr. I deſire Major *Mould* may be called?

L. C. J. Then I ſuppoſe you have done with Mr. *Hawkins?*

Fr. Yes. (*Then Major* Mould *ſtood up.*)

L. C. J. Well, what ſay you, Sir?

Mould. My Lord, I have known Sir *John Freind* many Years, above theſe twenty Years, and I always look'd upon him as a ſincere Proteſtant; and I have often been in his Company ſince the Revolution, and I never heard him ſpeak diminiſhingly of the Government. I believe him to be as good a Proteſtant as any in *England.*

L. C. J. How! as any in *England?* That's a great Character.

Fr. Then, I deſire Dr. *Hollingſworth* may be called. [*But he did not appear.*] —— *Fr.* Then, my Lord, I deſire Mr. *Lupton* may be called.

L. C. J. There is Mr. *Lupton*, what would you have with him?

Fr. I deſire he will give an Account what he knows of me, what Religion I am of?

Lupton. My Lord, as to Sir *John Freind*, I have known him this ten Years; he was pleaſed to employ me as a Chaplain in his Houſe a conſiderable Time, both before and after the Revolution; and after the Revolution we always uſed the Prayers according to the Church of *England*, and we did always pray for the preſent King, and the late Queen *Mary*, at which Sir *John* was many times preſent.

Mr. *Att. Gen.* How long is it ſince you left him?

Lupton. About four or five Years, as I remember: Then Sir *John*'s Family leſſened; he was pleaſed to ſay to me, Mr. *Lupton*, I am going to *Tunbridge*, and my Family leſſens, (this is about five or ſix Years ago,) and I ſhall have no Occaſion for you at preſent; but if ever I make uſe of a Chaplain again, I will make uſe of you: This he was pleaſed to ſay.

L. C. J. How long is it, do you ſay, that you have left him?

Lupton. About five Years; and as to any Objection of his being a Papiſt, I have often diſcourſed with Sir *John Freind* about the Popiſh Religion, and he has often ſpoken with Deteſtation of the Principles of the Papiſts.

Freind. What have you heard me ſpeak of the *French*; and about any thing of an Invaſion, how I would venture my Life for the Proteſtant Religion, or any thing of that?

Lupton. I have often heard you ſay, as to the preſent Government, that though you could not comply with it, yet you would live peaceably under it. When we have been talking of theſe Things, you ſaid you never would be in a Plot; and tho' you could not comply with the preſent Government, yet you would never concern yourſelf in any Deſign againſt it. For my part, my Lord, I know nothing by him, but that he is an honeſt and a worthy Gentleman, tho' he be ſo unfortunate to be under this Accuſation.

Fr. I deſire Mr. *Hoadley* may be called. [*Who appeared.*]

L. C. J. Well, what ſay you, Sir?

Fr. Pray, Mr. *Hoadley*, will you give an Account to the Court what you know of my being a Proteſtant, and of my Life and Converſation?

Hoadley. I believe Sir *John Freind* is a very ſettled Proteſtant in the Church of *England*; and I have Reaſon to believe ſo, becauſe I have frequently diſcourſed with him, becauſe I have had a Couple of Children that were his Nephews, upon whoſe Account I have been forced ſeveral times to wait upon him; and he has often ſaid he never would be in any Plot, and his Words that he uſed to me were really very remarkable, *Catch me in the Corn, and put me in the Pound.*

L. C. J. What were his Words, Sir?

Hoadley. He uſed to ſay he would never be in any Plot; for, ſays he, *Catch me in the Corn, and put me in the Pound:* and I have heard him expreſs himſelf with a great deal of Deteſtation of King-killing, and thoſe Principles of the Papiſts, the Aſſaſſinating of any crowned Head.

Mr. *Att. Gen.* Pray, Sir, how came you to diſcourſe with Sir *John Freind* about King-killing and Plots? You are a Schoolmaſter it ſeems; how happen'd this Sort of Diſcourſe between you?

Hoadley. There will be Diſcourſes about theſe Things ſometimes.

Mr. *Att. Gen.* But, pray, how was the Diſcourſe introduced? What was the Occaſion of the Diſcourſe? Sure there was ſome Occaſion extraordinary for him to expreſs himſelf to you.

Hoadley. I cannot remember the particular Occaſion, but ſuch Diſcourſe there was.

Mr. *Att. Gen.* Pray, how long ago is this time that this Diſcourſe was?

Hoadley. I believe it was five or ſix times within theſe two Years.

Mr. *Att. Gen.* What, have you had the ſame Diſcourſe five or ſix times one after another?

Hoadley. I cannot ſay that; but thoſe uſed to be his Words.

Mr. *Att. Gen.* What, in common Diſcourſe?

Hoadley. He ſaid he would never be in any Plot.

Freind. My Lord, I can bring a great many more Witneſſes of this kind, and I believe I could have a thouſand to prove me a Proteſtant.

L. C. J. Call whom you will, Sir *John*, we will hear them.

Fr. My Lord, I am very loth to trouble you.

Mr. Juſtice *Rokeby.* No, it will not be reckoned any Trouble, we will hear all your Evidence.

Freind. There is one Mr. *Willis* and one Mr. *Hemings*; but I deſire it may not be forgotten as to the Acts of Parliament, for they are very material for me, as I ſhall ſhew by and bye. (*Mr.* Willis *appeared.*)

L. C. J. Well, what ſay you to this Gentleman?

Fr. Mr. *Willis*, I deſire you'd give an Account to their Lordſhips, what you think of me, as to my being a Proteſtant, and how I have behaved myſelf in every Reſpect all along?

Willis. My Lord, I have always taken it for granted, that thoſe that come to Church are Proteſtants; and I did always take Sir *John Freind* to be a Proteſtant. The Acquaintance I had with him was ſince he lived in the Pariſh of *Hackney*, and we have had ſome Converſe together; and there have paſt friendly Viſits between us; and I do not remember any Diſcourſe while I was there that tended to the Government one Way or another. I was never very often with him, but his Diſcourſe was always very obliging, diſcreet, and prudent, whenever I was there.

L. C. J. Pray, Sir, when did you ſee him at Church?

Willis. Truly, my Lord, I cannot call to mind when it was.

L. C. J. Cannot you name any time?

Willis. He may be at Church ſometimes, and I not ſee him; our Seats are at a Diſtance from one another, and there are Pillars between, that one can't ſee every Body; and I cannot call to mind when I did ſee him laſt at Church.

L. C. J. Has he been there within this Year or two?

Willis. He has been gone from *Hackney* a Year and above.

Mr. *Mountague.* Pray can you ſay you have ſeen him at Church within theſe four Years?

Willis. Truly I cannot call to mind whether I have or no.

Freind. I deſire Mr. *Hemings* may be called. I could call a great many more, but they are much to the ſame Effect as theſe are.

L. C. J. Call whom you will; Sir *John*, if you think fit to call them, we will hear them.

Fr. Being they are not here, I will not trouble you farther; it is all to the ſame Purpoſe.

L. C. J. Well, take your own Courſe; if you'll call them, the Court will be ſure to hear them.

Fr. But, my Lord, here is one Thing that I muſt deſire your Lordſhip's Direction in: If theſe Gentlemen, my Lord, Capt. *Porter* and Capt. *Blair*, who are the two Witneſſes, and none but thoſe two againſt me, if they are Papiſts, they are not good Witneſſes againſt a Proteſtant, to prove him a Traitor within the Statute of the 25th of *Edward* the Third. For the Statute ſays, He that is indicted muſt be proveably attainted; which cannot be by the Evidence of Papiſts, and thoſe that refuſe to take the Oaths of Obedience, which are required to be taken: And therefore I humbly beſeech you, that you will pleaſe to tender them the Oaths, for there is a Statute in the 3 *Jac.* 1. *Cap.* 4. which appoints the tendering of the Oaths to them.

L. C. J. That is not our Buſineſs at this Time.

Fr. Then I muſt beg your Pardon that they are not ſubſtantial Witneſſes; for this is the Law, as I am inform'd. I humbly ſubmit to your Lordſhip, whether this be not the Law. I only ſpeak it to know whether it be convenient for me to rehearſe it. I aſk'd the Queſtion before they were ſworn. I know not whether it be convenient for me to move it now.

L. C. J. Ay, ay, it is very convenient now; now is the proper Time.

Freind. Before ever they were ſwore I would have aſk'd them the Queſtion, whether they were Papiſts or not, but it was not allow'd, it was over-rul'd: Now, my Lord, there is ſuch a Statute, and I humbly beſeech you to tender them the Oaths, and that would be a Demonſtration that they were Papiſts, and then they could be no good Witneſſes.

L. C. J. You ſay well, if we could find ſuch a Statute, that no Papiſt ſhould be a Witneſs; but there is no ſuch.

Freind. My Lord, I beg your Pardon, and I hope you will not take it amiſs; I offer what I am adviſ'd to offer.

L. C. J. No, no, by no Means, there will be nothing taken amiſs.

Freind. For the Statute of the 25th of *Edward* the Third, and that of the 30th of King *Charles* the Second, and that of the 3d of King *James* the Firſt, *Cap.* 4. here it is plainly demonſtrable, that Papiſts are not to be believ'd againſt any Proteſtant, who is with them eſteem'd a damnable Heretick; and then they believe the Pope and their Prieſts can abſolve them from all Oaths, and they are declared to be given to Evaſions, and Equivocations, and mental Reſervations, and can have Diſpenſations for all their Villainies; and therefore they are not to be credited: Their Evidence is of no Value, unleſs they will in this Manner upon their Oaths renounce theſe Principles: Therefore I humbly beg they may have the Oaths tender'd them.

L. C. J. That is not our Buſineſs now.

Freind. And, my Lord, your Lordſhip was pleaſed to promiſe me that if any Matter of Law did ariſe, my Counſel ſhould be heard.

L. C. J. Firſt, let us know, whether there be any ſuch Law as this you mention, or to any ſuch Purpoſe.

Freind. My Lord, I deſire my Counſel may come in, and ſpeak to it: For my Life is in Danger, and ſo is every honeſt Gentleman's Life every Day. I am as clear as the Child unborn, I have no Witneſſes to prove any thing, and therefore I deſire my Counſel may be heard.

L. C. J. If the Court did think there were any Colour in this Objection that you make, we would let you have Counſel: We would do it; nay, we are deſirous to do it if it could.

Freind. What, my Lord?

L. C. J. To allow you Counſel, if there were any Colour in this Objection in Relation to Papiſts not being Witneſſes. I would be glad to ſee the Counſel that would own this Objection; but indeed, I ſee no Colour in it: The Statute ſhall be produced that you quote, and then we ſhall ſee, whether there be any thing like it in that Statute. Pray will you read thoſe Words that you ſay are in that Statute to that Purpoſe?

Freind. I am not ſo expert to know the Words before and after; and therefore I think it is requiſite I ſhould have Counſel.

L. C. J. It is ſuppoſed you have had Counſel, and I ſuppoſe your Counſel that have adviſed you to make this Objection, have inſtructed you whereabouts in the Statute it is.

Fr. My Lord, I deſire my Counſel may be call'd in and heard to it.

L. C. J. I tell you, that by Law we cannot hear Counſel to any ſuch Matter that has no Colour of Objection in Law in it; tho' for my Part, I wiſh we could, becauſe I would fain hear what any Counſel can ſay to make out ſuch an Objection, that Papiſts are not good Witneſſes.

Fr. My Lord, I wiſh you would hear my Counſel to it.

L. C. J. Look ye, Sir *John Freind*, you have deſir'd that this Statute may be turned to, and you deſire to have them read, and they ſhall be all read from the Beginning to the End.

Fr. I deſire the Statutes of the 25th of *Edward* the Third, the 3d of K. *James* the Firſt, *Chap.* 4. and the 30th of K. *Charles* the Second, may be read.

L. C. J. What Chapter is that of the 30th of K. *Charles* the Second?

Fr. Really it is not put down in my Paper.

L. C. J. Then look out the Chapter, while he is reading the other. Look ye, Gentlemen of the Jury, Sir *John Freind* does deſire the Statute of the 25th of *Edward* 3. may be read, which is the Statute about Treaſons, and the Statute upon which he is indicted, and it ſhall be read, therefore pray hearken to it.

Cl. of Ar. (*Reads it.*) This is made in the 25th Year of K. *Edward* the Third.

Third. *A Declaration which Offences ſhall be judged Treaſon.* Item, *Whereas divers Opinions have been before this Time, in what Caſes Treaſons ſhall be laid, and what not.*

Fr. My Lord, I beg the Favour I may ſpeak one Word before it go on to be read. —— *L. C. J.* Yes, with all my Heart.

Fr. I ſpeak it, my Lord, becauſe it will be to the very Thing now in Queſtion; I am adviſed that Conſultation to levy War is no Treaſon, without Rebellion and Inſurrection; and inviting Men to come from beyond Sea is no Treaſon, unleſs a Foreign Prince be invited to come with his own Subjects; for *Engliſh*, *Scotch*, and *Iriſh* are not Enemies, but Rebels, and to be dealt with otherwiſe; therefore I leave it to your Lordſhips, for I am no Lawyer, only I am adviſed to inſiſt upon theſe Things.

Then the Statute of the 25th of Edward III. *about Treaſons was read throughout, only about the middle the Priſoner made ſome Interruption.*

Fr. I believe this Statute is not the Statute I go upon; that which I mainly inſiſt upon, is the Statute of the Third of King *James* the Firſt, *Cap.* 4.

Mr. Juſt. *Rokeby.* This is the ſame Statute you are indicted upon, the great Statute for Treaſons; and as to your Objection laſt mentioned, what is Treaſon and what is not, he is not yet come to that Part.

Fr. Well then, let him go on with it. (*It was read to the End.*)

L. C. J. Now it has been read, is this the Statute you would have?

Fr. There muſt needs be a Miſtake as to the Chapter, it is ſet down the 25th of *Edward* III. but there is no Chapter.

L. C. J. Yes, this muſt be the Statute, it relates to Treaſons, and it has thoſe Words in it, that what you read out of your Papers relates to. Well, that we may go on in Order of Time, what Statute of King *James* is it that you mention?

Fr. It is the 3d of King *James* I. *Cap.* 5. it is upon Account of tendering the Oaths appointed to be taken by that Statute, and (*reading out of a Paper*) to tell the Court that they ought to have the Oaths tendered them.

L. C. J. That is the Buſineſs of another Time; read the Statute.

Cl. of Ar. An Act for the Diſcovering and Repreſſing Popiſh Recuſants. What Part is it? —— *Fr.* Truly, my Lord, I can't tell.

L. C. J. It is a long Statute, but if he'll have it read, it muſt be read all.

Fr. My Lord, I would not give the Court any Trouble, but it is about having the Oaths tender'd to them.

Cl. of Ar. I believe this is the Paragraph, *And for the better Trial how his Majeſty's Subjects ſtand affected in Point of their Loyalty and due Obedience*, &c.

(*A great Part of the Statute was read, relating to that Matter.*)

L. C. J. What elſe would you have read, Sir *John Freind?*

Fr. I only gather from thence, that no Roman Catholick is capable of Swearing againſt a Proteſtant, becauſe the Pope and the Prieſts can abſolve them from their Oaths.

L. C. J. Well, what have you more to ſay?

Fr. My Lord, I only ſpeak this as to Roman Catholicks, they do not regard an Oath againſt a Proteſtant, becauſe they have their Prieſts that can abſolve them, and therefore how ſuch a Man's Oath can weigh any thing, I cannot apprehend; therefore if I have omitted any thing, I hope your Lordſhip will ſupply it, as you are my Counſel; for you are a Counſel for me, as well as the King.

L. C. J. Yes, yes, I would help you in any thing I could.

Fr. My Lord, I thank you; I deſire you to help me, for I am as innocent as the Child unborn, whatſoever theſe Men have ſworn: Theſe are hard Things that are laid upon a Gentleman, and no Man is ſafe at this Rate, they being ſworn by two Papiſts, who will ſwear any thing againſt Proteſtants.

L. C. J. Look ye, Sir *John Freind*, have you any Witneſſes to produce, that theſe two Men have any Diſpleaſure or Malice againſt you, that they ſhould accuſe you falſely?

Fr. My Lord, I am ſorry I have not my Witneſſes; I have been ſo kept up, that I had not Time for People to come to me; I had not my Counſel come to me before *Saturday*.

L. C. J. How happen'd that?

Fr. My Lord, there was a Miſtake in that, I think it was *Friday*, either *Friday* or *Saturday*; I had them not till *Friday* in the Afternoon: I was kept ſo cloſe that none were permitted to come at me: On *Thurſday* I had an Order, but there was a Miſtake in the Order, and I deſired to get another Order, but I could not get any Body to get another Order for me, to have my Friends to go and enquire into Things, or elſe I ſhould have found out enough of Witneſſes.

Mr. *Att. Gen.* I am ſure he had an Order for Counſel, at the ſame Time that Notice was given him of his Trial.

L. C. J. When was that? —— Mr. *Att. Gen.* On *Tueſday*, my Lord.

L. C. J. What ſay you to it, Mr. *Baker?*

Mr. *Baker.* My Lord, I did attend Sir *John Freind* on *Tueſday* laſt, to give him Notice of his Trial as this Day; and I at the ſame Time told him if he would name his Counſel to me, I would procure an Order for them to come to him. The next Morning he was pleaſed to name to me Sir *Bartholomew Shower*; I took the Liberty to tell him, that he being ſo concerned at the Houſe of Lords, and at the Committee about Parliamentary Buſineſs, ſome other Perſons that had named him of their Counſel, notwithſtanding Orders were procured for him to go to them as their Counſel, yet by that Means they were diſappointed of him, and great Delay was given to the Priſoners; and therefore I deſir'd him to conſider of it, and to ſend to Sir *Bartholomew Shower*, and any other Counſel that he had a Mind to, and know their Pleaſures, whether they would attend him; and if he would ſend me Word, I would procure an Order for him. But not hearing from him, I went on *Wedneſday* to him again, and he ſaid he had ſent to Mr. *Northey*, but he would not come to him till he had ſpoke with Sir *Bartholomew Shower*, but he would ſend me Word that Night, yet he did not. But the next Day came Mr. *Burleigh* to me to the Duke of *Shrewſbury*'s Office, and brought me the Names of the Perſons that he would have aſſign'd him of Counſel, and immediately I procured an Order for it, and away he went with it. This was upon the *Thurſday*; Mr. *Welden*, and Mr. *Creſſet*, or one of them, were named in the Order, I am not poſitive which, and Mr. *Underhill*, and Mr. *Burleigh* were to be admitted to him. Mr. *Burleigh* had the Order; if he did not carry it to him, I can't help that.

L. C. J. When was that Order for the Counſel?

Mr. *Baker.* It was upon *Thurſday*, my Lord.

Fr. My Lord, may I ſpeak?

L. C. J. Yes, yes, what you will.

Fr. My Lord, the Reaſon why I had not my Witneſſes was this: There was a Gentleman, one Colonel *Caſh*, Lieutenant to my Lord *Lucas*, he undertook to go, and put in his Name, and three more, one *John Neale*, and one *Phillips* to have an Order to go about to look after my Witneſſes; but they did not put in any one of their Names, but they took up and ſecured my Kinſman *Caſh*, and put him into the Meſſenger's Hands, and would not ſuffer me to have any of his Aſſiſtance; therefore I ſaw what a Deſign there was upon me.

Mr. *Att. Gen.* As for Mr. *Caſh*, there was very good Reaſon for it, he was ſecured for Suſpicion of Treaſon.

L. C. J. If you had wanted any Witneſſes, and had not been ſo fully prepared as you expected to be, you ſhould have moved before the Trial came on to put it off.

Mr. Juſt. *Rokeby.* But my Lord put a Queſtion to you before, Can you ſhew any Reaſon why theſe Perſons ſhould have any Malice againſt you?

Fr. My Lord, I was not ſo much a Lawyer as to know theſe Things; but it's a hard thing, that a Man that's innocent muſt ſuffer at this Rate: I have been diſappointed in every thing; for theſe Gentlemen have not been permitted to anſwer, whether they are Roman Catholicks or no.

Mr. J. *Rokeby.* Nor have your Witneſſes prov'd that they are Roman Catholicks, but only that they are reputed ſo.

L. C. J. Well, I can't tell what Avail that would have been of, if they had been proved ſo. Have you any more to ſay, Sir *John Freind?*

Fr. No, my Lord, I leave it to God, and you, and the Jury to conſider of it.

Mr. *Sol. Gen.* May it pleaſe your Lordſhips, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King, againſt Sir *John Freind*, the Priſoner at the Bar; and it comes to my Turn to ſum up the Evidence that has been given. Sir *John Freind*, the Priſoner at the Bar, cannot but own, that he hath hitherto had a very fair Trial, and he ſhall have no Reaſon to complain, that I do him any Injury in my Part. I am ſure both he, and you, and all of us, very well remember, when Perſons of as good Quality as he is, or better, had not the ſame Uſage or Liberty of Defence, in ſuch Caſes as this Gentleman has had: And tho' all Things are very well now, yet the Time was, within all our Memories, when Innocency was no Safety for a Man's Life, much leſs for his Liberty; and when thoſe two are taken away, and are invaded, Property ſignifies nothing. The Time was, when the Proteſtant Religion, and the Church of *England*, of which the Priſoner boaſts himſelf to be, (and for a very good Reaſon, becauſe it is the beſt of Religions,) I ſay, the Time was, when that was in Danger; and when Popery (for which he now reflects upon the Witneſſes) was like to have over-run both us and it; and if his Majeſty, with the Hazard of his Life, and at a great Expence, had not reſcued us, there is nobody doubts, but that all that we feared at that Time, would have been made good upon us ere now. And it is a melancholy thing to conſider, that there ſhould be a ſort of People amongſt us, ſo in Love with what we then dreaded, as to be continually endeavouring to bring it about again. And it is an ungrateful thing, when his Majeſty ventured his Life then, and has done it ſeveral Times ſince to defend us, and does all that he can to keep our Enemies at a Diſtance, there ſhould be a Party of Men, that do what they can to invade their Country, to deſtroy his Majeſty's Subjects, and to fall upon himſelf, when he is preſent amongſt us. I will not accuſe the Priſoner at the Bar particularly, though it is plain he knew of it.

Fr. Know of it? I declare before God, and the World, I know nothing of it.

Mr. *Sol. Gen.* This, if it were among Equals, were certainly a moſt ungrateful thing, when another Perſon is fighting in my Defence, that I ſhould deſign againſt his Life; or when he does what he can to protect my Eſtate, I ſhould be invading and ſpoiling his.

Gentlemen, if the Priſoner at the Bar is not Guilty of what he is accuſed of, and what you have heard the Witneſs give Evidence of, then nothing of this doth relate to him: But if what has been given in Evidence againſt him is true, then the Priſoner at the Bar is one of thoſe Perſons, that has done all he can to make this Country, which has been the Place of Retreat for all Proteſtants to fly to, from Perſecution in their own Countries; I ſay, to make it as unſafe for them, as that from which they came.

Gentlemen, The Evidence againſt him is, firſt, Mr. *Porter*, and he gives it in Evidence, that at the *Old King's Head* in *Leadenhall-ſtreet*, there was a Meeting of the Priſoner, and *Porter*, and ſeveral others, in order to conſider the beſt Means, how to bring back the late King *James*; and they concluded at laſt, that the beſt Means would be to ſend ſomebody into *France*, to adviſe the late King *James* to borrow of the *French* King 10000 Men, 1000 Horſe, 1000 Dragoons, and 8000 Foot, and that he ſhould make what Speed he could to land with them here; and to encourage and invite him to do ſo, they promiſed him their Aſſiſtance, and they did not doubt but to be ready to meet him with 2000 Horſe at his Landing.

Gentlemen, The Perſon that was pitched upon to go upon this Errand, was Mr. *Charnock*, a Perſon lately executed for the Treaſons of which he was attainted. Mr. *Charnock* was diffident whether this was the Effect of ſober Conſideration, and therefore would not undertake to carry this Meſſage 'till there had been another Meeting of the ſame Perſons; to ſee whether they continued in the ſame Mind. Another Meeting accordingly was appointed, and agreed upon, and that was at Mrs. *Mountjoy*'s Tavern at St. *James*'s, and there, he ſays, there were almoſt all the Perſons that were in *Leadenhall-ſtreet*; and at that Meeting the Queſtion being aſk'd, Whether they were of the ſame Opinion, that Mr. *Charnock* ſhould go to *France* to the late King upon that Meſſage, that I told you of before? they did all agree to abide by the old Reſolution; that he ſhould go, and make as ſpeedy a Return as he could, and bring back the late King's Anſwer.

Captain *Porter* tells you, that Mr. *Charnock* did go to *France*, and comes and brings Word back, that the *French* King could not at that Time ſpare that Force that was then deſir'd; and ſo it was delay'd at that Time, becauſe the *French* King was not at Leiſure then to employ his Men in this Service; but it was likely to have taken Place, but very lately, if the Providence of God had not prevented it.

Gentlemen, our next Witneſs is Captain *Blair*, and he tells you, That about Two Years ago, Sir *John Freind*, the Priſoner at the Bar, ſhew'd him a Commiſſion that he had receiv'd from the late King *James*, to raiſe a Regiment of Horſe, of which he was to be Colonel; that this was ſigned *James Rex* at the Top, and counterſigned by my Lord *Melford*, and it was in Paper. And that there were a great many Conſultations between Sir *John Freind*, himſelf, and others, about the Raiſing of this Regiment, and providing Officers for it. He tells you he was to have been Lieutenant Colonel, and was to procure as many Officers and Troopers as he could; and he tells you, he did procure ſeveral Officers; and he names them; one *Fiſher* was to be eldeſt Captain, one *Vernatti*, and one *Hall*, and one *Bertham*, and that *Bertham* was to be Lieutenant to *Blair* in his own Troop.

Gentlemen, a great deal of the Evidence which Captain *Blair* has given, is indeed out of Sir *John Freind*'s own Mouth, and that is as ſtrong an Evidence as poſſibly can be given; and he does for that Purpoſe tell ye, that he ſaid one *Evans* was to be a Captain of Horſe, and one Colonel *Slater* was grown ſo much in Sir *John Freind*'s Favour, that he rivalled Captain *Blair*, in the Opinion of Sir *John Freind*; and Sir *John Freind* for that Reaſon would have two Lieutenant Colonels, whereof *Slater* was to be one. Captain *Blair* ſays, he took that amiſs, that any one beſides himſelf ſhould be in that Poſt, and reſented it to Sir *John Freind*; and therefore Sir *John Freind* found out another Office for *Slater*; and that was to be a Captain of a Troop of Horſe, that ſhould conſiſt of Non-ſwearing Parſons, and which were to be an independent Troop.

Gentlemen, He tells you that he did liſt ſeveral Men, but the particular Perſons, though he has named the Officers, he did not ſo diſtinctly remember, but they are in the Paper that he delivered to the Counſel, which he has not about him: He tells you, that Sir *John Freind* told him, that one *Richardſon* was another Captain of Horſe, and the like of one Mr. *Cole*, that he was to be a Captain likewiſe.

He alſo acquainted you, Gentlemen, that he did receive from Sir *John Freind* ſeveral Sums of Money, and he acquaints you in particular with the Manner how; he ſays that Sir *John Freind* had expended 100*l.* towards the 300*l.* that was paid for the Eſcape of Colonel *Parker* out of the *Tower*; and that Sir *John Freind* was to be reimburſed by Monies that were to be tranſmitted from King *James* at *St. Germains*. He tells you that *Piggott* had received the Money, but did not deal with Sir *John Freind* ſo fairly as to pay it to him; but when Captain *Blair* was preſſing on Sir *John Freind* for ſome Money, Sir *John Freind* was contented that he ſhould have 20*l.* provided he got it from *Piggott* out of this 100*l.* Captain *Blair* had not Intereſt enough it ſeems to get it himſelf from *Piggott*, but he applies himſelf to one *Harriſon* or *Johnſon*, (for it ſeems he goes by both thoſe Names) a Prieſt, who had an Intereſt in *Piggott*, by which Means he got 20*l.* of *Piggott*, and this he ſays was in *June* or *July* laſt.

Then, Gentlemen, he tells you afterwards, he was preſſing upon Sir *John Freind* to have another 20*l.* and Sir *John Freind* was contented he ſhould have it, provided he had it from *Piggott*, and he produces ye a Letter that was from that very Perſon, the Priſoner at the Bar, which is to that Purpoſe; excuſing himſelf that Captain *Blair* had not heard from him, but that he would meet him at ſuch a Time, and at ſuch a Coffee-houſe. The Matter indeed is not directly expreſs'd in Words, but at the Time and Place the Priſoner did meet *Blair*, and there was *Harriſon* and this *Piggott*, and there 5*l.* of the laſt 20*l.* was paid him; and the other 15*l.* was paid him afterwards; and he ſwears theſe Two Twenty Pounds were paid to him by Sir *John Freind*, upon Account of the Charge that *Blair* had been at in drinking with, and treating thoſe Men who were to be engaged with Sir *John Freind* in his Regiment.

Gentlemen, he tells you likewiſe, that Sir *John Freind* told him he had written a Letter to King *James*, and he ſhewed him this Letter, and this was at that *Piggott*'s Mother's Houſe; and when *Blair* read it, he tells you he thought it was ſo well penned, that he did apprehend *Ferguſon* muſt have a Hand in it, and that it was none of Sir *John Freind*'s own; and that upon this Sir *John Freind* was angry, that he ſhould ſuſpect that Sir *John* was not the Writer of this Letter; all this ſhews an Intelligence with King *James*, and makes out all the reſt of the intended Invaſion by King *James*, and a *French* Force here.

Captain *Blair* likewiſe tells you, Gentlemen, that Sir *John Fenwick* had Four Troops of Horſe, as Sir *John Freind* told him, by way of Encouragement, which were all ready for the Service; and that *Ferguſon* undertook to bring a Number of Men, and was to be one himſelf in that Party; and all this was to be put in Practice when the *Thoulon* Fleet came about, and join'd the *Breſt* Fleet. And laſtly he tells you, when he went in the Coach with Sir *John Freind*, Sir *John* told him they muſt act very warily, and be very good Huſbands, for in truth it had coſt him ſo much, that if the Fleet did not come ſoon, or the Deſign ſhould miſcarry, he ſhould want Money to carry on his Trade. All this poſitive Evidence is of the Witneſs's own Knowledge, from the Priſoner's own Mouth.

Againſt this Evidence, Gentlemen, he takes Exception; that the Two Witneſſes are Roman Catholicks; but this is no Exception to their Evidence at all; for it was never yet allowed, or indeed objected, that I know of, before, that Roman Catholicks were not good Witneſſes. A Roman Catholick may be an honeſt Man, notwithſtanding his Religion: But, I think, that every body knows that Men who have been ill in other Things, though Roman Catholicks, may, as to thoſe particular Things, be good Witneſſes. Nay, not long ago, but on *Wedneſday* laſt we produced ſome Witneſſes, who were Roman Catholicks, and yet allowed for good Evidence, though engaged in that horrid Conſpiracy againſt the Life of the King; and if any thing would have taken off their Evidence, certainly the Guilt of ſuch a Crime would do it, more than the Pretence of any particular Perſuaſion of Religion. Nay, I muſt crave Leave to ſay farther, that this Argument is ſo far from making him no Witneſs, that it makes it the more likely he does ſpeak the Truth, and therefore is a good Witneſs. For though Roman Catholicks may be honeſt Men, yet they are more likely to engage in ſuch a Deſign than any other Men. And I think I may very ſafely add, Sir *John Freind* would not have found ſo many that he could ingage in ſuch a Buſineſs as this, that were of any Religion but the Roman Catholick, and therefore he applied himſelf to theſe Perſons, as moſt likely to imbark with him on ſuch a Bottom.

Gentlemen, as to what *Courtney*, that was brought from the *Gate-houſe*, ſays about his Diſcourſe with Captain *Blair* in the Priſon; Captain *Blair* has upon his Oath declared, that he did not go ſo far as to ſay, he did any thing againſt his Conſcience, but only *Courtney* bid him take care what he ſwore, and preſs'd him no farther. He pretends he came caſually into *Blair*'s Chamber, but it is plain he intruded into his Room; for it is ſworn by the Jaylor, and *Blair* himſelf, that he had given Directions none ſhould come into his Room but his Wife, ſo that does not diſcountenance the Evidence of *Blair* at all; and if you do believe what our Witneſſes have ſaid, Captain *Porter* and Captain *Blair*, then Sir *John Freind* is guilty of all the Crimes that are charged upon him in this Indictment, and I hope you'll be ſo juſt to your Prince, to your Country, and to yourſelves, as to find him Guilty accordingly.

Mr. *Cowper*. If your Lordſhip pleaſes, ſpare me a Word on the ſame Side. My Lord, I do not trouble your Lordſhip out of an Apprehenſion that there is any thing neceſſary to be ſaid to the Court in this Matter, or for the Satisfaction of the Jury, but, if poſſible, that we might convince the Priſoner at the Bar, that he has had no hard Meaſure, in this Proſecution, meted to him, but that he is proved Guilty of the Crime of which he ſtands accuſed, and that really there is no Weight at all in the Defence which he has made.

The firſt Part of it goes to diſcredit one of our Evidences, Captain *Blair*, from ſome Diſcourſe that he would object to have paſs'd between him and the Perſon here produced, in the Priſon of the *Gate-houſe*. And the firſt Part of that Diſcourſe was, upon *Blair*'s firſt coming into the Priſon; and as to that Time, the Objection amounts to no more than this; That Captain *Blair* would not confeſs, when he was pump'd by a Fellow-Priſoner, that he was engaged in ſo horrid a Deſign. What Weight there is in ſuch an Objection, truly I cannot ſee, but will leave it to any Man's Judgment to conſider, That a Man, when he is freſhly taken up on ſuch an Occaſion, does not immediately confeſs his Guilt to every Body that meets him, nay, to Perſons that would not have lik'd him for making ſuch a Confeſſion, but perhaps would have deſtroy'd him in Priſon for ſo doing.

The other Diſcourſe was upon *Friday*, the next Day, I think, before Captain *Blair* went to *Hicks*'s-*Hall*, to his Examination; and then he intrudes himſelf into *Blair*'s Chamber, when he lay very ill upon the Bed, accoſts him with a Cup of Brandy in his Hand, and with good Advice at the ſame Time, that he ſhould take great Care in what he ſhould ſay at *Hicks*'s-*Hall*, and the like: And then Captain *Blair*, it ſeems, did expreſs ſome Reluctancy in the Thing he was going about, as if it were againſt his Mind and Inclination. If that were true, (though Captain *Blair* denies it poſitively upon his Oath) yet it was no more than, I am willing to obſerve for the Priſoner, Captain *Blair* did expreſs here, when he firſt came into Court; and it is no more than what is natural, ſince the Priſoner had been his Friend and Intimate, and he was going to depoſe that againſt him, which was likely to prove fatal to him.

My Lord, As to another Part of his Defence, it conſiſts chiefly in this: The Evidence brought to prove, that the King's Witneſſes are reputed Roman Catholicks, and that the Priſoner is a reputed Proteſtant of the Church of *England*. If that be true too, all that can be rationally and fairly collected from thence is this, that they (the Witneſſes I mean) when they engaged in ſuch a black and execrable Deſign, might be very good Papiſts; but I am ſure it will be agreed, That the Priſoner in ſo doing was a very bad Proteſtant.

My Lord, he objects to their Evidence this likewiſe, That, if they be Papiſts, they may be abſolv'd by the Pope, or their Prieſts, though they ſhould ſwear falſely. Poſſibly that may be ſo, for aught I know; I confeſs, I am not very well acquainted with the Principles of that Religion: But this I dare ſay, that every one, who has heard what has been ſworn by them, will think it ſo great a Diſſervice to the Popiſh Cauſe and Intereſt, that it will be one of the laſt Things their Prieſts will ever abſolve them of.

My Lord, there's another Matter the Priſoner has thought fit to inſiſt upon; he has brought two or three Clergymen to depoſe, that whenever he diſcourſed with them (it ſeems at all Times) he was talking about being in a Plot, and very readily told his Reſolution not to be in any. It ſeems it ſtill ſwam uppermoſt; his Profeſſions were made very cauſeleſly: For they all ſay nothing introduc'd them; but of his own meer Motion he was always declaring he was not then in a Plot, nor ever would be. I have heard, that one Way, weak Men and Children often diſcover their Knowledge of a Secret intruſted to them, is, by a repeated and unneceſſary declaring, that they know nothing of the Matter.

My Lord, in the next Place for his Defence, he juſt offered a Point of Law; but the Court ſo well ſatisfied him in that, that I think he waved it. He alledged, that a bare Conſpiracy to levy War is not Treaſon; and the Court did him right in declaring (as God forbid but they ſhould) that it is not Treaſon: But I deſire the Gentlemen of the Jury would conſider that the Priſoner at the Bar is not accus'd barely of a Conſpiracy to levy War, but you are told to what End that War was to be levied, to join the late King upon his Deſcent into this Kingdom with a *French* Power, in order to drive his Majeſty out of the Kingdom, and to depoſe him from the Crown; which is a Killing him in the Eye of the Law: And that is High-Treaſon, by whatever Means they intended to effect it; whether by War, or a Stab, or any other Manner, it is indifferent.

In the next Place, my Lord, I would not take Notice of another Part of his Defence, which had been better let alone, wherein he admits that he was preſent at the two Meetings he is accuſed to have been at by *Porter*; but he only differs in one Point, that there was nothing talked then but general and indifferent Diſcourſe. The Witneſſes have ſworn what the Diſcourſe was, and you will weigh the one againſt the other; his Affirmation of a Thing unlikely in Defence of himſelf, and what is depoſed upon Oath by the King's Witneſſes to the contrary.

My Lord, there is one thing more I would take Notice of, and that is the Evidence of Mr. *Bertham*, which we do not produce as a direct Evidence againſt the Priſoner at the Bar, but as a Confirmation of what was ſworn by *Blair*. And it does ſhew that the Matter ſworn by *Blair*, was not of late deviſed out of Malice, or otherwiſe, to deſtroy the Priſoner; for that *Blair* acquainted *Bertham* with, and diſcourſed him about the principal Matters of Fact, that are now ſworn, at leaſt Two Years ago; and beſides his Evidence and the Evidence of *Blair* concur in this Particular, that he was to be Lieutenant in *Blair*'s Troop.

My Lord, ſuch a Concurrence of Evidence and other Circumſtances in this Matter, greatly increaſe the Weight of the Proof againſt the Priſoner, eſpecially when there is nothing material alledged by him in his Defence, and therefore I ſhall trouble your Lordſhip no further.

L. C. J. Look ye, Gentlemen of the Jury, Sir *John Freind*, the Priſoner at the Bar, is indicted for High-Treaſon. The Treaſon that is mentioned in the Indictment is Conſpiring, Compaſſing, and Imagining the Death and Deſtruction of the King. To prove the Conſpiracy and Deſign of the King's Death, there are two principal Overt-Acts that are mainly inſiſted upon. The one is the Conſulting and Agreeing with divers others to ſend Mr. *Charnock* into *France* to King *James*, to deſire him to perſuade the *French* King to ſend over Forces here to aſſiſt them; who were to furniſh other Forces for the raiſing of a War within this Kingdom, in order to depoſe the King; and accordingly Mr. *Charnock* was ſent upon that Deſign. The other Overt-Act is the Priſoner's having a Commiſſion from the late King, and preparing and directing Men to be levied, and to be ready to be in a Regiment, of which Sir *John Freind* was by that Commiſſion to be Colonel; and this was always to aſſiſt in the Reſtitution of King *James*, and in order thereunto in the Depoſing and Expulſion of King *William*.

Theſe, Gentlemen, I tell you, are the two Overt-Acts that are principally inſiſted upon: And to prove Sir *John Freind* guilty of theſe there are two Witneſſes that have been produced; the one is Captain *Porter*, who ſpeaks to the firſt, the other is Captain *Blair*, who ſpeaks to the ſecond.

Captain *Porter* tells you, That, the latter End of *May*, or the Beginning of *June* laſt, he and Sir *John Freind*, and others that he mentioned, were at the *King's-Head Tavern* in *Leadenhall-ſtreet*, and there they entered into a Diſcourſe about the Returning of the late King *James*; and they did conſider among themſelves which was the moſt effectual Way, and what were the moſt probable Means to have him reſtored: And thereupon it was agreed among them, that they would ſend a Meſſenger into *France* to him, to deſire him that he would ſolicit the *French* King to furniſh him with 10,000 Men, to be ſent into *England*, 8000 Foot, 1000 Horſe, and 1000 Dragoons; and they did agree, that when theſe Forces were ſent, conſiſting of this Number of Men, then they would be ready to meet and join them with 2000 Horſe: every one of them was to furniſh his Quota: To which Sir *John Freind* did expreſsly agree. The Meſſenger that they agreed to ſend was with them in Company, and heard the Conſult, which was Mr. *Charnock*, who was lately tried and ſince executed.

This being at that Time determined, Mr. *Charnock* intended to go upon the Execution of that Deſign, and made ready for his Journey: But before he went, he had a Deſire to meet with the Company again, and have a further Diſcourſe upon this Matter, to ſee whether they did perſevere in the Reſolution they had ſo taken. There was another Meeting about a Week or a Fortnight after, which was at Mr. *Mountjoy*'s, a Tavern in St. *James*'s-*ſtreet*, where met Sir *John Freind*, Captain *Porter*, and divers others of the Company that were before at the *King*'s-*Head*. And there they entered into a Debate of the Matter again; the Queſtion there was, Whether Mr. *Charnock* ſhould be ſent into *France*, as it was formerly agreed? And there it was again determined he ſhould go; to which he agreed; and Captain *Porter* ſays, that he did go about two or three Days after.

Mr. *Porter* tells you farther, That, about the time that Mr. *Charnock* came back, Mr. *Porter* was in Priſon, and he did not ſee him upon his firſt Return, but afterwards he met and ſpoke with him, and aſked him what was the Effect of his Negotiation? And Mr. *Charnock* told him, that he had done as he was directed; that he had been with King *James*, and he had ſpoke to the *French* King; but the Anſwer returned was this, That the *French* King had Occaſion for his Forces that Year to be otherways imployed, and therefore he could not afford ſuch a Number of Men that Year; and Mr. *Porter* aſk'd him whether he had been with the reſt of the Gentlemen, and acquainted them therewith? And he ſaid he had. This is the Subſtance of Mr. *Porter*'s Evidence; whereby you may perceive what the Meetings were for, what Reſolutions were there taking, and what was the Iſſue and Effect of them.

The next Witneſs is Capt. *Blair*; and his Evidence goes to the other Part, that is, to Sir *John Freind*'s having a Commiſſion from the late King *James*, and engaging him and others to be in his Regiment, whereof Sir *John* was to be Colonel, and the providing of Officers. And for that the Evidence ſtands thus:

Captain *Blair* tells ye, that about two or three Years ago, he was with Sir *John Freind* at his Lodgings in *Surrey-ſtreet*, and there he did produce a Commiſſion that he had from King *James* to be Colonel of a Regiment of Horſe; he was to raiſe it himſelf, and was to appoint, and provide what Officers he thought fit. He ſays, he read the Commiſſion, and it was ſigned at the Top *James Rex*, and counterſigned at the Bottom *Melfort*; this he is poſitive in; And farther, that Sir *John Freind* did promiſe that he ſhould be Lieutenant Colonel of this Regiment, and alſo deſired that Captain *Blair* would get as many Men as he could; and that there were other Officers that were appointed in that Regiment, and particularly one *Fiſher* was brought to Sir *John Freind* by Captain *Blair*, to be his firſt Captain, and one Colonel *Slater*, who was much in Favour with Sir *John Freind*, was to have been another Lieutenant Colonel; for, ſaid Sir *John Friend*, I have a mind to him to be my Lieutenant Colonel, and though you are ſo too, yet it is no Matter if we have two in this Regiment; at which *Blair* took very great Offence, and expreſſed as much to Sir *John Freind*; whereupon Sir *John Freind* told him, it ſhould not be ſo, but ſaid he would make another Proviſion for Mr. *Slater*; that he ſhould be a Captain of an independent Troop, that ſhould be compoſed of Non-ſwearing Parſons, and that ſhall ſatisfy him.

And Sir *John Freind* did intruſt Captain *Blair* with the providing of Men, and managing of them. And Captain *Blair* tells you, he was at a great deal of Charge, and laid out diverſe Sums to careſs them, and keep them together; and wanting Money to proceed in that Affair, he came to Sir *John Freind*, and made great Complaints, that he wanted Money to carry on the Deſign, by obliging the Men to keep together, and therefore preſſed Sir *John Freind* to furniſh him with ſome Money; ſays Sir *John*, There is 100*l.* due to me, becauſe I laid down 100*l.* to further the Eſcape of Colonel *Parker*, and *Piggott* has received it, and had Directions to pay it me, but I cannot yet get it. You ſhall have 20*l.* out of that 100*l.* if you can get it. Well, but how is that 20*l.* to be had? It ſeems there was one *Harriſon* or *Johnſon* a Prieſt, who had ſome Intereſt in this *Piggott*, and he was to help him to it; and thereupon the 20*l.* was actually paid the latter End of *June* or the Beginning of *July* laſt. This 20*l.* he ſwears he did receive upon that Account, by the Direction of Sir *John Freind*, to be ſo imployed as you have been told.

Then Captain *Blair* had Occaſion for more Money, which was ſome time after *Michaelmas* laſt, which was to be employed as the former was; and he was very importunate to obtain it of Sir *John Freind*: at length he did obtain it, as he tells you, and the Manner how. He produces a Letter under Sir *John Freind*'s own Hand, which ſeems to be an Anſwer to a Letter that Capt. *Blair* had ſent to him before, he thinks it to be his own Hand, for he is acquainted with his Hand-writing. But that is not all to prove it his Hand, for the Contents of the Letter are remarkable, which are about the Payment of Money to *Blair*: The Letter bears Date on a *Tueſday* Morning, and is directed to Captain *Blair*; and a Porter brought it, as he thinks, to his Houſe; and thereby it was appointed they ſhould meet on *Thurſday* next at *Jonathan*'s Coffee-houſe about the Hour of Twelve. And accordingly Captain *Blair* came to *Jonathan*'s Coffee-houſe, where he accordingly met with Sir *John Freind*, and there was *Harriſon* the Prieſt, and *Piggott*, and there he does receive a Sum of Money upon the ſame Account: So that now the Proof of this Letter does not depend barely upon the Knowledge of the Hand, but the Contents of it; and the ſubſequent Meeting at the Time and Place mentioned in the Letter, is a great Evidence that it was Sir *John Freind*'s Hand-writing, and more Money is proved to be actually paid in the Preſence of Sir *John Freind*, which is the moſt material Part of the Evidence. And you are told further, that as Sir *John Freind* and Captain *Blair* were going together in a Coach, from *Jonathan*'s Coffee-houſe to St. *Martins-le-grand*, there was a Diſcourſe between them; and Sir *John Freind* ſaid, For his part he would not ſtir till ſuch time as the *Thoulon* Fleet was come about, and joined with the *Breſt* Fleet. That he did think he was in Danger of being apprehended when it came about, and therefore Captain *Blair* was to ſculk till then, as he himſelf told him he would do, but yet he ſhould get what Men he could. And this is a great Argument of his being concerned in the intended Invaſion, and that his making Preparation for his Regiment had Relation to the *French* Invaſion which was expected.

It ſeems two Years ago, there being a great Intimacy between *Blair* and Sir *John Freind*, as appears by all the Evidence, *Blair* was acquainted with this Deſign. For you are told of the Letter that was writ by him to King *James*, which he ſhewed to Captain *Blair*, and it was concerning his Regiment; he ſays, that Sir *John Freind* own'd he writ that Letter himſelf, that *Blair* did read the Letter, and finding it ſo well penn'd, he ſaid, that he thought *Ferguſon* had a Hand in it, at which Sir *John Freind* was angry; but *Blair* ſays, the Letter was concerning the Regiment of which Sir *John Freind* was Colonel.

Then, Gentlemen, you have *Bertham* called to prove, that *Blair* did tell him, that he was to be his Lieutenant Colonel, which was long before there were any Thoughts of any Diſcovery of this intended Invaſion, and before the Diſcovery of the Plot of Aſſaſſination, which Sir *John Freind* did own he had ſome Knowledge of, but he diſliked it, and ſaid it would ruin King *James*'s Affairs. So that, Gentlemen, I think this is the Sum and Subſtance of the Evidence that has been given upon this Occaſion againſt Sir *John Freind*, to induce you to believe him to be guilty of this Crime with which he now ſtands charged.

But now you are to conſider what Sir *John Freind* ſays on behalf of himſelf. In the firſt place, he makes an Objection againſt the Credit of all theſe Witneſſes, that they are not to be believed, becauſe, ſays he, they are known or reputed to be Roman Catholicks and Papiſts, and their Conſciences and their Oaths are large, eſpecially when they think they can do an Injury to any Proteſtant; and therefore they are not to be allowed as Witneſſes, at leaſt their Credit is not ſufficient to induce a Jury to believe them. At firſt indeed, he urged there was a Statute and a Law that did diſable them from being Witneſſes; but I muſt tell you there is no ſuch Statute, nor indeed is their being Papiſts any Diminution at all to the Credit of their Teſtimony: For Papiſts are legal Witneſſes, and though there are ſevere Laws to puniſh them for their Non-conformity to the Church of *England*, and for other their Popiſh Practices; yet I know of no Law that renders them infamous, or incapable of being Witneſſes. For you are to conſider Papiſts are Chriſtians, and ſwear by the ſame Evangeliſts that Proteſtants do; and as for that Suppoſition, that they look upon Proteſtants as Hereticks, and can have a Diſpenſation for any Oaths that they take againſt them; you are to conſider, as it has been very well obſerved by the King's Counſel, that they are never like to obtain any Diſpenſation or Pardon, if they ſhould forſwear themſelves to defeat the Deſigns of the Popiſh Party; and therefore it is a very inconſiderable Objection, and in this Caſe hath no Weight.

But

But then he does insist upon it, that Captain *Blair* is not to be believed; and there are two Objections he makes against him. First, That he did deny that he knew any thing of the Plot. For *Blair* being upon this Occasion brought Prisoner to the *Gate-house*, and afterwards, upon a Discourse of some News in the Flying-Post, wherein it was mentioned that Captain *Blair* had confess'd all, and made a full Discovery, and thereupon he should say, He was innocent of the Plot, and knew nothing of it. You, Gentlemen, are to consider the Weight of this Objection. First, Suppose he had said so, it might be, he was not willing (as he was not oblig'd) to own it, and would not confess it at that time, and to those Persons. It was not his Interest and Prudence to be too open; and therefore it does not follow, but because a Man would not trust others with his Confession, but deny'd his Knowledge of a Plot when there was no Occasion for him to own it, that now he swears it positively, therefore he should swear falsely.

But Secondly, Captain *Blair*, who was called for the Vindication of himself, and his Testimony, has upon his Oath declared to you, that he did not say he knew not any Thing of the Plot, but did deny any Concern in, or Knowledge of the Assassination. Now this Business for which Sir *John Freind* is tried, is not for being a Party in the designed Assassination, but of a Design with Force to depose the King, and restore King *James*.

Then as to the other Matter that was upon *Friday* Night last; *Courtney* the Witness says, that he came to Captain *Blair*'s Chamber, and took Notice of his being to be a Witness at *Hicks*'s-*Hall* the next Day, and said, I pray God direct you; and he says his Wife, then present, said it was against his Conscience, and he seemed to be in very great Trouble about it, and owned as much. But now Captain *Blair* himself, being examined upon his Oath, does deny positively, that either he or she said any such thing as that it was against his Conscience: He says, that *Courtney* got in to him on Purpose to surprize him, and he was aware of it, and his Design being to keep himself free from all Company, he gave Directions to the Keeper (as the Keeper himself swears) to let no Body come to him but his Wife; and Mr. *Courtney* intruded himself upon him.

Besides, Gentlemen, you are to consider the Probability of that which Mr. *Courtney* saith: When a Man is to be a Witness the next Day upon a Bill of Indictment before a Grand Jury, that he should be so indiscreet, as to tell any Body he was going to swear against his Conscience, is strange and very unaccountable. You are therefore to consider of this whole Matter, what Evidence Captain *Blair* has given, and the Import of it, and the Weight and Credibility of that Evidence which is given against him.

Then Sir *John Freind* insists upon another Matter: Says he, I am a Protestant, and it is not likely that I that am a Protestant should conspire with Papists against Protestants; and for that he has called eight Witnesses, who tell you they have known him, some twenty Years, some more, others ten, and that they have frequently conversed with him, and never knew that he was ever popishly affected, and they have been frequently in his Company since the Revolution, and they never knew that at any time he reflected upon the Government; nay, I think one said, that once he did reprove a Man for talking undecently of the Government; that he used constantly to go to Church four or five Years ago (though there is no Account of that since.) And particularly there is one Mr. *Lupton* that was his Chaplain, and he tells you he was in his House; and there he read the Common-Prayer in the Family since the Revolution, and pray'd for the King, and the late Queen, and Sir *John Freind* was often present at the Prayers, and particularly when he prayed for the present King, and the late Queen; but he says he himself has been gone thence five Years, and has been little conversant with him since.

There is another Witness tells you, he has been in Sir *John Freind*'s Company divers times, whom he believes to be a Protestant of the Church of *England*, and hath had a Discourse concerning the present Government; and that Sir *John Freind* said, that tho' he could not take the Oaths, and thereby conform to the Government, yet he was resolved to live quietly under it; and would not engage in any Manner of Plot, for he that catched him in the Corn should put him in the Pound.

This is the Sum and Substance of the Evidence on both Sides; and you, Gentlemen, are to consider, the Weight of this Part of his Defence too; whether it be a sufficient Answer to the Evidence given against him, and has Weight enough to out-balance what the Witnesses for the King have sworn? For although he was a Protestant, yet it is plain he had no great Liking to the Government; and therefore would not take the Oaths; and though he was present at the Common Prayer, when the King and Queen were prayed for, yet whether he joined in those Prayers is very uncertain. There are a great many, who are not very well-affected to the present Government, that come to Church, and are present at the publick Prayers; but it may be a very great Doubt, whether they join in their Prayers for the present Government or no; his Conscience that scruples the taking the Oaths, might scruple that too; but whether Sir *John Freind*'s being a Protestant, and his Declaring he would never be in a Plot, be a sufficient Proof, that therefore he never was in one; and that his former Discourse of that Kind should discredit these Witnesses, that have sworn he has been so much concerned in a Plot, you are to consider; and comparing the Weight and Nature of the Evidence on the one Side, and the other, it must be left to your Determination.

Then there is another Thing that he did insist upon, and that is Matter of Law. The Statute of the 25th *Ed.* III. was read, which is the great Statute about Treasons; and that does contain divers Species of Treason, and declares what shall be Treason. One Treason is the Compassing and Imagining the Death of the King; another is the levying War: Now, says he, here is no War actually levied; and a bare Conspiracy or Design to levy War does not come within this Law against Treason. Now for that, I must tell you, if there be only a Conspiracy to levy War, it is not Treason: but if the Design and Conspiracy be either to kill the King, or to depose him, or imprison him, or put any Force or Restraint upon him, and the Way and Method of effecting of these, is by levying a War, there the Consultation, and the Conspiracy to levy a War for that Purpose, is High Treason, tho' no War be levied: For such Consultation and Conspiracy is an Overt-Act, proving the Compassing the Death of the King, which is the first Treason mentioned in the Statute of the 25th of *Ed.* III. For the Words of that Statute are; *That if any Man shall compass or imagine the Death of the King.* Now because a Man designs the Death, Deposition, or Destruction of the King, and to that Design, agrees and consults to levy War, that this should not be High-Treason, if a War be not actually levied, is a very strange Doctrine, and the contrary has always been held to be Law. There may be a War levied without any Design upon the King's Person, or endangering of it; which, if actually levied, is High-Treason; but a bare Designing to levy War, without more, will not be Treason. As for Example*; if Persons do assemble themselves, and act with Force in Opposition to some Law, which they think inconvenient, and hope thereby to get it repealed; this is levying a War and Treason, though Purposing and Designing it is not so: So when they endeavour in great Numbers with Force to make some Reformation of their own Heads, without pursuing the Methods of the Law, that is a levying of War, and Treason, but the Purposing and Designing it is not so.

* Rising with Force to pull down all Inclosures, to expell Strangers, to pull down Bawdy-Houses, is levying of War, and Treason: but a bare Purposing and Designing to raise such a Force, for such a Purpose, is not Treason.

But if there be, as I told you, a Purpose and Design to destroy the King, and to depose him from his Throne, or to restrain him, or have any Power over him, which is proposed or designed to be effected by War that is to be levied, such a Conspiracy and Consultation to levy War, for the bringing this to pass, is an Overt-Act of High-Treason. So that, Gentlemen, as to that Objection, that he makes in Point of Law, it is of no Force, if there be Evidence sufficient to convince you, that he did conspire to levy War for such an End.

Gentlemen, the Evidence you have heard what it is, you may consider the Weight of it, and the Circumstances that do attend it; and likewise the Answers that have been given by the Prisoner to invalidate that Evidence, and to prove the Improbability of what they have testified against him. You have heard, I say, the Evidence on the one Side, and on the other; If you are not satisfied, that what the Witnesses have sworn is true, that Sir *John Freind* did engage in such a Design for such a Purpose, then you are to acquit him; but on the other Side, if you believe that Sir *John Freind* is guilty of what the Witnesses have deposed against him, then you are to find him Guilty.

Juryman. My Lord, we desire we may have that Letter with us that was produced here.

L. C. J. No, no, you cannot have it by Law.

Juryman. May it not be left with the Foreman, my Lord?

L. C. J. No; but you may look upon it in Court before you go away, if you will.

Then the Letter was handed to the Jury, *and one of them handed it to the Prisoner.*

L. C. J. Why do you do so? You should not give the Prisoner the Letter.

Juryman. It was done to see whether it was his Hand; and we desire, if there be any Body here that knows his Hand-writing, or that saw him write it, may be produced.

L. C. J. Why? Did not he own the Letter to the Witness afterwards? It was sworn to you he did; and that he met according to the Appointment in the Letter, and that Money was paid.

Then the Jury *withdrew to consider of their Verdict, and an Officer was sworn to keep them according to Law, till agreed; and about a Quarter of an Hour afterwards they returned into Court, and the Prisoner was brought to the Bar.*

Cl. of Arr. Gentlemen, Answer to your Names. *Thomas Clark*——

Mr. *Clark.* Here.

(*And so did all the rest of the Twelve.*)

Cl. of Arr. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Sir *John Freind*, hold up thy Hand. (*Which he did.*) Look upon the Prisoner: How say ye, is he Guilty of the High-Treason whereof he stands indicted, or Not guilty?

Foreman. Guilty, my Lord.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the High-Treason committed, or at any Time since?

Foreman. None, to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treason.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it. You say that Sir *John Freind* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, nor Chattels, Lands, nor Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge.

L. C. J. Discharge the Jury.

Cl. of Arr. Gentlemen, the Court discharges you, and thanks you for your Service.

L. C. J. Then we had best to adjourn the Court till To-morrow Morning.

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Persons that have any thing more to do, at this General Sessions of the Peace, Sessions of *Oyer* and *Terminer*, holden for the City of *London*; and Gaol-Delivery of *Newgate*, holden for the City of *London*, and County of *Middlesex*, may depart hence for this Time, and give their Attendance here again To-morrow Morning at Seven of the Clock; and *God save the King*.

Then the Prisoner was carried back to Newgate, *and was brought the next Day to the Bar to offer what he had to say for Stay of Judgment; and afterwards received Sentence of Death as a Traytor.*

CLV. *The Trial of Sir* WILLIAM PARKYNS, *Knight, at the* Old-Baily, *for* High-Treason, March 24. 1695. 8 W. III.

Tuesday, March 24. 1695.

This Day the Trial of Sir William Parkyns, *Knt. came on at the Sessions-House in the* Old-Baily, *for High-Treason.*

Clerk of the Arraignments.

CRYER, make Proclamation.

Cryer. Oyez, Oyez, Oyez. All Manner of Persons that have any thing more to do at this General Sessions of the Peace, Sessions of *Oyer* and *Terminer*, holden for the City of *London*; and Gaol-Delivery of *Newgate*, holden for the City of *London* and County of *Middlesex*, and were adjourned over to this Day, draw near, and give your Attendance, for now they will proceed to the Pleas of the Crown for the same City, and County; and *God save the King.*

Cl. of Ar. Middlesex. Cryer, make Proclamation.

Cryer. Oyez, You good Men of the County of *Middlesex*, summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoner that shall be at the Bar, answer to your Names as you shall be called, every Man at the first Call, upon Pain and Peril shall fail thereupon.

Then the Jury *that were returned in the Pannel were all called over, and the Appearances of those who answered to the Call were recorded.*

About ten of the Clock the Judges (to wit) the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, and Mr. Justice *Rokeby* came into the Court.

Cl. of Ar. Set Sir *William Parkyns* to the Bar. (*Which was done.*) Sir *William Parkyns*, hold up thy Hand.

Parkyns. My Lord, if you please, I humbly beg the Favour of one Word before I am arraigned. My Wife coming to see me in my Distress, sent up a Trunk of Linnen for our Use, and the Sheriffs of *London* have seized it, and do detain it. It has Linnen in it, and all her necessary Things, and all Things have been torn from me, since I was apprehended, but what is there; I have nothing to subsist upon but what is there; for no Money can I get from any Body, no Body will pay us a Farthing.

Mr. Sheriff *Buckingham.* My Lord, we were sent for to Mr. Secretary *Trumball*'s Office, and when we came there, there was a Trunk that had been seized, as belonging to Sir *William Parkyns*; and when we came thither it was opened, and there was in it some Houshold Linnen, and some Plate; and Mr. Secretary *Trumball* was pleased, after having searched the Trunk, to seal it up, and deliver it to my Brother and me, to be kept; and this is all we know of it.

* Sir John Holt. * *L. C. J.* Where was this Trunk seized?

Mr. Sh. *Buckingham.* We found it in the Secretary's Office, and it was delivered to us there, and we gave a Receipt for it to bring it down again when called for; we did not seize it.

L. C. J. Look ye, Sir *William Parkyns*, your Trunk was seized, I suppose, in order to search for Papers.

Parkyns. Yes, I believe it was; but I hope it shall be delivered back now they have found nothing in it, and I have nothing else to subsist upon but what is there.

L. C. J. Is there any Plate there? What is there in the Trunk?

Mr. Sh. *Buckingham.* There is some Diaper and Damask Linnen, a Carpet, and some Pieces of Plate, two or three hundred Ounces of Plate, for ought I know. We had it from the Secretary's Office; we did not seize it.

[*Then the Judges consulted among themselves.*]

L. C. J. He ought to have his Plate to sell, to support him that he may have Bread.

Parkyns. Will your Lordship please to direct the Sheriff to deliver it back?

L. C. J. Well, some Care or other shall be taken in it.

Parkyns. My Lord, I have nothing to subsist upon, unless I can make something of what is there; I have a Wife and four Children, and nothing to subsist upon.

L. C. J. Let your Wife make Application for it at the Secretary's, it cannot now be done here. Why did you not make Complaint of it before? If you had, Care had been taken in it.

Park. I was told there was a Petition; for, my Lord, I was a close Prisoner, and they told me there was a Petition; but my Wife never mentioned any thing of it to me till afterwards; and they talk'd of an Order of Council that they had for the Sheriff's seizing it; but when I came to enquire into it, there was no Order about it, but only to search and examine it.

L. C. J. Well, some Order shall be taken about it.

Mr. Sh. *Buckingham.* My Lord, we have given a Receipt to the Secretary for it.

L. C. J. But he must have wherewithal to subsist and buy him Bread while he is in Prison.

Mr. Sh. *Buckingham.* My Lord, I see Mr. *Burleigh* there, who was Sir *John Freind*'s Sollicitor; I would humbly move your Lordship that it may be inquired into, how he came by the Pannel of the Jury yesterday? For it seems to reflect upon us, as if we had given the Prisoner a wrong Pannel.

Mr. Just. *Rokeby.* No, I think there can be no Reflection upon you; but I think it would be very proper to have the Matter examined.

L. C. J. Ay, let *Burleigh* come in. [*Which he did.*] Pray, how came you by the Pannel which you gave to Sir *John Freind?*

Burleigh. My Lord, I had three several Copies sent me by Sir *John Freind*'s Friends, to the *Hern* Tavern about three or four a-Clock, and I deliver'd one of them to Sir *John Freind*; but he had one before I delivered mine.

L. C. J. Who sent them to you, or brought them to you?

Burleigh. I had them brought to me by a Porter.

Mr. *Baker.* You know you might have had it from the proper Officer, for asking.

Burl. I had them brought me from Sir *John Freind*'s Friends.

L. C. J. Can you tell who had it from the Sheriff?

Burl. My Lord, I know not: I had three Copies sent me in a Quarter of an Hour's Time; whence they came, I know not; the Sheriff knows me, and every Body else.

Mr. Sh. *Buck.* I do know you, and would have you be fair in your Practice.

Mr. *Baker.* The Inquiry is made, because a false Copy is put upon him; you might have had a true Copy, if you had applied yourself right.

Burl. I sent to Mr. *Farringdon* for it.

L. C. J. The Sheriff delivered it the Secondary, who is the proper Officer.

Mr. J. *Rokeby.* Sir *John Freind* said he had it from him yesterday.

Burl. But he had one before; how he came by it, I can't tell; nor whence those came that were brought to me.

Mr. J. *Rokeby.* If you will not take care to go to the right Place, it is nobody's Fault but your own, if you suffer by it.

Burl. I was with my Lady, and delivered a Petition for this Trunk.

L. C. J. But it seems it was under the Conuzance of the Secretary, and Direction was given to go thither: some Care or other must be taken in it, and shall; but go on now to arraign the Prisoner.

Cl. of Arr. Hold up thy Hand. (*Which he did.*) Thou standest indicted in *Middlesex* by the Name of Sir *William Parkyns*, late of the Parish of St. *Paul Covent-Garden*, in the County of *Middlesex*, Kt. For that, Whereas an open, and notoriously publick, and most sharp, and cruel War, for a long time hath been, and yet is, by Sea and by Land had, carried on, and prosecuted by *Lewis* the *French* King, against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* During all which Time, the said *Lewis* the *French* King, and his Subjects were, and yet are Enemies of our said Lord the King that now is, and his Subjects, You the said Sir *William Parkyns*, a Subject of our said Sovereign Lord the King that now is of this Kingdom of *England*, well knowing the Premises, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor against the said most Serene, most Clement, and most Excellent Prince, our said Sovereign Lord *William* the Third, now King of *England*, *&c.* your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King, should bear, and of Right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your Strength purposing, designing and endeavouring the Government of this Kingdom of *England*, under him our said Lord the King that now is, of Right, duly, happily and very well established, altogether to subvert, change, and alter; as also the same our Sovereign Lord the King to Death and final Destruction to put and bring; and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery, to the aforesaid *French* King, to subdue and bring; the first Day of *July*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of St. *Paul Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly and traitorously did compass, imagine, contrive, purpose, design and intend our said Sovereign Lord the King that now is, then your Supreme, true, natural, rightful, and lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to depose, cast down, and utterly to deprive; and the same our Sovereign Lord the King, to kill, slay, and murder; and the aforesaid *Lewis* the *French* King, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to invade, fight with, conquer, and subdue, to move, stir up, procure and aid; and a miserable Slaughter among the faithful Subjects of our said Lord the King, throughout all this whole Kingdom of *England*, to make and cause; and that you the said Sir *William Parkyns*, to the aforesaid Enemies of our said Lord the King that now is, then and there, during the War aforesaid, traitorously were adhering and aiding; and the same most abominable, wicked and devilish Treasons, and traiterous Compassings, Contrivances, Intentions, and Purposes of yours aforesaid, to fulfil, perfect and bring to effect; and in Prosecution, Performance, and Execution of the traiterous Adhesion aforesaid, you the said Sir *William Parkyns*, as such a false Traitor, during the War aforesaid, to wit, the same first Day of *June*, in the Year abovesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, and traitorously, and with Force and Arms, with one *Robert Charnock*, (late of High-Treason, in contriving and conspiring the Death of our said Sovereign Lord the King that now is, duly convicted and attainted) and with divers other false Traitors, to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, to procure from the aforesaid *Lewis* the *French* King, of his Subjects, Forces, and Soldiers, then and yet Enemies of our said Lord the King that now is, great Numbers of Soldiers and armed Men, this Kingdom of *England* to invade and fight with, and to levy, procure and prepare great Numbers of armed Men and Troops, and Legions against our said Sovereign Lord the King that now is, to rise up and be formed; and with those Enemies

at and upon such their Invasion and Entrance into this Kingdom of *England*, to join and unite; Rebellion and War against him our said Sovereign Lord the King, within this Kingdom of *England*, to make, levy, and wage; and the same our Sovereign Lord the King so as aforesaid to depose, and him to kill and murder. And further, with the said false Traitors, the same first Day of *July*, in the Year abovesaid, at the Parish aforesaid, in the County aforesaid, traitorously you did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from you the said Sir *William Parkyns*, and the same other Traitors unknown, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, to *James* the Second, late King of *England*, to propose to him, and desire of him to obtain of the aforesaid *French* King, the Soldiers and armed Men aforesaid, for the Invasion aforesaid to be made; and Intelligence and Notice of such their traitorous Intentions, and Adhesions, and all the Premises to the said late King *James*, and the said other Enemies and their Adherents, to give and exhibit; and them to inform of the said Things, Particulars, and Circumstances thereunto relating; as also Intelligence from them of the late intended Invasion, and other Things and Circumstances concerning the Premises to receive, and them to you the said Sir *William Parkyns*, and the said other Traitors in this Kingdom of *England*, to signify, report and declare, in Assistance, Animation, and Aid of the said Enemies of our said Sovereign Lord the King that now is, in the War aforesaid: And to stir up and procure those Enemies the more readily and boldly this Kingdom of *England* to invade, the Treasons and traitorous Contrivances, Compassings, Imaginations and Purposes of you the said Sir *William Parkyns* aforesaid to perfect and fulfil, and all the Premises the sooner to execute, manage and perform, and the Invasion aforesaid to render and make the more easy, you the said Sir *William Parkyns* afterwards, to wit, the 10th Day of *February*, in the Year abovesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traitorously and with Force and Arms, with the aforesaid *Robert Charnock*, and very many other false Traitors to the Jurors unknown, did meet, propose, treat, consult, consent and agree, him our said Sovereign Lord the King that now is, by lying in wait and deceit, to assassinate, kill and murder; and that execrable, abominable and detestable Assassination and Killing the sooner to execute and perpetrate, afterwards, to wit, the same Day and Year, there traitorously you did treat, propose and consult with those Traitors, of the Ways, Methods, and Means, and the Time and Place where, when, which Way, and how our said Sovereign Lord the King, so by lying in wait, the sooner might be killed and slain; and did consent, agree and assent with the same Traitors, that forty Horsemen or thereabouts of those Traitors, and others by them and you the said Sir *William Parkyns* to be hired, procured and paid, with Guns, Carbines and Pistols with Gun-Powder and Leaden-Bullets charged, and with Swords, Rapiers and other Weapons armed, should lie in wait and be in Ambush our said Lord the King in his Coach being, when he should go abroad, to attack; and that a certain and competent Number of those Men so armed, should set upon the Guards of our said Lord the King then and there attending him, and being with him, and should over-power and fight with them, whilst others of the same Men so Armed him our said Lord the King should kill, slay, and murder; and that you the said Sir *William Parkyns*, then and there, did take upon you to provide five Horses for those Men which should so kill and murder our said Sovereign Lord the King; and also that you the said Sir *William Parkyns*, your Treasons, and all your traitorous Intentions, Designs and Contrivances aforesaid to execute, perpetrate, fulfil and bring to Effect, afterwards, to wit, the Day and Year last abovesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Carbines, Rapiers and Swords, and other Weapons, Ammunition and Warlike Things, and Military Instruments, falsely, maliciously, secretly, and traitorously did obtain, buy, gather, and procure; and to be bought, obtained, gathered, and procured did cause, and in your Custody had and detained, with that Intention them in and about the detestable, abominable and execrable Assassination, Killing, and Murder of our said Lord the King, and the Invasion aforesaid, as aforesaid, to use, employ and bestow; and also your Treasons and all your traitorous Intentions, Purposes, and Contrivances aforesaid to execute, perpetrate, fulfil and fully bring to Effect, you the said Sir *William Parkyns*, afterwards, to wit, the Day and Year last abovesaid, at the Parish aforesaid, in the County aforesaid, falsely, maliciously, advisedly, secretly and traitorously, divers Soldiers and Men Armed, and ready to be Armed, after the said detestable, abominable and execrable Assassination, Killing, and Murder of our said Sovereign Lord the King so as aforesaid should be done, perpetrated and committed, to rise and muster, and War and Rebellion within this Kingdom of *England* to make and wage, and with the Enemies of our said Lord the King, Foreigners and Strangers, Subjects and Soldiers of the said *Lewis* the *French* King, being about to invade this Kingdom of *England*, at and upon their Invasion and Entrance into this Kingdom then expected to be shortly made, themselves, together with you the said Sir *William Parkyns*, to join and unite, and into Troops and Legions to form, you did levy, list, and retain, and did procure to be levied, listed, and retained; and those Soldiers and Men for the Treasons, Intentions and Purposes aforesaid, then and there, and afterwards in Readiness you had, against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, His Crown and Dignity; as also against the Form of the Statute in this Case made and provided.

How say'st thou, Sir *William Parkyns*, Art thou Guilty of this High-Treason whereof thou standest indicted, or Not Guilty?

Parkyns. Not Guilty.

Cl. of Ar. Culprit, How wilt thou be Tryed?

Parkyns. By God and my Country.

Cl. of Ar. God send thee good Deliverance.

Parkyns. My Lord, If your Lordship pleases to favour me with a Word or two.

L. C. J. Aye, What say you, Sir?

Parkyns. My Lord, I have been kept in hard Prison ever since I was committed, nobody has been suffer'd to come to me till *Friday* last, then my Counsel came to me; and being charged with many Facts as I see in this Indictment, it will be necessary to have divers Witnesses to clear myself of these Particulars; they are dispers'd up and down, and I have had no Time to look after them, and therefore I beg your Lordship to put off my Trial till another Day.

L. C. J. When had you first Notice of your Trial?—*Parkyns.* The first Notice of my Trial was on *Wednesday* last, in the Afternoon.

L. C. J. That is a sufficient Time of Notice; sure you might have provided your Witnesses, and prepar'd for it by this Time.

Parkyns. But, my Lord, being kept so close Prisoner, I had no Opportunity for it; for it was not possible for me to get any Body to come to me till *Friday* Noon, not so much as my Counsel, and then there was but two Days, *Saturday* and *Monday*, (for *Sunday* is no Day for any Business) and it is impossible for me to be ready in the Manner that I ought to be. It is a perfect Distress and Hardship upon me, to be put so soon upon my Trial without my Witnesses, and what should enable me to make my Defence; therefore I humbly intreat your Lordship to put it off till another Day.

L. C. J. What Witness do you want, Sir *William?*

Parkyns. I have divers Witnesses, my Lord, that can give an Account where I was from time to time; but they are many of them out of Town, and I have sent about every Way, but cannot get them together in so short a Time.

L. C. J. When had he Notice of his Trial?

Mr. *Baker.* On *Wednesday* I told him, that he must expect to be try'd this Day, and withal, that if he would name me any Counsel that he would have come to him, he should have an Order next Morning for them.

L. C. J. You were told, it seems, on *Wednesday* that you might have what Counsel you would.

Mr. *Baker.* And he had an Order upon *Thursday* Morning for his Counsel.

Parkyns. I could not have it without Application to the Court at *White-Hall*, and could have nobody come to me till *Thursday*, and it was *Friday* before I could get my Counsel to me.

L. C. J. You might have sent for your Witnesses on *Thursday*, and employ'd somebody about that Matter then.

Parkyns. The Sollicitor that I employ'd was employ'd otherways, and I could not employ any Body else.

L. C. J. Yes; you might have employed any other about that Business.

Parkyns. I had nobody to send, I was kept close, and nobody permitted to come to me.

L. C. J. Your Sollicitor you desir'd had Leave to come to you.

Mr. *Baker.* You know that those you sent for, you had an Order for.

Parkyns. I could not get him till *Thursday* to me, I had no Messengers to send till then.

Mr. *Baker.* I gave the Keeper Direction, to let him have Persons come to him to send on any Errand.

L. C. J. The Keeper had Orders, it seems, to let any Messenger come to you; and he would have help'd you to somebody to send of this Errand, to be sure.

Keeper. I always did it, as soon as I know they have Notice of their Trial.

Parkyns. But the Keeper is not always in the Way; and besides, when I had Notice given me of my Trial, it was Execution Day, and he was not at home that Day.

L. C. J. He names no Witnesses, only he says he has divers Witnesses, neither is there any Oath made of any Witnesses: Pray how long is it since you were committed?

Parkyns. I was committed this Day Fortnight.

L. C. J. Your Commitment charged you with High-Treason, and therefore you knew what you stood accus'd of; were you not committed for High Treason?—*Parkyns.* Yes, my Lord, I believe I was.

Mr. Sol. Gen. (Sir *John Hawles*) My Lord, he had a very fair Time to prepare for his Defence, for he saw his Name in the Proclamation a good while before he was taken, and there it is declar'd what he stands charg'd with.

L. C. J. You might have had a Copy of your Commitment, you had a Right to have it, and thereby you might have seen what you were accused of.

Keeper. We never do deny it, if it be demanded.

L. C. J. You cannot deny it; you know what Penalty you are under if you do.

Parkyns. Nobody was permitted to come to me.

L. C. J. You might have ask'd for a Copy, or any Body else; for you had Notice of your Trial so long ago as *Wednesday* last.

Mr. *Baker.* I gave him Notice of his Trial on *Wednesday*, and then told him he must prepare for it against this Day; he said he would endeavour to petition for a longer Time; I told him it would be in vain, for he must prepare for his Trial To-day, and could have no longer Time.

L. C. J. Sir *William*, truly we do not see any Reason to put off the Trial upon these Suggestions.

Parkyns. My Lord, it is very hard; then I humbly beg I may have the Favour, that I may have Counsel allow'd me; I have no Skill in Indictments.

L. C. J. We cannot allow Counsel.

Parkyns. My Lord, if I have no Counsel, I do not understand these Matters, nor what Advantage may be proper for me to take in these Cases.

L. C. J. You are not ignorant, Sir *William*, that Counsel has been always refused when desired in such Cases.

Parkyns. My Lord, there is a new Act of Parliament that is lately made, which allows Counsel.

L. C. J. But that does not commence yet, Sir *William*.

Parkyns. My Lord, it wants but one Day.

L. C. J. That is as much as if it were a much longer Time: For we are to proceed according to what the Law is, and not what it will be.

Parkyns. But it is declarative of the Common Law, because it says it was always just and reasonable.

L. C. J. We cannot alter the Law till Law-makers do it.

Parkyns. Will your Lordship be pleased to let it be read?

L. C. J. Ay, if you have a Mind to it, it shall be read.

Parkyns. Yes, if your Lordship pleases.

L. C. J. Read it.

Cl. of Ar. (*Reads.*) An Act for Regulating of Trials in Cases of Treason, and Misprision of Treason.——

[*All the first Paragraph of the new Act was read.*]

L. C. J. Look ye, Sir *William Parkyns*, this Law has not taken any Effect as yet; but the Law ſtands as it did before the making of this Act.

Parkyns. But, my Lord, the Law ſays it's juſt and reaſonable that it ſhould be ſo.

L. C. J. We go according to the Law as we find it is.

Parkyns. And, my Lord, what is juſt and reaſonable To-morrow, ſure is juſt and reaſonable To-day; and your Lordſhip may indulge me in this Caſe, eſpecially when you ſee how ſtreight Notice I have had, and what a little Time has been allowed me, that I am not able to make any Defence.

L. C. J. We cannot make a Law, we muſt go according to the Law; that muſt be our Rule and Direction.

Parkyns. Yes, my Lord, but what is juſt and reaſonable, ſure is Law: the Law is grounded upon Reaſon.

L. C. J. The Parliament has thought fit to make ſuch a Law, which is to commence from the 25th of this Month: It is not a Law till the Time comes that the Parliament hath appointed for its being a Law.

Parkyns. But, my Lord, if my Notice had been a convenient Notice, I had been within the Time limited by the Act of Parliament; and no one can want the Advantage of that Act from henceforward, nor ſuffer for ſuch Want but myſelf, which is a particular Hardſhip upon me.

L. C. J. We cannot alter the Law, we are bound by our Oaths to proceed according to the Law, as it is at preſent.

Parkyns. Pray, my Lord, let the Trial be put off till another Day then.

L. C. J. You ſhew no Reaſon for it; you name no Witneſſes that you want, nor have we any Oath as we ought to have in ſuch a Caſe.

Parkyns. I will do both if your Lordſhip will oblige me to it.

L. C. J. There ought to be an Oath certainly; but we think you have had fair and convenient Notice: For you have had as much Notice as Sir *John Friend* had, who was tried Yeſterday.

Parkyns. As I am inform'd, he was charged with ſingle Facts about the Town, but I am charged with many particular Things more than he was.

L. C. J. The Act of Parliament ſays nothing of Notice of Trial; that ſtill continues as it was before; and you have had very convenient Notice: Go on, Mr. *Hardeſty*, to ſwear the Jury.

Cl. of Ar. Sir *William Parkyns*, you the Priſoner at the Bar, Thoſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you upon Trial of your Life and Death; if therefore you will challenge them, or any of them, you are to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Parkyns. I hope your Lordſhip will be of Counſel for me then.

L. C. J. So we will; we will do you all the Right we can. Look ye, you know you may challenge 35 without Cauſe, and as many as you will with Cauſe, but no more than 35 without Cauſe.

Cl. of Ar. Sir *Goddard Nelthorp.*—*Parkyns.* I except againſt him.

Cl. of Ar. Leonard Hancock, Eſq;

Parkyns. I except againſt him, he is the King's Servant.

Cl. of Ar. William Withers, Eſq.—*Parkyns.* I challenge him.

Cl. of Ar. Samuel Powell, Eſq.—*Parkyns.* I challenge him.

Cl. of Ar. William Northey, Eſq.

Parkyns. Well, I don't except againſt him.

Cl. of Ar. Hold Mr. *Northey* a Book. (*Which was done.*) Look upon the Priſoner. You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar, whom you ſhall have in Charge, according to your Evidence; So help you God.

Cl. of Ar. Thomas Tench —*Parkyns.* I challenge him.
Cl. of Ar. John Wolf.---*Parkyns.* I challenge him.
Cl. of Ar. James Bodington.---*Parkyns.* I challenge him.
Cl. of Ar. John Smith.---*Parkyns.* I challenge him.
Cl. of Ar. Edward Gould.
Parkyns. I have no Exception againſt him. (*He was ſworn.*)
Cl. of Ar. John Raymond.---*Parkyns.* I challenge him.
Cl. of Ar. Daniel Thomas.
Parkyns. I have no Exception againſt him. (*He was ſworn.*)
Cl. of Ar. Iſaac Honeywood.---*Parkyns.* I challenge him.
Cl. of Ar. William Underwood.---*Parkyns.* I challenge him.
Cl. of Ar. Arthur Bayley.---*Parkyns.* I challenge him.
Cl. of Ar. Nehemiah Erming.---*Parkyns.* I challenge him.
Cl. of Ar. John Webber.---*Parkyns.* I challenge him.
Cl. of Ar. John Cane.---*Parkyns.* I have no Exception to him.
Mr. Att. Gen. We challenge him for the King.
Cl. of Ar. Thomas Glover.---*Parkyns.* I challenge him.
Cl. of Ar. Henry Whitchcott.
Parkyns. I have no Objection againſt him. (*He was ſworn.*)
Cl. of Ar. Timothy Thornbury.---*Parkyns.* I challenge him.
Cl. of Ar. Dormer Sheppard.---*Parkyns.* I challenge him.
Cl. of Ar. John Temple.---*Parkyns.* I challenge him.
Cl. of Ar. Nathaniel Gold.---*Parkyns.* I have no Exception againſt him.
Mr. *Gold.* My Lord, I am no Freeholder in this County.
Mr. *Baker.* Nor have you no Copyhold, Sir?
Mr. *Gold.* Yes, Sir, I have.
Mr. Att. Gen. However, let him be ſet by.
Cl. of Ar. Robert Breedon.---*Parkyns.* I challenge him.
Cl. of Ar. Thomas Taylor.
Parkyns. I challenge him, he is the King's Servant.
Cl. of Ar. Joſeph Biſſett.---*Parkyns.* I challenge him.
Cl. of Ar. John Billier.---*Parkyns.* I challenge him.
Cl. of Ar. Francis Chapman ---*Parkyns.* I challenge him.
Cl. of Ar. John Cleeve.---*Parkyns.* I challenge him.
Cl. of Ar. Robert Bompton.
Parkyns. I have no Exception to him. (*He was ſworn.*)
Cl. of Ar. William Atlee.---*Parkyns.* I challenge him.
Cl. of Ar. Thomas Sutton.
Parkyns. I have no Exception to him. (*He was ſworn.*)
Cl. of Ar. Thomas Edling.
Parkyns. I have no Exception againſt him. (*He was ſworn.*)
Cl. of Ar. Robert Sanderſon.
Parkyns. I have no Exception againſt him. (*He was ſworn.*)
Cl. of Ar. Ralph Marſh.
Parkyns. I have no Exception againſt him. (*He was ſworn.*)
Cl. of Ar. Richard Bealing.

Parkyns. Pray, Mr. *Hardeſty*, how many have I challeng'd?

Mr. *Hardeſty.* I will tell you preſently, Sir.——You have challenged 25.

Parkyns. But there are two that I gave Reaſon for: Do you put them in among them? that is, Mr. *Hancock* and Mr. *Taylor* as the King's Servants.

Cl. of Ar. You may ſpeak to my Lord about it; but if that be allow'd, then there are but 23.

Parkyns. Well, Sir, Go on then.

Cl. of Ar. Richard Bealing.---*Parkyns.* I challenge him.
Cl. of Ar. William Partridge.---*Parkyns.* I challenge him.
Cl. of Ar. Nicholas Roberts.---*Parkyns.* I challenge him.
Cl. of Ar. Peter Lavigne.---*Parkyns.* I challenge him.
Cl. of Ar. Joſeph Whiſton.
Parkyns. I have no Objection to him. (*He was ſworn.*)
Cl. of Ar. Andrew Cook.---*Parkyns.* I challenge him.
Cl. of Ar. Samuel Hooper.
Parkyns. I challenge him.
Cl. of Ar. Thomas Heames.
Parkyns. I have no Exception to him. (*He was ſworn.*)

L. C. J. Sir *William Parkyns*, you have challenged two, and have aſſign'd the Cauſe of your Challenge, that is, *Hancock* and another, and the Reaſon of your Challenge is, becauſe they are the King's Servants. I am to acquaint you, that is no Cauſe of Challenge; but however, the King's Counſel do not intend to inſiſt upon it, if there are enough beſides. They are willing to go on with the Pannel; and I ſpeak this, becauſe I would not have it go for a Precedent, nor have it underſtood that the Cauſe you aſſign is a good Cauſe: But however, they will no ſtand with you, if there be enough to ſerve.

Parkyns. My Lord, I ſubmit to it; the Jury is full, I think.

Cl. of Ar. No, there are but Eleven ſworn yet.

Parkyns. But how far have I gone in my Challenges?

Cl. of Ar. There are Four which you may challenge more.

Parkyns. There are Two allow'd me, though it be not a Precedent: Are there Four ſtill?

Cl. of Ar. Yes, you may challenge Four more, and no more. *Edward Thompſon.*

Parkyns. I challenge him.

Cl. of Ar. Nicholas Rufford.

Parkyns. I have no Exception of him. (*He was ſworn.*)

Cl. of Ar. Cryer, countez. *William Northey.*

Cryer. One, &c. (*and ſo the reſt 'till the Twelve.*)

Cl. of Ar. Nicholas Rufford.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now to be taken, of the High-Treaſon whereof the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance. And all Jury-Men of *Middleſex* that have appear'd, and are not ſworn, may depart the Court.

The Names of the Twelve ſworn were theſe:

William Northey, Eſq..	*Thomas Edling*, Gent.
Edward Gold, Eſq.	*Robert Sanderſon*, Gent.
Daniel Thomas, Eſq.	*Ralph Marſh*, Gent.
Henry Whitchcott, Eſq.	*John Whiſton*, Gent.
Robert Bampton, Gent.	*Tho. Heames*, Gent. and
Thomas Sutton, Gent.	*Nicholas Rufford*, Gent.

Cl. of Ar. Sir *William Parkyns*, hold up thy Hand. (*Which he did.*) You that are ſworn, look upon the Priſoner, and hearken to his Cauſe: He ſtands indicted by the Name of Sir *William Parkyns*, late of the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, Knight, that whereas (*prout* in the Indictment, *mutatis mutandis*,) and againſt the Form of the Statute made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire, whether he be Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty; if you find that he is Guilty, you are to inquire what Goods and Chattels, Lands, Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince: If you find him Not Guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him Not Guilty, nor that he did fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr. *Mountague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Parkyns. My Lord, your Lordſhip was pleaſed to ſay, you would be my Counſel. I am ignorant in Matters of Indictments, I beg if there be any Fault in it, you will let me know it.

L. C. J. Truly I have obſerv'd no Fault in it; I do not know of any.

Mr.

Mr. *Mountague.* Gentlemen, this Indictment does contain as heavy an Accusation as can be laid upon any Man, for it not only charges the Prisoner with a traitorous Design of subverting the Government, and raising War and Rebellion within this Kingdom; which was to be done by adhering to the King's Enemies and promoting a Foreign Invasion, but likewise with a Conspiracy against the Life of the King, which was to have been taken away by a bloody Assassination.

Gentlemen, the Indictment sets forth, That Sir *William Parkyns*, the Prisoner at the Bar, did meet several Times with *Charnock*, and other false Traitors; and there it was consulted and agreed, how they should procure *French* Forces to land within this Kingdom, and then they were to raise Rebellion amongst his Majesty's Subjects, to join with the Invaders. Mr. *Charnock* was sent from the Prisoner at the Bar and the rest, as a Messenger into *France*, unto the late King *James*, to acquaint him with this bloody Design, and to desire him to borrow of the *French* King as many Troops as he could spare, to make a Descent upon this Kingdom; and they at the same Time were to facilitate the Descent, by getting as many Men as they could to make the Assassination; and the Number of Forty was pitched upon, who were to be provided for that Purpose; of which the Prisoner at the Bar was to find Five, who were to lie in wait with the rest, and set upon the King as he came along in his Coach, upon his Return from Hunting. Some were to assault and attack the Guards, while others were barbarously to assassinate and murder the King in his Coach: And particularly it charges the Prisoner with undertaking to procure and provide Five Horses and Arms, that were to be employed in this bloody Assassination; and also with gathering together great Quantities of Arms and Ammunition that were to be used in the Insurrection. To this Indictment the Prisoner has pleaded Not Guilty; if he be not guilty, God forbid he should be convicted! But if he be guilty, and we prove the Fact, the Nation expects that you will do Justice to the King and Kingdom, and find him so.

Mr. Att. Gen. (Sir *Thomas Trevor.*) May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar, Sir *William Parkyns*, stands indicted of High-Treason, for Compassing the Death of his Majesty, and Adhering to his Majesty's Enemies: And the Overt-Acts laid in the Indictment to prove this Treason are, That he with others had several Meetings and Consultations about this Design, and sent a Messenger over to *France* to the late King *James*, to procure *French* Forces to invade the Kingdom, to depose the King, and subject the Kingdom to a *French* Power: And likewise that he did enter into a Conspiracy with several Persons for the Assassination of his Majesty's Royal Person. These are the Overt-Acts mentioned in the Indictment, to prove this Charge of Treason against the Prisoner.

Gentlemen, the Evidence to prove these Overt-Acts, and which we shall produce, will be in this Manner: It will appear that the Prisoner at the Bar, Sir *William Parkyns*, has had a Commission from King *James* to raise a Regiment of Horse; and about *May* last, he with several others had a Meeting at the *Old King's-Head* in *Leadenhall-street*, where were present my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, Sir *John Fenwick*, Mr. *Charnock*, Mr. *Porter*, and one Mr. *Cook*; and *Goodman* came in to them after Dinner. And at that Meeting it was consulted and concerted among them, how they should bring back the late King *James*, and depose his present Majesty; and in order to that, they did resolve to send Mr. *Charnock* as a Messenger to the late King *James*, to desire him to obtain from the *French* King 10,000 Men to invade this Kingdom; 8000 Foot, 1000 Horse, and 1000 Dragoons; and to encourage the late King to this, they did assure him by the same Messenger, that they would meet him with 2000 Horse upon his Landing; and they did all undertake and agree that they would do it; and Mr. *Charnock* undertook to go of this Message.

Gentlemen, about a Week after this Meeting, Mr. *Charnock* not being willing to go upon this Errand without a good Assurance that they intended to perform what they had resolved upon, they therefore had another Meeting of most of the same Persons that were at the former, and particularly the Prisoner at the Bar was one; and that was at Mrs. *Mountjoy's*, a Tavern in St. *James's-street*. And at that Meeting they did all agree, as formerly, and continued in their former Resolution, to send Mr. *Charnock* to assure the late King, that they would meet him, according as they had promised, if he would give them Notice where he was to land, and he should not fail of their Assistance. And at these Meetings they did take Notice, that then was the most proper Time for such an Invasion: For the King was gone to *Flanders*, most of the Forces were drawn thither, and the People were dissatisfy'd, and so it would be the fittest Opportunity to accomplish their Design. And they desired Mr. *Charnock* to make haste to carry this Message, and to intreat King *James* that he would be speedy and expeditious in his coming, that they might not lose this Season.

Gentlemen, after these Meetings, Mr. *Charnock* did within a few Days go over into *France*, and did deliver his Message to the late King *James*; who took it very kindly, but said that the *French* King could not spare so many Forces that Year, having other Work to employ them about: Upon which, within a Month's Time, or less, he came back again, and brought an Account of his Message to those Gentlemen who sent him. This was in *May* or *June* last, and so the further Prosecution of the Design ceased at that Time.

But, Gentlemen, the last Winter it was revived again, and attempted, and carried on very near to the obtaining a fatal Success. And you will hear, that the Prisoner at the Bar, Sir *William Parkyns*, has had too great a Hand, and been a very great Instrument in both the Parts of this wicked Conspiracy and Treason; not only in the Invasion, which he with others sent the Messenger over to procure; but also in the other Part, the blackest Part, even the Assassination of the King's Person.

About *January* last Sir *George Barcley*, a Lieutenant of the Guards to King *James* in *France*, was sent over into *England* to engage Persons to join in the Conspiracy and Assassination; and for his Assistance there were sent over with him, and before and after him, some 20 Troopers of the late King's, that were his Guards in *France*. And Sir *George Bartley*, to encourage the Persons that were to join, and whom he had brought over with him, pretended an Authority to justify it, that is, a Commission from the late King *James*; and he communicates this Design to Mr. *Charnock*, Mr. *Porter*, and several others, and amongst the rest to the Prisoner at the Bar, Sir *William Parkyns*, having a great Confidence in him, and did acquaint him he had such a Commission, and he shewed it him, and that Commission was to levy War against the King's Person; which they took to be a sufficient Authority for them to assassinate the King's Person.

Gentlemen, in order to the accomplishing this horrid Conspiracy, there were several Meetings and Consultations had, at which the Prisoner at the Bar was present, and very active. Sometimes they met at Captain *Porter's* Lodgings, at another Time at the *Nagg's-Head* in *Covent-Garden*, at another Time at the *Sun* in the *Strand*, and another Time at the *Globe* in *Hatton-Garden*, in order to accomplish this Design: And at these Meetings you will hear they did propose several Ways and Methods for the Execution of it; and several Persons, particularly one of them that have suffered the Punishment of the Law for this, were appointed to go and view the Ground, where the King's Person might most conveniently be assaulted. Mr. *King*, that was executed for it, was one, Captain *Porter* was another, and one *Knightley* was the third; and these did go to see the Ground. And the Day before they went there was a Meeting, at which was present the Prisoner at the Bar, and others, wherein 'twas concluded upon, that they should go; and they went accordingly to see the most convenient Place for it. They went to *Brentford*, and afterwards to the other Side of the Water to *Richmond*, and survey'd all the Ground; and the Place they pitch'd upon as the most proper for their Purpose, was, when his Majesty should return from Hunting, to do it in the Lane betwixt *Brentford* and *Turnham-Green*. And accordingly, when they return'd in the Evening, they came by Appointment to the Place where the rest of the Accomplices were to meet, at the *Nagg's-Head* Tavern in St. *James's*, and gave an Account of their Proceedings; and at that Meeting likewise was Sir *William Parkyns*, the Prisoner at Bar, Mr. *Charnock*, and several others; and upon the Report of Captain *Porter* and Mr. *King's* Expedition, they did resolve the Thing should be done in that Place, and that it should be done in this Manner.

Sir *George Barcley* with about Eight or Ten in his Party, who were to be chosen out of all the other Parties, were to assault the King's Coach, and endeavour to kill the King, and all the rest that were in the Coach with him, whilst the others in two Parties were to attack the Guards; and the Number in all was to be about 40. This was fully agreed upon.

And, Gentlemen, the first Time that they resolved to put this traitorous Design in Execution, was the Fifteenth of *February*, which was a *Saturday*, the usual Day that the King was wont to go a-Hunting on; but it happened by great Providence, that the King did not go abroad that Day.

They had contrived further, to make the Thing sure, that there should be two Persons, whom they called orderly Men, who should be placed at *Kensington*, to give Notice when the King went abroad; and *Chambers* was one, and *Durance* that was a *Fleming* was another; and *Durance* was likewise employ'd to view the Inns about *Turnham-Green* and *Brentford*, for the Lodging of their Men, who were to be placed Two or Three in an Inn, that they might not be observed.

Gentlemen, the first Day appointed for the accomplishing this Design, which was the 15th of *February*, being over, and they disappointed; yet they did afterwards resolve to go on and execute it. And the next *Saturday*, which was the 22d of *February*, was pitched upon for the Time of Execution; and accordingly on *Friday* the 21st of *February*, the Day before, there was a Meeting at the *Nagg's-Head* in *Covent-Garden*; and there was present Sir *George Barcley*, Capt. *Porter*, and several others, and amongst the rest the Prisoner at the Bar was there: They had at first some Discourse among them that they were in doubt, because of the first Disappointment, whether there had not been some Discovery, but that Doubt was soon over; for it was said, it could not be so, for then they should not have been there together. That seemed probable, and the Disappointment was imputed to some Accident; and that gave them new Assurance to go on, and they were resolved to do it in the same Manner, as they had formerly resolv'd, on the next Day, which was *Saturday*.

Gentlemen, at that Meeting Mr. *Porter* acquainted them, that he had the Misfortune to have some of his Horses fallen sick or lame, and he acquainted the Prisoner with it; and Sir *William Parkyns* was careful to supply him with other Horses, and told him, he could get a Note from one *Lewis*, who I think is Major of the Horse to my Lord *Feversham*, to get three Horses; and accordingly he did send a Note for three Horses to Mr. *Lewis*.

Upon the 22d of *February* in the Morning, which was the Time for the Execution of this bloody Conspiracy, they had met together, and resolved to go on with it, and put it in Execution; and that they had Notice from *Chambers*, that the King did go a-hunting that Day, and there was great Joy among them all, thinking themselves sure; and so they order'd all Things to be got ready. But afterwards, about One a-Clock, there came other News, that the King did not go abroad, but the Guards were all come back in great haste, their Horses being all of a Foam, and the King's Coaches were sent back to the *Mews*; then they began to be in a great Consternation, and they thought the Thing had taken Air, and was discovered. This, Gentlemen, is a short Account how it will appear upon the Evidence, as to the Conspiracy of Assassinating the King, and the several Meetings and Consultations about it; at which the Prisoner at the Bar, Sir *William Parkyns*, was present.

But, Gentlemen, there will be a little more Evidence, if it be necessary, to confirm this former Evidence, and to shew the Part that the Prisoner at the Bar had in this treasonable, this barbarous Conspiracy: For it will appear, that, as the Prisoner had a Commission from the late King *James* to raise a Regiment of Horse, and had sent a Messenger into *France* to invite the late King over, with 10,000 *French*; so he had made great Preparation of Arms to be ready for that Purpose. About

Michaelmas

Michaelmas last the Prisoner at the Bar sent a Parcel of Goods, as he called them, which were put into Cases, I think they were about eight small Boxes, put into very large Cases, and sent down by his Order into the Country, unto one *Haywood*. It seems this *Haywood* had married Mr. *Charnock*'s Sister; and *Charnock* writ a Letter to him, and desired that he would give Sir *William Parkyns* Leave to lodge some Goods there, which were of great Value, and he durst not trust them at his own House in *Warwickshire*, because his Servants were not there to look after them; and accordingly upon that Letter Mr. *Haywood* did give Leave that the Goods should be carried thither, and they were so, and there they were lock'd up privately, and kept till this barbarous Conspiracy was discovered; then you will find, the Prisoner at the Bar sent his own Servant down, the *Tuesday* after the Discovery, and gave him Orders immediately (his Name is *Eubank*, and he is the Groom, and looks after his Horses) to go down to *Warwickshire* to one *Evans*, who carried the Goods; and desire him with all Speed to remove those Goods, and to take Care to remove them privately, and to secure them, and to hide them. And accordingly on *Wednesday* he came there, which was *Ash-Wednesday*; and acquainted *Evans* with what Sir *William* had ordered him, and they went that very Night with a Cart to Mr. *Haywood*'s; and though it was late, and they were desired to stay till the next Morning, they would not; they said they could stay no longer, but would remove the Goods immediately; and accordingly they were carried from thence that Night; to Sir *William Parkyns*'s own House in *Warwickshire*; and there they were buried in the Garden. These Goods that were of this great Value were put into the Ground to preserve them. But after this Discovery, Sir *William Parkyns* being accused, and his Name put in the Proclamation, and a Search being ordered to be made at his House, these Goods that lay hid at *Haywood*'s, and upon the Removal thence were thus buried in the Ground, came to be discovered, and the Cases were broke open, and then they did appear to be Goods of an extraordinary Nature indeed, for you will find they were Horse Arms for Troopers; there were two and thirty Carbines, five and twenty Cases of Pistols, and about forty odd Swords without Hilts upon them, but the Hilts lay loose by them; so that this will make it apparent, without Dispute, how far the Prisoner at the Bar has engag'd in this Conspiracy, and what Preparations he had made for the Execution of it.

Gentlemen, it will appear farther against the Prisoner at the Bar, that he hath had a considerable Number of Horses, that have frequently been brought up from his House in *Hartfordshire*, to the *George-Inn* in *Holbourn*.

But before we come to that, I would acquaint you with another particular Part of our Evidence, that is precedent in Point of Time. About *Christmas* last, the Prisoner did acquaint one *Sweet*, who is an Officer in the Excise, (and I am very sorry that we should have any such Officers that should be thought fit to be intrusted with Secrets of this Nature) Sir *William Parkyns* acquainted this *Sweet*, and gave him an Account that he had long had an Assurance that King *James* would land; but now he had it under his own Hand, that he would land very speedily, and that he had made Preparations for that Purpose to meet him. That great Things were expected from him; that his own Troop was ready, and it consisted chiefly of old Soldiers; and that several Persons who had been Officers would be Volunteers under him. He said he intended to go into *Leicestershire*, and there he was to meet several Gentlemen from the North, and from the West, to consider and settle a Correspondence how to meet the late King upon his Landing; and accordingly Sir *William Parkyns* did go; and you will have an Account that he came to *Leicester* on *Friday* Night, one *Scudamore* went along with him; there he staid all *Saturday*, and a good Part of *Sunday*. There came several Persons to him while he was at *Leicester*, particularly one Captain *Yarborough*, the Son of Sir *Thomas Yarborough*, and a Parson, who said they came as far as from *York* to meet Sir *William Parkyns* at *Leicester*; and there was great Resort thither at that Time, as you will hear from the Witnesses. Sir *William Parkyns* came back again from *Leicester* to *Brick-hill* that Night, and returned to his own House on *Monday* Night; and after his Return, he acquainted this *Sweet*, that he had been his Journey to *Leicester*; that he met with several Gentlemen there from the North, and other Places, and had settled a Correspondency, and had found them all fully engaged, and well inclined; all went well, and there was no Danger of any Miscarriage at all; and this was about *January* last, that this Expedition was made by the Prisoner.

And now, Gentlemen, as to that Particular about the Horses, which were so frequently brought up this last Winter from his House in *Hartfordshire*, to the *George-Inn* in *Holbourn*, there is one very unfortunate Circumstance that attends this Matter; that is, that these Horses were brought to Town just the several Nights before the King was to be assassinated; for upon *Thursday* the 13th of *February*, he being in Town, sent Directions to his Groom to bring up three of his Horses on *Friday*, which was the 14th in the Afternoon, and all these Horses were furnish'd with Pistols and Furniture for Troopers; according to those Directions his Servant brought up the three Horses, and he came and acquainted his Master that they were brought up according to his Order; Sir *William Parkyns* was then at his Lodgings, which were in the same House where Mr. *Charnock* did lodge; when his Man had told him the Horses were come, he pretended at first that he had some Thoughts of going out of Town that Evening, but that he had changed his Mind, and would go in the Morning; and he would have the Horses ready against the next Morning, which was *Saturday* the 15th, the first Day upon which the Assassination was intended to be put in Execution.

The next Morning when his Man came to him again, he had changed his Mind, and he would not go out of Town in the Morning, but he would go in the Afternoon; and it will appear that he did not go out of Town that Day, nor the next Day, nor till *Monday*; and then the Design had miscarried by the King's not going abroad a *Saturday*, and the Horses were carried back; and when he went out of Town upon *Monday*, one *Holmes* went along with him, and he went with him to his House in *Hartfordshire*; and there he staid until *Friday* after, which was the Day before the next Time that was appointed for the Execution of the Assassination. And upon the *Friday* they came up again, and then there were more Horses, four or five, that were brought up that Day; and all of them with Pistols, and Jack-Boots, and other Furniture and Accoutrements for Troopers; and these came to the *George-Inn*, where Sir *William Parkyns* gave his Man, *Eubank*, particular Orders to be very early the next Morning at *Kensington*; that was the 22d, and he was to go, as he told him, to one *Brown*, that he said was concerned in the King's Kitchen, and liv'd two Doors off the Gate that turns up to the King's House; and he was to tell him he was Sir *William Parkyns*'s Servant, but that he came from a Man that lodg'd at a Confectioner's House over against *Gray's-Inn*; in which Place, by the Description of the Person, you will find Sir *George Barcley* lodged.

The Man went accordingly at Eight a-Clock in the Morning to *Kensington*, and inquired out this *Brown*, and met with him, and told him he was Sir *William Parkyns*'s Servant, but came from the Gentleman that lodg'd at the Confectioner's in *Holbourn*. *Brown* said he had nothing to say to him, but bid him give him his Almanack, and he writ in it, that he would be in Town in two Hours himself, and wait upon him; and bid him carry that to the Man that lodg'd at the Confectioner's: And this *Brown* by the Circumstances of the whole, must probably be one of the orderly Men who lodg'd at *Kensington*, to give Notice when the King and the Guards went out.

Sir *William Parkyns*'s Servant came back to the Confectioner's House, and there he met with a Man that went by the Name of *Rogers*; he'll tell you he was a *Scotch* Man, for he spoke broad *Scotch*, and he'll give you a particular Description of the Man, by which, I believe it will appear that it was Sir *George Barcley*. Sir *William Parkyns*'s Servant, after he had deliver'd his Message to this *Rogers*, came back to his Master, and told him he had done his Errand according as he was order'd; and Sir *William Parkyns* ask'd him what *Rogers* said, and he told him that he bid him tell his Master, if he would come to him he would be ready at home for him. This was upon *Saturday* Morning the 22d of *February*.

About Eleven a-Clock that Day Sir *William Parkyns*, and this *Lewis* that we spoke of before, came to the *George-Inn*; and there Sir *William Parkyns* ask'd his Servant whether he had receiv'd any more than two Saddles, for there were two Saddles sent in thither, according to an Order that had been given, to furnish two other Horses that stood there at the *George-Inn*, and which Sir *William Parkyns* told his Groom belonged to two Friends of his, and bid him be sure to take care of them, and to see them well fed, and order'd two Saddles to be bought for them. *Lewis* said he did think they had more than two; but you will see by the Evidence that this same *Lewis* had provided thirty Saddles for Sir *William Parkyns*; but there seem'd to be a Controversy between them at that Time how many had really been sent in, and *Lewis* affirm'd there was twenty-four; but Sir *William Parkyns* said, I have had but twenty-two of the thirty yet, for I have but two brought in here, and I had twenty before. This you will hear fully proved; and I think it is impossible for any Body to believe, but that all this Preparation of Saddles, Pistols, Boots, and other Things, must convince any Body of the Prisoner's being so far engaged in this Design, that he can never answer it without giving you a very good Account what this Preparation was for.

Gentlemen, a great Part of this will be prov'd to you by one that acted in it, as a Servant to Sir *William Parkyns*, that is, as to the coming up of the Horses, Jack-boots, Pistols, and other Arms at that Time; and that when on the last *Saturday* it was disappointed, all the Horses, not only those Sir *William Parkyns* brought, but the other two, went away in a great Hurry and Confusion, and nothing was ever heard of them more; and that will be prov'd by the Servants in the very *Inn*.

Gentlemen, I have now open'd to you the Nature and State of the Evidence; we will call our Witnesses, and make it out very undeniably and substantially, and therefore I will not give you any farther Trouble.

Mr. Sol. Gen. Call Mr. *Porter*. (*Who was sworn.*) Mr. *Porter*, pray will you give the Court and the Jury an Account of the Meeting at the *King's-Head* in *Leadenhall-street*; and who was there, and what Resolutions and Agreements they came to?

Capt. *Port.* About the latter End of *May* last, or the Beginning of *June*, there were two Meetings had, the one was at the *King's-Head* in *Leadenhall-street*, the other was at Mrs. *Mountjoy*'s near Sir *John Fenwick*'s. At the first Meeting there was my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Friend*, Sir *William Parkyns* the Prisoner at the Bar, Sir *John Fenwick*, Capt. *Charnock*, Mr. *Cook*, and myself. Mr. *Goodman* came in after Dinner, and there we consulted which was the best Way for King *James*'s coming in; and we all resolv'd to send a Messenger to him, to invite him over, and to desire him to interpose with the *French* King for the getting 10,000 Men, to come over with him, 8000 Foot, 1000 Horse, and 1000 Dragoons. It was then consider'd who should be sent; and all the Company agreed Mr. *Charnock* was the properest Person. Says Mr. *Charnock*, If you send me, pray tell me what Errand I shall go upon: We did likewise then agree, that he should assure the King, if he would come over at such a Time, we would meet him with a Body of 2000 Horse.

Mr. Att. Gen. Did *Charnock* undertake to go upon that Message?

Capt. *Port.* Yes, he did, and to propose this Matter to him, that he might propose it to the *French* King for the getting of the Men.

Mr. Sol. Gen. Before you go away, I desire to ask of you one Thing, Did Sir *William Parkyns*, the Prisoner at the Bar, agree to the Message?

Capt. *Port.* Yes, he did.

Mr. Sol. Gen. Had you any other Meeting about this Business, and when was it, and who was there?

Capt. *Port.* My Lord, Capt. *Charnock* said at first he would not go of a foolish Message; and thereupon we all agreed to be at the Head of 2000 Men to meet King *James* at his Landing, and every one should bring his *Quota*.

Mr. Att. Gen. When was the second Meeting, and where was it, and who was there, and what was agreed upon?

Capt. *Port.* The second Meeting was at Mrs. *Mountjoy*'s, where Captain *Charnock* desired us once more to meet, before he went away, to know whether

whether we kept to our first Resolution? And we did agree to what was resolved upon at first, and he said he would go in two or three Days time.

Mr. Att. Gen. Did the Company agree to it then?

Capt. *Port.* Yes, they did, Sir, all that met at that Time.

Mr. Sol. Gen. Pray name them over again who they were?

Capt. *Port.* Sir *William Parkyns* was actually there, and my Lord of *Ailesbury*, and Sir *John Freind*, and Capt. *Charnock*, Mr. *Cook*, and myself; I cannot tell whether my Lord *Montgomery* was there, or Mr. *Goodman*.

Mr. Att. Gen. Pray when did you see Capt. *Charnock*, or speak with him, after that?

Capt. *Port.* It was when I was in Prison about the Riot, and he told me he had been there; but there would be nothing done in that Matter at present, for King *James* said, the *French* King could not then spare so many Men, though he thanked us for our kind Offer: And he said he had been with my Lord of *Ailesbury*, Sir *William Parkyns*, and the several other People of Quality, which he did not name, and had carried them the particular Messages that he had in command from the King to carry to them.

Mr. Att. Gen. Now, pray tell us, what you know about the Design of Assassinating the King, and what hand the Prisoner at the Bar was to have in it?

Capt. *Port.* About some Weeks before I heard of the Assassination, I came to lodge in the House in *Norfolk-street*, where Capt. *Charnock* lodged; and where Sir *William Parkyns* lodged when he came to Town. Most commonly we used to go in the Evening to the Tavern, or drink a Bottle of Wine at our own Lodgings; and one Morning I ask'd Mr. *Charnock*, if I should see him at Night? He said he was engaged in private Company for that Night, and he could not go with me to the Tavern. For, says he, there are some Gentlemen that are lately come from *France*, and there is something to be done for the King's Service. If there be so, says I, pray let me be concerned: Says he, They are but newly come, and they will see no Body else but me at present. A little after I fell sick of a Fit of the Gout, and Mr. *Charnock* came to visit me, and we fell into Discourse, and I asked him about those Gentlemen that were come from *France*, what they came about? He told me it was Sir *G. Barcley* that came from *France*, and several other Officers with him, and that he had a Commission from the late King *James* to levy War against the Person of King *William*, or the Prince of *Orange*, as I think it was named in the Commission.

L. C. J. Who told you this?

Capt. *Port.* It was Capt. *Charnock*: he desired to know how many Men I could bring. I desir'd a little Time to consider; but I said there would be a great many would join if the King landed, whom I did not think fit to trust with a Thing of this Nature before-hand. Some few Days after, Capt. *Charnock* came into my Chamber, and brought Sir *George Barcley*, and Major *Holmes* that said he was come from *France*; and there we had little more but a general Discourse: But a little after that I got well of the Gout, and we had several Meetings at several Places; at the *Globe*-Tavern in *Hatton-Garden*, at the *Nagg's-head* in *Covent-Garden*, and at the *Sun* in the *Strand*, where Sir *William Parkyns* was always present. And there we did consult of the best Ways to assassinate the King, as he came from *Richmond* after Hunting. Sir *George Barcley* said, he had received 800*l.* from King *James*'s Secretary towards the buying of Horses, and furnishing both Horses and Men for the Expedition; and it was consider'd of how many Men it would be necessary to bring. The Number agreed upon was about Forty, of which Sir *George Barcley* was to provide Twenty; I promised to bring Seven or Eight, Sir *William Parkyns* engaged to bring Five, whereof Three should be mounted with his own Men, and the other Two my Men were to mount upon.

Mr. Att. Gen. Do you know the Names of those People that he was to mount? —— Capt. *Port.* I never had the Names myself.

Mr. Att. Gen. Well, what was done after these Consultations?

Capt. *Port.* I asked Captain *Charnock* one time; if I might not see the Commission that King *James* had given: He said he had never seen it himself, but Sir *William Parkyns* had. I asked Sir *William Parkyns*, one Evening as we were smoaking a Pipe by the Fire-side, whether he had seen the Commission? He said, he had; and that because King *James* would not trust any of his Ministers, it was written and signed with the King's own Hand.

Mr. Att. Gen. Pray did he tell you what it was for?

Capt. *Port.* He said it was for raising and levying War upon the Person of the King, but I do not know whether he called him King *William*, or the Prince of *Orange*; but I suppose it was the Prince of *Orange*.

Mr. Att. Gen. Pray then give us an Account of your going to view the Ground, where it was most convenient to do the Business.

Capt. *Port.* There were several Propositions about the Place where it was to be done; one was to be on the other Side of the Water by Ambuscade in *Richmond* Park; the other was to be on this side of the Water after the King was landed. Sir *G. Barcley* was for that that was upon the other side of the Water; I thought that it would take up too much time to go over thither, that it was better to be done on this side; but because there was Difference of Opinions, it was resolved upon that somebody should be appointed to view the Ground; and I was appointed for one, Mr. *Knightley* for another, and Mr. *King* would needs go with us for a Third; and we three did go. We lay all Night at *Knightsbridge*, and the next Day went and viewed the Grounds on both Sides the River; and came back that Evening to the *Nagg's-head* according to Appointment, where was Sir *William Parkyns* the Prisoner, and Sir *George Barcley*, and Mr. *Charnock*, and we gave an Account that we had view'd both Places: And upon our Report it was resolved, that it should be done on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*.

Mr. Att. Gen. Are you sure Sir *William Parkyns*, the Prisoner at the Bar, was there, at that Meeting at the *Nagg's-head*?

Capt. *Port.* Yes, he was.

Mr. Att. Gen. Did he agree to the Resolution?

Capt. *Port.* It was in general agreed to by all that were there.

Mr. Att. Gen. Pray, Capt. *Porter*, then give us an Account of the Days that were fixed for the Execution of this Design?

Capt. *Port.* There was *Saturday* the 15th, and *Saturday* the 22d, because *Saturday* was the Day the King used to go a-Hunting and Shooting.

Mr. Att. Gen. Were there any Men at *Kensington*, to give you Notice when the King went abroad?

Capt. *Port.* There were two Men that had a Lodging at *Kensington*, the one was one *Chambers*, who belonged to Captain *Charnock*, and the other was a *Fleming*, one *Durance*, who came over with Sir *G. Barcley*, and he went every Day, and thrust himself among the Guards to bring Intelligence.

Mr. Sol. Gen. What was the Reason the Design was not executed?

Capt. *Port.* The first Day, *Durance* brought Notice in the Morning that the Guards were gone abroad; and afterwards there came Notice, that the King would not go abroad that Day; for which Reason we adjourned it to the next *Saturday*.

Mr. Att. Gen. What was the Method you was to take in the Execution?

Capt. *Port.* The Method agreed upon was this: There was one *Rookwood* that came from *France* upon this Expedition, he was to command one Party, and Captain *Charnock* and myself were to command another Party, to attack the Guards; and Sir *G. Barcley* was to have four Men out of each Party to attack the Coach while we attacked the Guards.

Mr. Att. Gen. Well, You say the first Day you was disappointed by the King's not going. When was the next Meeting?

Capt. *Port.* The next Meeting was upon *Friday*, the Day before the 22d. I was sick all the Week, and I do not know whether I lay a-bed all the Week, or no; but upon *Friday* they met, and it was at the *Sun*-Tavern in the *Strand*: There was none but Sir *G. Barcley*, Capt. *Charnock*, Sir *William Parkyns*, and myself.

Mr. Att. Gen. What Discourse was there then?

Capt. *Port.* Sir *George Barcley* came in, and said, he was afraid the Thing was discovered; I told him I fancied not, for if it had, we should not have been in that House at that time. Then, says he, let us go on, and try another Day. Sir *William Parkyns* was asked if his Horses were come to Town: He said they were come to Town that Night. Said I, I have had a Misfortune with my Horses, two of them are fallen lame, and won't be fit for Service. Says he, If I had known that, I could have brought more Horses out of the Country: But, says he, I will send to Mr. *Lewis*, who was Gentleman of the Horse to my Lord *Feversham*, and I believe he can help us to more Horses; he will be with me To-morrow Morning, and I'll get a Note from him for two more. In the Morning I sent to him, and he sent me a Note for two Horses to mount my Men: and he sent me Word Mr. *Lewis* could help me to two or three others, that they were all three saddled, and one was accoutred with Holsters and Pistols, but the other two had only Saddles. I did not see Sir *William Parkyns* on *Saturday* the 22d, but I met some of my Friends, who were to go along with me upon this Enterprize; and we had first Notice that the Guards were gone abroad, and that the King would go, at which all were very glad: But when we had Notice that the King did not go, we were afraid the Thing was discovered, and I went out of Town, and I did not see any of them afterwards till they were taken.

Mr. Att. Gen. Pray, Capt. *Porter*, have you heard any thing from Sir *William Parkyns* of his having a Commission from King *James*?

Capt. *Port.* I have heard Captain *Charnock* ask Sir *William Parkyns*, why he did not go along with us in this Expedition? He said, he did not go, because he could not go.

Mr. Att. Gen. Was he not to be one in the Number that was to act in the Assassination?

Capt. *Port.* No; he said he had other Business to do, he had a Regiment to look after.

L. C. J. How many Horses had you from *Lewis*?

Capt. *Port.* I had never a one, only Sir *William Parkyns* sent me Word, if I wanted I might have three, for I had told him I would not send for them, till I heard whether the King went abroad; and then I had Notice that the King did not go.

Mr. Att. Gen. Had you a Note for them?

Capt. *Port.* Not for those three Horses; but *Cranbourn* said he had a Note for two Horses.

Parkyns. Did he say he had a Note from me?

Capt. *Port.* No, I don't say so, Sir *William*; *Cranbourn* told me, he had a Note whither to go for them.

L. C. J. Will you ask him any Questions, Sir *William*?

Parkyns. No, my Lord.

Juryman. My Lord, I desire he may be asked, Whether at any of those Meetings there was any Discourse of the Assassination before Sir *William Parkyns*?

L. C. J. What say you to that, Captain *Porter*?

Capt. *Port.* Yes; he was at all the Meetings and Consultations.

Juryman. Pray, my Lord, I desire to know, whether Sir *William Parkyns* discoursed of it himself, and what he did say about it?

Capt. *Port.* I cannot say exactly what he did say in particular, only he agreed to it, and was to furnish five Horses for it, and said it was necessary to be done; for it would bring the King in more easily, though he could not personally engage in it himself, because he had other Business; he was to look after his Regiment.

Mr. Sol. Gen. If Sir *William Parkyns* will ask Captain *Porter* no Questions, we will go on to our next Witness, which is one *Abraham Sweet*, whom Mr. *Attorney* mentioned.

[*He was brought in and sworn.*]

Mr. Sol. Gen. Mr. *Sweet*, will you give the Court and Jury an Account, what Sir *William Parkyns* said to you about King *James*'s Landing?

Mr. Att. Gen. Pray, will you give an Account what Discourse you had with Sir *William Parkyns*, the Prisoner at the Bar, about King *James*'s returning and landing with *French* Forces?

Sweet. Sir *William Parkyns* did tell me, that he did expect King *James*'s Landing; and he said his own Troop was composed of old Soldiers.

Mr. Att. Gen. How long have you known Sir *William Parkyns*?

Sweet. This three Years.

Mr. Att. Gen. Pray tell the Time when this Diſcourſe was. About what Time was it?

Sweet. This was ſince *Chriſtmas*, about *Chriſtmas* laſt.

Mr. Att. Gen. Where was it that you had this Diſcourſe?

Sweet. It was about his own Houſe.

L. C. J. What Diſcourſe?

Sweet. We were talking about King *James*'s coming.

L. C. J. Who told you that King *James* was coming?

Sweet. Sir *William Parkyns*.

Mr. Att. Gen. What did he ſay?

Sweet. He ſaid he had bought a great many Saddles, thirty Saddles; and that his own Troop was compoſed of all old Soldiers.

Mr. Att. Gen. Did he tell you of any Aſſurance that he had of King *James*'s Landing?

Sweet. Yes; he ſaid he had the King's Word for it.

Mr. Att. Gen. Was there any Diſcourſe between you about any Journey that Sir *William* was to take?

Sweet. Yes; he did tell me he was to go into *Leiceſterſhire*, and was to meet ſeveral Gentlemen in *Leiceſterſhire*; and he did go, and after he came back again, he ſaid he had met his Friends, and all was well, and that the Weſt was as much inclin'd to King *James*'s Intereſt as the North, and that a Lord's Brother was concerned.

Mr. Att. Gen. What other Diſcourſe had you about this Matter?

Sweet. Nothing elſe, as to Particulars, that I can remember.

Mr. Att. Gen. What Orders had you to come up to Town in *February*, and when, and from whom?

Sweet. Sir *William Parkyns* ſent for me, and he ſent me a Letter about the 11th of *February* that I ſhould come to him the next Day; and I did come the next Day.

Mr. Att. Gen. Whither did you come? Where did you find him?

Sweet. At his Lodgings in *Norfolk-ſtreet*, at the Houſe where Mr. *Charnock* lodged; and after I had ſpoken with Sir *William Parkyns* about the Letter which he had ſent me to come up, he told me, that the Buſineſs that he had deſigned for me, he did not think fit I ſhould do, becauſe of my Family.

Mr. Att. Gen. Pray, what Directions had you from him, what you were to do when you went into the Country?

Sweet. When I went into the Country, he order'd me to go to his Houſe, and ſend up three of the ſtrongeſt Horſes.

Mr. Att. Gen. When was this, do you ſay?---*Sweet.* It was in *February*.

Mr. Att. Gen. What Time in *February*?

Sweet. The Eleventh or Twelfth, which was *Wedneſday*; and at my going away, he told me if I had not a Letter from him the *Friday* following, I ſhould come to Town again. I did come to Town again, and then he aſked me, if I had made Proviſion for my Family? I told him, No; then he aſked me, why I came up to Town? He told me I might go into the Country again on the Morrow Morning.

L. C. J. What did he tell you?

Sweet. He ſaid I might go back again into the Country. I came upon the *Saturday* Morning to him.

Mr. Att. Gen. Pray, what Day was that *Saturday*?

Sweet. I believe it was the 13th or 14th of *February*.

Mr. Att. Gen. You ſay, *Wedneſday* was the 12th.

Sweet. Yes, I believe *Wedneſday* was the 12th, and I came to Town the *Friday* after that 12th, that was the 14th, and on the *Saturday* I went home again.

Mr. Att. Gen. You ſay you came to him on the *Saturday* Morning, what paſſed between you then?

Sweet. I went the next Morning to Sir *William Parkyns*'s Lodgings, but he was gone out, and had left Word, that I muſt come again about Eleven of the Clock: I did go about that Time, and he was not come in, and there I met one Mr. *Chambers*, and one Mr. *Lee*, whom I had ſeen there the Night before.

Mr. Att. Gen. And what Diſcourſe had you then with them?

Sweet. We had little Diſcourſe, for I had only ſeen them the Night before; but I think *Chambers* told me he had been at *Kenſington*, and I deſired to know what News there; and he told me *William* kept as cloſe as a Fox; and he ſhew'd me his Wounds, and ſaid thoſe Wounds wanted Revenge.

Mr. Att. Gen. Where did he ſay he received thoſe Wounds?

Sweet. At the *Boyne*.

Mr. Sol. Gen. Pray, Mr. *Sweet*, did he tell you for what Uſe his Troop was?---*Sweet.* He did not tell me poſitively; but I underſtood it to be to join King *James* when he landed.

Mr. Sol. Gen. Pray, Sir, where did you dine that *Saturday*?

Sweet. With Sir *William Parkyns*, and Mr. *Charnock*, and *Chambers*, and one or two more that I did not know.

Mr. Att. Gen. Will you aſk him any Queſtions, Sir *William*?

Parkyns. Did I tell you, Mr. *Sweet*, that I had a Troop of Horſe?

Sweet. I will tell you your own Words, and no other: You ſaid, Your own Troop was compos'd of old Soldiers.

L. C. J. Pray let me aſk you one Queſtion: How many Horſes were you to bid the Man to bring up to Town?---*Sweet.* Three, my Lord.

Mr. Att. Gen. And were they not his ſtrongeſt Horſes?

Sweet. Yes, my Lord, they were.

Mr. Att. Gen. Did he ſay any thing to you about Volunteers?

Sweet. Yes; he ſaid there were ſome Gentlemen that were Captains and old Officers that would be Volunteers under him.

Parkyns. Pray, where were thoſe Words ſpoken?

Sweet. Either in your Houſe or in the Garden, I can't tell directly which, but ſomewhere about your Houſe it was.

Parkyns. Where is that Houſe?---*Sweet.* In *Hertfordſhire*.

Parkyns. Then I am in your Lordſhip's Judgment, whether Words ſpoken in *Hertfordſhire* can be an Evidence of a Treaſon acted here in *Middleſex*?

L. C. J. Sir *William Parkyns*, if there be a Deſign to kill the King, and there are ſeveral Overt-Acts to prove that Deſign, and one is in one County, and another is in another County, the Party may be indicted in either of the Counties, and Evidence may be given of both thoſe Overt-Acts, though in ſeveral Counties. It is true, you being indicted in *Middleſex*, makes it neceſſary that ſome Evidence ſhould be given of ſome Things done in *Middleſex*, as there is; as your Meeting at Mrs. *Mountjoy*'s, and at the *Nag*'s-*Head* in *Covent-Garden*, and the *Sun* in the *Strand*, where were ſeveral Conſults, which are Overt-Acts of the ſame Treaſon; and if Treaſon be committed in ſeveral Counties, the Party may be indicted in any one, and the Evidence may be given of Facts done in all.

Parkyns. Then, Mr. *Sweet*, you do not ſay that I had raiſed a Troop, or would raiſe a Troop.

Sweet. I told you your own Words, that your Troop was made up of old Soldiers.

L. C. J. But yet I muſt tell you further, Sir *William Parkyns*, if I remember right, there is Evidence given of a Diſcourſe you had in *Norfolk-ſtreet*, where you lodg'd, and that is in *Middleſex*.

Parkyns. My Lord, I did not obſerve that he ſaid any thing of me about *Norfolk-ſtreet*.

Mr. Att. Gen. Yes; this is what he ſays: You told him you had thought of a Buſineſs for him, but you would not engage him in it, becauſe of his Family.

Parkyns. Pray, Mr. *Sweet*, did I tell you any thing what you were to do?---*Sweet.* No, Sir, you did not.

Parkyns. I hope the Jury will take Notice of that: I did not tell him any thing that he was to do.

L. C. J. Well, that was no great Matter. Will you aſk him any more Queſtions, Sir?---*Parkyns.* No, my Lord.

Mr. Sol. Gen. Then our next Witneſs is *James Eubank*.

(*Who was ſworn.*)

Mr. Att. Gen. Do you know Sir *William Parkyns*?

Eubank. Yes, he is my Maſter.

Mr. Att. Gen. What Servant was you to him?

Eubank. I was Groom to him.

Mr. Att. Gen. How long have you been his Groom?

Eubank. Not a Twelvemonth yet.

Mr. Att. Gen. Pray, firſt give an Account what Journey you took with him.

Eubank. I went into *Leiceſterſhire* with him.

Mr. Att. Gen. Pray tell us what you know of that Matter.

Eubank. Yes, my Lord, we went from our own Houſe to *Stony-Stratford*, and there we lay all Night.

Mr. Att. Gen. What Time was this?

Eubank. I cannot tell the Day of the Month, it was in *January*.

Mr. Att. Gen. What Day of the Week was it?

Eubank. It was on a *Thurſday*.

Mr. Att. Gen. And where did you go from *Stony-Stratford*?

Eubank. We came the next Day to *Leiceſter*.

Mr. Att. Gen. Who went with him?---*Eub.* One Captain *Scudamore*.

Mr. Att. Gen. How long did you tarry at *Leiceſter*?---*Eubank.* When we came the next Day to *Leiceſter*, we ſtaid there till *Sunday* Morning.

Mr. Att. Gen. What Company came to your Maſter when he was at *Leiceſter*?---*Eubank.* Sir, I am a Stranger, I know none of them, I was never there before.

Mr. Att. Gen. Can you remember whether there was one *Yarborough* there?

Eubank. There was one that ſaid his Name was *Yarborough*.

Mr. Att. Gen. Whence did he come?

Eubank. He ſaid he came out of *Yorkſhire*.

Mr. Att. Gen. Who came with him?---*Eubank.* There was a Gentleman in black Cloaths, that ſaid he was a Miniſter.

Mr. Att. Gen. Did you obſerve any others that came thither to your Maſter?

Eubank. It was Market-Day, and I had my Horſes to look after; there were a great many People went up and down Stairs; but whether they went to him, or no, I can't tell.

Mr. Att. Gen. When did you come back again?

Eubank. We ſtaid there till *Sunday* Morning, and then we came away.

Mr. Att. Gen. To what Place did you go that Night?---*Eubank.* To a Town call'd *Brickhill*, and the Night following we came home.

Mr. Att. Gen. Who came back with him?

Eubank. None but Captain *Scudamore*, who went with him.

Mr. Att. Gen. Whither did you go the next Day?

Eubank. We came to *Buſhy* about 8 a-Clock a *Monday* Night.

Mr. Att. Gen. Well, after this, did you bring up any Horſes to the *George-Inn* to your Maſter, and when?---*Eubank.* Yes, three Horſes.

Mr. Att. Gen. Ay, when?---*Eubank.* I cannot tell the Day.

Mr. Att. Gen. What Day of the Week was it?---*Eub.* Upon a *Friday*.

Mr. Att. Gen. What Month was it in?

Eubank. Indeed, I can't ſay that.

Mr. Att. Gen. Do you remember *Valentine*'s Day?

Eubank. Yes; it was upon that Day.

Mr. Att Gen. That is the 14th of *February*, a remarkable Day, and was then of a *Friday*, the Day before the Aſſaſſination was to have been executed. Whither did you bring them?---*Eubank.* To the *George-Inn*.

Mr. Att. Gen. How were they furniſh'd? Were there Piſtols upon them?

Eubank. No; the Piſtols were in Town, and the Horſes were ſent after my Maſter.

Mr. Att. Gen. Where were the Piſtols left?---*Eub.* Indeed, I don't know.

Mr. Att. Gen. Pray, when you came to Town, did you go to your Maſter, and acquaint him with it?---*Eubank.* Yes, Sir, I did.

Mr. Att. Gen. Pray, what did he then ſay to you?

Eubank. He ſaid he thought he ſhould go home that Night.

Mr. Att. Gen. Did he change his Mind?

Eubank. Yes, for he did not go till *Monday*.

Mr. Att. Gen. Did he tell you he ſhould go a *Saturday*?

Eubank. Yes; he ſaid he thought he ſhould.

Mr. Att. Gen. Did you come to him to know his Mind, and what did he ſay?---*Eubank.* He ſaid in the Morning, he would go in the Afternoon; but he did not.

Mr. Att. Gen. Afterwards when did he go?

Eub. Upon *Monday.*

Mr. Att. Gen. Who went with him that *Monday?*

Eub. One *Holmes*, a fat, thick Man.

Mr. Att. Gen. Well, pray when did you come to Town again?

Eub. Upon the *Friday* following.

Mr. Att. Gen. How many Horſes did you bring up then?

Eub. On the *Friday* following we brought up Four; my Maſter himſelf came up with them.

Mr. Att. Gen. Who came with him?

Eub. Mr. *Holmes*, and I, and another Servant.

Mr. Att. Gen. How were the Horſes furniſh'd?

Eub. Every Horſe had Piſtols.

Mr. Att. Gen. What did you bring beſide? Were there any Boots?

Eub. None but what we rid in.

Mr. Att. Gen. Where did you leave thoſe Horſes?

Eub. At the *George* Inn in *Holborn.*

Mr. Att. Gen. What Directions did your Maſter give you that Night for going the next Morning upon an Errand, and whither?

Eub. I had no Meſſage from him; but there was a Note that I was to carry to *Kenſington* to one *Brown*; and I was ordered to go to the Gentleman that lives within a Door or two next the Going into the King's Gate, I forget his Name; but this Man where *Brown* lodged belonged to the Court, ſome Officer in the Kitchen to the King; either Confectioner, or Cook, or ſomething; and this Man lay there.

Mr. Att. Gen. What was your Meſſage to him?

Eub. I was to tell him, that I came to ſpeak with one *Brown*, and that I came from a Gentleman that lay at the Confectioner's in *Holborn*, over-againſt *Gray's Inn.* I know the Gentleman by Face again, if I ſee him;

Mr. Att. Gen. Well, what did he ſay to you?

Eub. He bid me ſet my Horſe at the *Red Lion*, and he would come to me preſently; and ſo he did. Says he, I have no Buſineſs that I need to ſend; but I'll write in your Almanack, and you may carry it back and ſhew it him, that I will come to Town betwixt nine and ten o'Clock. I did go back and tell that Gentleman at the *Confectioner*'s.

Mr. Att. Gen. What kind of Gentleman was it?

Eub. A luſty Man, with a great Noſe, and a black Wig; he ſpeaks broad *Scotch*, and he was a ſwarthy colour'd Man, and he had a wide Mouth.

Mr. Att. Gen. What Age was he of?

Eub. A middle-aged Man.

Mr. Att. Gen. Pray, what did he ſay to you?

Eub. He aſk'd me if I had ſeen the Gentleman? I told him, Yes. He aſk'd me what the Gentleman return'd for Anſwer? I told him, he had writ in my Almanack, which I had ſhewn him, that he would be in Town between nine and ten o'Clock. He aſk'd me then where I was going? I ſaid, To my Maſter. Says he, Tell your Maſter that I will be in my Chamber ready for him.

Mr. Att. Gen. Did you go to your Maſter, and tell him ſo?

Eub. Yes, I did.

Mr. Att. Gen. And what did he ſay to you?

Eub. He ſaid he deſigned to go home in the Afternoon, and therefore bid me go to the Inn, and make ready the Horſes, and know what was to pay for them, and he would come by and bye thither.

Mr. Att. Gen. Did he afterwards come to the Inn?

Eub. Yes, Sir, about three or four o'Clock in the Afternoon.

Mr. Sol. Gen. Pray, who came with Sir *William Parkyns?*

Eub. One *Lewis.*

Mr. Att. Gen. Do you know him?

Eub. I have ſeen him before with my Maſter.

Mr. Att. Gen. What is he?

Eub. They ſay he is my Lord *Feverſham*'s Gentleman.

Mr. Att. Gen. What did he ſay to you about any Saddles?

Eub. They aſk'd me what Saddles, and how many had been ſent in there? And I ſaid but two.

Mr. Att. Gen. What ſaid Mr. *Lewis.*

Eub. Mr. *Lewis* ſaid there muſt be a Miſtake, becauſe my Maſter ſaid he had but twenty-two, for he reckoned he had more; there ſhould be twenty-four in all.

Mr. Att. Gen. Did he ſay ſo, or Sir *William Parkyns?*

Eub. It was Mr. *Lewis* that ſaid there were twenty-four, to the beſt of my Remembrance.

Mr. Att. Gen. Where were they ſent?

Eub. Indeed I know not, I never ſaw any of them but thoſe two.

Mr. Att. Gen. Who delivered thoſe two to you?

Eub. My Maſter, Sir *William Parkyns.*

Mr. Att. Gen. Who were thoſe Saddles for?

Eub. They were for two Gentlemen's Horſes that were there.

Mr. Att. Gen. Whoſe Horſes were they?

Eub. They were not my Maſter's; but they ſtood at that Place.

Mr. Att. Gen. Did your Maſter ever ſpeak to you about them, to look after them?

Eub. He ſaid, if at any time I was there, I ſhould ſee that the Hoſtler gave them their Corn.

Mr. Att. Gen. Were they your Maſter's Horſes, or not?

Eub. Not that I know of.

Mr. Att. Gen. What Time did you go out of Town?

Eub. I went out of Town with them about four o'Clock in the Afternoon.

Mr. Att. Gen. When did you hear from your Maſter after that?

Eub. Upon *Monday* I had a Letter from him.

Mr. Att. Gen. What was that Letter for?

Eub. It was to go to my Maſter's Houſe in *Warwickſhire*, to one *Richard Evans* that was his Servant, to whom he ſent a Letter.

Mr. Att. Gen. What were the Contents of that Letter?

Eub. I did not ſee what they were, it was ſealed.

Mr. Att. Gen. Did you carry that Letter to *Evans?*---*Eub.* Yes, I did.

Mr. Att. Gen. What Time did you come thither?

Eub. I came there a *Tueſday* at four o'Clock.

Mr. Att. Gen. What did *Evans* and you do after you had read the Letter?

Eub. We went to fetch ſome Boxes that my Maſter had order'd *Evans* to fetch home. It was about two Miles, or more from Home, at a Tradeſman's.

Mr. Att. Gen. What was his Name, was it *Haywood?*

Eub. Yes, I think it was ſomething like that Name.

Mr. Att. Gen. Did you go with *Evans* to fetch the Boxes from thence?

Eub. They had a Man that drove the Team to fetch them.

Mr. Att. Gen. Were they carried in a Team then?

Eub. Yes, they were.

Mr. Att. Gen. Were you there when the Goods were brought back?

Eub. Yes, I was at my Maſter's Houſe.

Mr. Att. Gen. What did they do with them?

Eub. They buried them in the Garden, Sir.

Mr. Att. Gen. What, in the Boxes?----*Eub.* Yes, Sir.

Mr. Att. Gen. How many Boxes were there?

Eub. Five or ſix, I think, I know not what was in them.

Mr. Att. Gen. You help'd to bury them, did you not?

Eub. No; but I was there, I ſaw them buried.

Mr. Att. Gen. Did *Evans* tell you what they were?

Eub. *Evans* told me they were choice Goods.

Mr. Att. Gen. *Evans* told you ſo, did he?---*Eub.* Yes.

L. C. J. What Time of the Day or Night were they fetch'd Home?

Eub. They went away about four o'Clock in the Afternoon.

L. C. J. How far is it from Sir *William Parkyns*'s Houſe to *Haywood*'s?

Eub. I think about three or four Miles, I can't tell how far exactly.

L. C. J. What Time did they return?

Eub. About ten or eleven o'Clock at Night.

Juryman. My Lord, I underſtand he ſays they buried them immediately; was he there, and did he help to bury them?

Eub. No, I did not help to bury them; but I ſaw Earth put upon them.

Mr. Att. Gen. Pray, *Eubank*, let me aſk you one Queſtion: The Perſon that lay at the *Confectioner*'s, did you obſerve whether he had a lame Arm, or no?

Eub. No, I did not take Notice of any ſuch thing.

Mr. Sol. Gen. Will Sir *William Parkyns* aſk him any Queſtions?

L. C. J. What ſay you, Sir *William*, will you aſk him any Queſtions?

Park. You ſay one *Holmes* went out of Town with me; pray give an Account what *Holmes* that is?

Eub. It is Fat Mr. *Holmes*, if it pleaſe your Honour, he lives at the *Golden Key* in *Holbourn.*

Park. My Lord, I obſerve this to diſtinguiſh it, that it was not, as Mr. *Attorney* opened it, Major *Holmes* that is in the Proclamation; it was one that us'd to be at my Houſe frequently; he was at my Houſe all the Summer.

Mr. Att. Gen. You did well to aſk him that Queſtion to explain it.

L. C. J. Will you aſk him any more Queſtions?

Par. No, my Lord.

Mr. Sol. Gen. Then our next Witneſs is one *Thomas Hipwell.*

(*Who was ſworn.*)

Mr. Att. Gen. Where do you live?

Hip. At in *Warwickſhire.*

Mr. Att. Gen. With whom do you live?---*Hip.* I live of myſelf, Sir.

Mr. Att. Gen. Do you know of any Goods that were carried from Mr. *Haywood*'s Houſe to Sir *William Parkyns*'s Houſe?

Hip. I came from *Litchfield* Fair upon *Aſh-Wedneſday*, where I had been to carry Goods for my Maſter------

Mr. Att. Gen. Did not you ſay you lived of yourſelf? I aſk'd you before, who you liv'd with? Who is your Maſter?---*Hip.* Mr. *Haywood.*

Mr. Att. Gen. You ſaid before, you had no Maſter.

Hip. That is, when he pleaſes to employ me, I work for him.

Mr. Att. Gen. Pray tell what you carry'd from *Haywood*'s Houſe, and who came for them?

Hip. There were, to the beſt of my Remembrance, either ſeven or eight Boxes.

Mr. Att. Gen. Who came for them?

Hip. There was one of Sir *William Parkyns*'s Men, one *Richard Evans*, that was his Servant, and one *Whetſtone*, that was Tenant to Sir *William.*

Mr. Att. Gen. Well, how did they come, and what did they do?

Hip. They brought a Waggon and Two Mares.

Mr. Att. Gen. About what Time was it?

Hip. It was about nine or ten o'Clock at Night when they went away.

Mr. Att. Gen. What Orders had you from your Maſter?

Hip. It was near upon ſeven o'Clock, when the Waggon came, and my Maſter wiſh'd me to go to borrow a Mare of at I did ſo, and I brought the Mare I had borrowed with me home.

Mr. Att. Gen. What was that Mare borrowed for?

Hip. I know not.

Mr. Att. Gen. What Uſe was ſhe put to afterwards? What did you ſee more?

Hip. Why, before the Team came (about a Quarter of an Hour before) to fetch theſe Goods, my Maſter told me, that Sir *William Parkyns*'s Men were to come to fetch ſome Bedding and other Goods, what they were he knew not; and he order'd me, when they knock'd at the Gate, to let them in; and I did ſo.

Mr. Att. Gen. Well, Friend, did they carry away any Goods, and what were they?

Hip. They were in Boxes at firſt, in three Boxes; and then Sir *William Parkyns*'s Servant did knock off the outſide Lining, which was a Deal Board, and he drew the Nails, and took out of two Boxes three Boxes a-piece, and two out of another: to the beſt of my Remembrance I think there were eight, but I am not ſure whether there were ſeven or eight.

Mr. Att. Gen. Did they carry them away that Night?

Hip. Yes, Sir *William Parkyns*'s Man *Richard* and the Tenant carry'd them to the Waggon, and I lighted them down with a Lanthorn, according to my Maſter's Order.

Mr. Att. Gen.

Mr. Att. Gen. When, what Day was this?

Hip. It was *Aſh-Wedneſday* at Night.

Mr. Att. Gen. Then ſet up Mr. *Haywood* (*Who was ſworn before*). Pray give my Lord an Account, when Sir *William Parkyns*'s Goods were brought to your Houſe, who brought them, and what Directions were given about the careful Keeping of them.

Haywood. My Lord, about *Michaelmas* laſt, Sir *William Parkyns*'s Man came to me with a Letter from one Mr. *Charnock*, and the Effect of the Letter was, to deſire the Favour of me to lodge ſome Goods of Sir *William Parkyns* at my Houſe; for he was taking his Servants from his Houſe, and he was loth to leave his Goods in an empty Houſe, and he deſired me to let them lie at my Houſe, which I did.

Mr. Att. Gen. How were they put up?

Haywood. I think in three Cheſts, pretty big Cheſts, nailed up and tack'd; and there was a Bed, and Bedding, and a Piece of Tapeſtry or two.

Mr. Att. Gen. Pray, did that Letter come from Mr. *Charnock?*

Haywood. Yes; *Evans*, Sir *William Parkyns*'s Man, brought it me.

Mr. Att. Gen. Pray, Sir, how are you related to that Mr. *Charnock?* What Kin is he to you?------*Haywood.* I married his Siſter.

L. C. J. You took the Goods into your Cuſtody upon that Letter from *Charnock?*——*Hayw.* Yes, my Lord, I did.

Mr. Att. Gen. Pray, will you give an Account, whether you were in Town before this Diſcovery, and had any Diſcourſe with Mr. *Charnock* or Sir *William Parkyns* about theſe Goods? When did you ſee Mr. *Charnock* afterwards?

Hayw. I came up to *London* the 16th Day, and I was in *London* the 17th, 18th, and 19th; I think thoſe three Days; and I went to ſee Mr. *Charnock* at his Lodgings, but I was hardly with him a Quarter of an Hour; I told him Sir *William Parkyns* had ſent ſome Goods to my Houſe, and I deſired to know when he would fetch them away. Says he, I can't ſay when I ſhall ſee him again. Said I, I ſhall have ſome Buſineſs at the *Temple*, and I will meet you at the *Temple* Coffee-Houſe. Says he, I will meet. And bring Sir *William Parkyns* with you, if you can, ſaid I. He came about Eight or Nine o'Clock on *Tueſday* Morning; ſays he, Sir *William Parkyns* is at my Lodgings, juſt a-going out of Town, and would deſire to ſee you. So I went up, and Sir *William Parkyns* was ready to go out of Town. I told him I had ſome Goods of his at my Houſe, and I deſired to know how he would diſpoſe of them; what he would do with them. He would take them away, he ſaid, the firſt Opportunity, or to that Effect.

L. C. J. When was this? What Month?

Hayw. It was in *February* laſt.

L. C. J. What Day?

Hayw. I think it might be about the Eighteenth Day.

L. C. J. It was you that deſired to have them taken away, it ſeems, was it not?

Hayw. I aſked him when he would take them away, or what he would do with them.------*L. C. J.* And what Anſwer did he make?

Hayw. He ſaid he would take them away the firſt Opportunity, as ſoon as he could diſpoſe of them, or to that Effect.

Mr. Att. Gen. Now, when you came home, tell us who came for thoſe Goods, and when?

Hayw. I think it was upon a *Shrove-Tueſday* that I came home, and my Wife ſaid Sir *William Parkyns* had ſent for his Goods, and deſired to have them away; but that ſhe had made Anſwer, I was not at home, but ſhould be at home ſoon, and then he might have them away. The next Day I came home from *Litchfield* Fair, about Five or Six o'Clock at Night: It was *Aſh-Wedneſday* at Night when I came home, and the Man came to me between Six and Seven, and told me his Maſter deſired to have the Goods away. I told him he might have them when he would; he ſaid he would have them away that Night. I told him it was an unſeaſonable Time: But, ſays he, the Waggon is a-coming, and I deſire you would give me leave to take them away; which I did: Then he ſaid he had but two Horſes, and he deſired me to lend him a Horſe; which I did, and he took the Goods, and went away with them; but for what he did afterwards with 'em, I know nothing at all of it.

Mr. Sol. Gen. Then ſwear Mr *Whetſtone*. (*Which was done.*)

Mr. Att Gen. Pray, Sir, do you give an Account when you went with *Evans* to *Haywood*'s Houſe, and what happened.

Whetſtone. His Man came to me——

Mr. Att. Gen. Whoſe Man?

Whetſtone. Sir *William Parkyns*'s Man, to deſire me to go to Mr. *Haywood*'s to fetch ſome Goods of Sir *William Parkyns*, ſome Bedding, and ſome odd Things, which I did; and ſaid he, I will go the next Way to the Houſe, and I will meet you before you can get thither; and he did meet me half a Mile off the Houſe, and told me I muſt ſtay, and not come to the Houſe till it was Night, 'till it was later.

L. C. J. Who told you ſo?

Whetſtone. Sir *William Parkyns*'s Man told me ſo; ſo he went forwards to the Gate, and then came back, and called me to come in; then we went to the Houſe, and loaded the Waggon with Boxes and Bedding that was there.

Mr. Att. Gen. How many Boxes were there?

Whetſtone. I cannot tell whether there were ſeven or eight.

Mr. Att. Gen. Whither did you carry them?

Whetſtone. We carried them to Sir *William Parkyns*'s Houſe.

Mr. Att. Gen. What was done with them?------*Whetſtone.* There they were put into the Ground by the Wall Side, where they were found.

Mr. Att. Gen. Why, was you preſent when they were found?

Whetſtone. Yes, I ſaw them dug up.

Mr. Att. Gen. Then you can give us an Account of them: What were they?------*Whetſtone.* They were Arms.

Mr. Att. Gen. How many were there? What Quantity?

Whetſtone. Truly, I cannot tell.

Mr. *Baker.* Where is the Conſtable *Thomas Watts?*

Watts. Here am I. (*He was ſworn.*)

Mr. Att. Gen. Are you the Conſtable?

Watts. Yes, Sir, I am the Conſtable, and ſearch'd Sir *William Parkyns*'s Houſe, and upon ſearching in the Garden I found ſome Arms there.

Mr. Att. Gen. Pray what Quantity of Arms did you find there?

Watts. Four Dozen of Swords, thirty-two Carbines, twenty-five Brace of Piſtols.

Mr. Att. Gen. What Kind of Swords were they?

Watts. They were broad Swords, two-edged Swords.

Mr. Att. Gen. Were there any Hilts to the Swords?

Watts. No; but there was a Box of Hilts that I ſuppoſe was prepared for them.

Mr. Att. Gen. Where did you find them?

Watts. In a Border under the Wall by the Wall-Side.

Juryman. Did you ſee the Boxes broke open, Sir?

Watts. Yes, Sir, I took them and broke them open my own ſelf.

Juryman. Was *Whetſtone* by, pray, Sir, when they were broke open?

Watts. He was not there by at the firſt, when we dug them up; but I brought them to my own Houſe, and there I broke them open, and there we ſaw them.

Mr. Att. Gen. Will you aſk him any Queſtions, Sir *William?*

Parkyns. No, Sir.

Mr. Sol. Gen. Then call *Turton*, *Freeman*, *Fielding*. (*Who were all ſworn.*)

Mr. Att. Gen. Pray ſet up Mr. *Freeman*. (*Which was done.*)

Mr. Att. Gen. Where do you live?

Freeman. At the *George* Inn in *Holborn*.

Mr. Att. Gen. What are you?------*Freeman.* I am Hoſtler there.

Mr. Att. Gen. Pray do you give an Account what Horſes were kept there of Sir *William Parkyns*, and how many.

Freeman. He was a Gueſt to the Houſe all this laſt Summer, ſometimes more, ſometimes leſs.

Mr. Att. Gen. How was it laſt Winter about *February* laſt, how many Horſes had he then?------*Freeman.* He had ſometimes three came in, ſometimes four; the moſt that ever he had was five.

Mr. Att. Gen. What Time was that that he had five, pray?

Freeman. To my beſt Memory, it was juſt the Week before the Diſturbance, before the Plot broke out.

Mr. Sol. Gen. Before the Proclamation, you mean?

Freeman. Yes, before the Proclamation.

Mr. Att. Gen. When was it? what Day of the Week was it?

Freeman. They came in on *Friday* Night.

L. C. J. Holt. What, did five come in then?---*Freeman.* Yes, I think ſo.

L. C. J. Holt. Who was with him?

Freeman. I only ſaw his Groom and another Servant.

Mr. Att. Gen. How were they accoutred?----*Freeman.* Four with Holſters and ſmall Piſtols, one was a led Mare with a Portmanteau; and in a Horſe-Cloth wrapp'd up there was one or two Pair of Jack-Boots, and, I think, a Collar in one; I cannot tell whether there was one Bridle or two.

Mr. Att. Gen. When did they go away?

Freeman. On *Saturday* in the Afternoon.

Mr. Att. Gen. Did you obſerve any Perſons to come there on *Saturday* Morning?

Freeman. There were two Men that were there that rid out between two and three Hours; they rid out between Nine and Ten, and they came in again between Twelve and One; where they had been I cannot tell; but they had rid pretty hard for the Time they were out, for the Horſes came in in a Sweat.

Mr. Att. Gen. Before this Time that you now ſpeak of, what Horſes came up? Can you remember how many Horſes came up the Week before?

Freeman. The Week before there were ſome, but how many I cannot remember; they very rarely ſtay'd above a Night.

Mr. Att. Gen. What do you know of any other Horſes that were left there?

Freeman. There were three Horſes that were at our Houſe a Week, that were very good Horſes; but I do not know whoſe Horſes they were, nor the Names of the Gentlemen that owned them. The Gentlemen that brought them in paid for the Horſes, only the Groom told me his Maſter, Sir *William Parkyns*, had ordered him to ſee the Horſes fed. I never received a Farthing of Sir *William Parkyns*, but always of the Groom.

Mr. Att. Gen. Pray, did you obſerve any particular Horſe that was brought in there, a *Roan* Horſe?

Freeman. Yes, there was one Horſe brought in.

Mr. Att. Gen. From whence did that Horſe come?

Freeman. As was told me, from *Mountague*-Houſe.

Mr. Att. Gen. I believe you miſtake the Place; recollect yourſelf a little.

Freeman. *Somerſet*-Houſe, I mean; a Porter brought it.

Mr. Att. Gen. Are you ſure it was *Somerſet*-Houſe?

Freeman. Yes, it was.

Mr. Att. Gen. Do you know one *Lewis?*

Freeman. I do not know him; perhaps the Tapſter does.

L. C. J. Holt. How many Horſes came from *Somerſet*-Houſe?

Freeman. Only the *Roan* Gelding, and a very fat Man mounted him, and rid out with Sir *William Parkyns*.

Par. Pray, Sir, what ſort of Horſe was that Bay Gelding that you ſay the fat Man rid upon?---*Freeman.* I ſay he rid upon a little *Roan* Gelding about fourteen Hands high.

Par. But the Bay Gelding, how high was that?

Freeman. About fourteen Hands high.

Par. There's your mighty Horſe for Service!

Freeman. They were no great-ſized Horſes, none of them.

Par. And have not you known theſe Horſes to have been mine a great while?

Freeman. Yes, I have known them to be yours a good while.

L. C. J. Holt. What, was the *Roan* Gelding Sir *William Parkyns*'s?

Freeman. No, not the *Roan*, but the others; they were no ſtrange Horſes, they were frequently there all laſt Summer; there was no new ſtrange Horſe but the *Roan*.

L. C. J. Holt. Will you aſk him any more Queſtions?

Par. No, my Lord.

Mr. Sol. Gen. Then ſet up Mr. *Turton*. (*Which was done.*)

Mr. Att. Gen. Pray will you give an Account what you know of Horſes that were ſtanding at the *George* Inn in *Holborn?*

Turton. I have known Sir *William Parkyns* to have uſed the Inn this four or five Years, ever ſince the Inn was built; and in laſt *February* he came to Town with three Horſes the firſt Time.

Mr.

Mr. Att. Gen. What Day of the Month was that?

Turton. I cannot say what Day of the Month, but it was about the Week before his last coming there, which was just before the Discovery of the Plot.

Mr. Att. Gen. Do you know what Day of the Week it was?

Turton. No, truly I do not, for I keep no Account of Horses going in or out. The last time of his coming was with about four or five Horses, to the best of my Knowledge, and that was upon the *Friday* before the Plot broke out; and then upon that *Friday*, Sir *William Parkyns* gave order to his Groom to get the Horses ready against *Saturday* Morning.

Mr. Att. Gen. Did he go out with his Horses on *Saturday* Morning?

Turton. He did not go out with all the Horses according as he had given order; but two Gentlemen rid out with two of the Horses, and staid out about two or three Hours, and came in again, as if they had rid pretty hard, the Horses being in a Sweat; and in the Afternoon they all went fairly out of Town, and gave out that they expected to be in Town on *Sunday* or *Monday* following, but they did not return; but then came down one Mr. *Lewis*, I know not that *that* is his Name, only when I formerly belonged to my Lord of *Oxford*, I knew him to be Gentleman of the Horse to my Lord *Feversham*, but I did not know his Name.

Mr. Att. Gen. Had you not seen him there before? What time did he come?---*Turton.* I do not know that I ever saw him there before; he was on *Saturday* in our Yard.

L. C. J. H. You are asked when *Lewis* came?

Turton. The first time I see him was on *Saturday*, in the Yard, asking for Sir *William Parkyns*.

L. C. J. H. What time on *Saturday* was that?

Turton. It might be three of the Clock in the Afternoon, about an Hour or thereabouts before Sir *William Parkyns*'s Horses went away; and asking for Sir *William Parkyns*, and he not being there, he returned back again; and after they were gone, he came again, and I told him they were gone; but the Groom had acquainted me, and given me an Account, that he would be there again on *Sunday* or *Monday*. On *Sunday* in the Afternoon, about five or six, Mr. *Lewis* came to enquire if Sir *William Parkyns*'s Horses were come to Town; I told him No; and so he came again upon *Monday* Morning betwixt eight and nine of the Clock, and asked me if I heard nothing of his coming to Town; I told him No, I did not hear of his coming again.

Mr. Att. Gen. The Horses that came up on *Friday* Night, how were they accoutred?—*Turton.* Two or three of them had Holsters; I cannot say but for Pistols they had four or five Case.

Mr. Att. Gen. Had they no Carbines?

Turton. No; but only Horse-Pistols.

Mr. Att. Gen. Did you not observe any other Arms, or other Furniture?

Turton. I did see a Pair or two of Jack-Boots that they rid in, but I did not see any more.

Mr. Att. Gen. Were there any that were wrapt up in a Horse-Cloth?

Turton. No, I did not see any, they were not brought into the House.

Mr. *Cowper.* Do you know what time the Horses were saddled that Day?---*Turton.* No, I did not.

Parkyns. You observed, and said there were two or three Cases of Pistols, did not I always ride with Pistols?---*Turton.* Yes; you seldom came without two or three Pair when you came with Servants.

Parkyns. And as to the Jack-Boots, you said we rid in them.

Turton. I suppose so.

Parkyns. We alighted at Mr. *John*'s House, and so our Boots were sent thither: And these were small Horses all of them; pray will you tell the Court what siz'd Horses they were; was there ever a great Horse among them?

Turton. Never a one, I believe, that exceeded above fourteen Hands and a half, some under fourteen.

Mr. Sol. Gen. Did you see the Roan Gelding? What Size was that?

Turton. A small Pad that might be about thirteen and a half.

Mr. Att. Gen. Did you ever see him come with so many Horses before?

Turton. I have seen more at the Sword and Buckler, when I lived there; and he used to inn there.

Mr. Att. Gen. How many have you seen at the Sword and Buckler?

Turton. I have seen four or five at a Time; but this is many Years ago, seven or eight Years ago, when he used to keep his Coach and four Horses, and come up with several Saddle Horses with him.

Mr. Att. Gen. How long have you lived at the *George* Inn?

Turton. About two Years.

Mr. Att. Gen. Did you observe any other Horses that stood there?

Turton. There were two that were pretty sizeable Horses, larger than any of Sir *William*'s own.

Mr. Att. Gen. Whose were they?---*Turton.* I cannot tell.

Mr. Att. Gen. Did any Body own them?

Turton. I don't know who owned them; there was one that paid for their Meat, and took them away.

Mr. Att. Gen. Who is that?---*Turton.* Truly, Sir, I cannot tell; I do not know who he was; I never saw him in my Life.

Mr. Sol. Gen. Has Sir *William Parkyns* any more Questions to ask him?---*Parkyns.* No, Sir.

Mr. Att. Gen. Then, my Lord, we shall call no more Witnesses, unless he gives further Occasion; we leave it here till we hear what he says to it.

L. C. J. Sir *William Parkyns*, Mr. *Attorney General*, and the King's Counsel have done; now is your time to make your Defence.

Parkyns. My Lord, I rely upon your Lordship for my Defence; for I am ignorant of these Proceedings; I rely wholly upon your Lordship, to give a true Account of them to the Jury; I hope your Lordship is so just, that you will repeat the Evidence to the Jury as it is, and no otherwise. But I do not observe, that as to the Assassination there is more than one Witness, and that is Captain *Porter*: There is not a Tittle more! and as to that, I suppose your Lordship will declare to the Jury, that I was not concerned in it; and Captain *Porter* declares, I was to have no Hand in it, only I was to furnish five Horses, and accidentally I was at some Meetings, but he does not declare that I was to do any thing in particular.

L. C. J. Yes, yes, you agreed upon the Debates to the several Resolutions of Assassinating the King, and said, that it was necessary and fit to take him off.

Parkyns. Still, that is but one Witness, I deny it utterly; and the Law says positively there shall be two Witnesses.

L. C. J. Not to every Overt-Act, there is no Law says so.

Parkyns. As to the Assassination there is but one, no other but he; and so as to the Regiment, he did not say that I was to raise a Regiment; but that he was told by a Gentleman that I had been desired to be in the Matter, but I would not, because I had engaged in another Business, about a Regiment; but this was all but Hear-say.

L. C. J. Yes; he said you owned you had a Regiment. Besides, it is said, you owned you had your Saddles, and your Troop consisted of old Soldiers.

Parkyns. No, Captain *Porter* never said so.

Mr. Att. Gen. That was *Sweet*.

L. C. J. You told *Porter*, you had a Regiment to look after.

Parkyns. Captain *Porter* is here, I desire he would explain himself.

L. C. J. Yes, and you told *Sweet*, that your Troop consisted of old Soldiers, and that you had bought thirty Saddles.

Parkyns. My Troop, aye! But still there was nothing of a Regiment; nor did they say I had raised a Regiment, or a Troop, or was to raise a Regiment.

Sweet. You told me your Troop consisted of old Soldiers. I did not say that you said you had raised or wou'd raise, but it did consist of old Soldiers.

L. C. J. He says that which makes it plain, that you were to have a Troop, or had a Troop, consisting of old Soldiers, besides Volunteers that had been Officers: and that you had bought a great many Saddles, thirty Saddles; and you were to go into *Leicestershire*; and accordingly you did go, and upon your Return, you did give an Account that all was well, and the *West* was as well inclined to King *James*'s Interest as the *North*.

Parkyns. That I went into *Leicestershire*, and met several Gentlemen, and that they were all well inclined; I hope that is no Evidence of Treason against me: every Body ought to be well inclined.

L. C. J. Aye! but they were all well disposed or inclined to King *James*'s Interest.

Parkyns. He did not say so; if your Lordship pleases to call him again.

L. C. J. Call him again.

(Sweet *was set up again.*)

Mr. Sol. Gen. What did Sir *William Parkyns* tell you of his Journey into *Leicestershire*?---*Sweet.* He said he had been there, and had met his Friends, and all was well.

L. C. J. What did he say? Did he name King *James*?

Sweet. He did not name King *James* to me at that time.

L. C. J. What was the Discourse about, that they were all well inclined to?

Sweet. He always named it the King's Interest, and did not name King *James*; but I understood it, and always took it to be King *James* he meant.

Mr. *Mountague.* What did he say of the *North* and *West*?---*Sweet.* He said that the *West* was as well inclin'd to the King's Interest as the *North*.

Mr. Att. Gen. What did he say before he went?---*Sweet.* He told me he was to go into *Leicestershire* to meet some of the King's Friends.

Parkyns. Pray, recollect yourself, and consider what you say.

Sweet. He said, some Gentlemen rid as far to him, as he did to meet them.

Mr. Att. Gen. Was that the Time he talked about the Troop?

Sweet. No, that was before this Time. I cannot remember the particular Time; it was at his own House, and Capt. *Scudamore* was with him.

Mr. Att. Gen. When was the Discourse about King *James*'s Landing?

Sweet. He told me that he believed now that King *James* wou'd land, he said he had his own Word for it; it was about *Christmas*.

Mr. Att. Gen. What did he say about Preparation for it?

Sweet. He said his own Troop was to consist of all old Soldiers.

L. C. J. Did he tell you he had a Troop?---*Sweet.* I speak his own Words; he said, My Troop consists of all old Soldiers.

L. C. J. Was it consists, or will consist, though I think there may be no great Matter of Difference in this Case?

Parkyns. Yes, my Lord, but there is a great deal, sure; for *will consist* shews nothing yet done, and all is but Words.

L. C. J. Sweet, Answer to Sir *William Parkyns*'s Question.

Sweet. I tell your Lordship, I repeat his own Words, my Troop consists or is composed of all old Soldiers.

Mr. *Cowper.* What did he say of Volunteers?

Sweet. He said, there were some Gentlemen that would go along with him as Volunteers, that had been old Officers.

Mr. *Cowper.* Pray, let me ask another Question? When he discoursed of the present King, by what Name did he use to speak of him?

Sweet. He called him by the Name of the Prince of *Orange*.

Parkyns. Pray, recollect yourself, Mr. *Sweet*, and think of what you say: Since he was declared King, did I ever call him Prince of *Orange*? I am upon my Life, and pray speak nothing but the Truth.

L. C. J. Consider, and answer the Question, What did he use to call him?

Sweet. Truly, my Lord, I am not positive as to that, I understood it so. I never knew that he allowed him to be King of *England*.

Parkyns. Did you ever hear me call him Prince of *Orange*, since he was King?

L. C. J. Look ye, Sir, how long have you been acquainted with him?

Sweet. About three Years, my Lord.

L. C. J. Well, that is long since his Majesty was declared King; have you ever heard Sir *William Parkyns* call this King Prince of *Orange*?

Sweet. I am not positive in that, but I understood he did not allow him to be King.

Mr. Sol. Gen. You frequently discoursed with him about the Government, it seems; pray, what did he use to call him?

Sweet. I have heard him call him King *William*, and the Little Gentleman.

Parkyns. When ever did you hear me call him the Little Gentleman? Mr. *Sweet*, pray, when you are upon your Oath conſider well, and recollect yourſelf, and don't anſwer raſhly and ſuddenly, but think of what you ſay. I always expreſs'd myſelf, when I had occaſion to ſpeak of him, and called him King *William*, as other People uſe to do, I never uſed the Words, Little Gentleman, nor Prince of *Orange* neither.

L. C. J. Did you ever hear him call him otherwiſe than King *William?*

(*He pauſed a while.*)

L. C. J. Pray ſpeak the Truth, and no more.

Sweet. I have heard him call him Prince of *Orange.*

L. C. J. But you have heard him call him King *William* too?

Mr. *Sweet.* Yes.

Mr. *Cowper.* But pray, when he ſpoke of the King, what King did you underſtand by it?

Sweet. I uſed to underſtand King *James.*

Parkyns. What is that to me what he underſtood?

L. C. J. But I would obſerve to you one thing; when you came from *Leiceſterſhire*, you talked how well diſpoſed they were to the King's Intereſt; he ſays, he underſtood that King to be King *James*, and you ſaid the *Weſt* was as well diſpoſed as the *North*; pray now, were you imployed by King *William* to ſee how the Gentlemen ſtood affected to him?

Parkyns. No, nor by King *James* neither.

L. C. J. Why then ſhould you concern yourſelf for the King's Friends in the *Weſt* and the *North?*

Parkyns. I never was in the *Weſt* in my Life, and therefore I can't tell why I ſhould tell him any thing about the *Weſt.*

Mr. Att. Gen. Pray, Sir, when was it that Sir *William Parkyns* ſpoke about the King's landing?

Sweet. It was about *Chriſtmas*, he ſaid he believed he would land.

Parkyns. Did I tell you poſitively it would be ſo then?

Mr. Att. Gen. He tells you he ſaid you did believe it, for you had it from his own Mouth.

Parkyns. That ſhews it is not probable I ſhould tell him ſo; that I ſhould have it from his own Mouth, carries ſuch an Improbability with it, that the Evidence is *Felo de ſe*, it deſtroys itſelf.

Mr. Sol. Gen. He does not ſay you had it from his own Mouth, but that you had his Word for it; and this being about *Chriſtmas*, long after our King was returned, it could mean no other King but King *James.*

L. C. J. Look you, Sir *William Parkyns*, there is another thing I would obſerve, Why did you ſend your Man to *Kenſington* to one *Brown?* Who is that *Brown?* and what was the Man that lodged at the Confectioner's in *Holborn?*

Parkyns. I cannot tell who it was, I know neither *Brown* nor the other Man; but I ſent my Man at the Requeſt of Mr. *Charnock*, who lodged in the ſame Houſe with me; he deſired he might go upon an Errand for him to *Kenſington*, and I directed him to go upon ſuch an Errand, for he was formerly Mr. *Charnock*'s Servant, and I deſired him to go of the Errand if he requeſted it. Who theſe Men were, I know not, neither of them, nor any of their Buſineſs.

L. C. J. But he was bid by the Man that lodged at the Confectioner's to tell his Maſter that he would ſtay within for him.

Parkyns. That might be Mr. *Charnock*, for he was his Servant once.

L. C. J. But he ſays he carried the Meſſage to you, and you received it. Well, have you any more to ſay?

Parkyns. My Lord, I think there is but one poſitive Evidence of any one Overt-Act.

L. C. J. Yes; what do you think of the Deſign of bringing in King *James*, and conſulting about it, and aſſiſting in the Invaſion, and preparing a Troop, and providing Arms and Horſes? Are not theſe Overt-Acts? Do you think your having a Troop of old Soldiers is no Overt-Act?

Parkyns. There is no poſitive Proof of any Troop or any Arms.

L. C. J. It is proved there were Arms ſent by you at *Michaelmas* laſt to Mr. *Haywood*'s, *Charnock*'s Brother-in-Law, and theſe lay there till *Aſh-Wedneſday* laſt, after your Name was in the Proclamation; and then they were removed in the Night, and buried at your Houſe, and were taken up there; and here is an Account given what Arms they were, four Dozen of Swords, twenty-five Pair of Piſtols, thirty-two Carbines.

Parkyns. Firſt, it does not appear when theſe Arms were brought, nor for what Intent they were brought from *Haywood*'s.

L. C. J. But what Uſe had you, a private Man, for ſo many Arms? And then your going into *Leiceſterſhire* to meet ſome Gentlemen, and your giving an Account how they ſtood affected to the King's Intereſt, whether that be underſtood for the Intereſt of King *James*, I muſt leave to the Jury, ſince you give no Account that you were imployed by King *William.*

Parkyns. My Lord, I went upon my private Occaſions, and then talked of News as other People do.

L. C. J. But when you returned back again, you declared all was well, and gave an Account how Perſons were diſpoſed in the *Weſt* and *North.*

Parkyns. Is there any Perſons named, or Particulars? Can it be an Overt-Act of Treaſon for me to diſcover my Acquaintance?

L. C. J. But your going with that Deſign to engage in an Intereſt againſt the King, and for the late King.

Parkyns. He does not ſay I diſcovered my Deſign. I went to meet with ſome Friends of my own.

L. C. J. Did he not tell you he was to go to *Leiceſterſhire?*

Sweet. Yes, he did ſo.

L. C. J. Did he tell you to what purpoſe?

Sweet. He ſaid he was to go to meet ſome of the King's Friends.

Parkyns. Did I tell you who?----*Sweet.* No.

L. C. J. But there was a Lord's Brother, what did he tell you of that?

Sweet. He ſaid all Things were well, and the *Weſt* was as well inclined as the *North.*

L. C. J. To what?----*Sweet.* To the King's Intereſt.

L. C. J. Treby. You ſpoke of a Lord's Brother that was concerned?

Sweet. He ſaid ſeveral Perſons of Quality in the *Weſt* were concerned, and a Lord's Brother was among them.

Juryman. My Lord, I deſire he may be asked, when he ſaid the King would land, what King he meant, whether he named the late King, or King *James?*

L. C. J. Well, Anſwer that; when he diſcourſed to you of the King's landing, did he name the late King *James?* or did he ſay the late King *James?*

Juryman. Was he mentioned in the Diſcourſe?

Sweet. He never uſed to mention King *James* to me, but only the King, which I underſtood always of King *James.*

Mr. Att. Gen. Pray what time was it that he ſpoke of the King's landing?-----*Sweet.* It was about *Chriſtmas.*

Mr. Att. Gen. Therefore no other King could be meant but King *James*, for there was no other King to land at that time; and he ſaid he had the King's Word for it. I ſuppoſe he can't pretend he had King *William*'s Word for it.

Parkyns. I hope, to talk of the King's landing is no Treaſon; it is but Words: If I tell an idle Story of what I think may come to paſs, ſhall that be reckoned Treaſon? Then for him to ſay, I had it from the King's own Mouth; it is impoſſible to be true, and is no Overt-Act, being only Words, and cannot be reputed Treaſon. And then as to the other two Parts of the Charge, the Conſultations with my Lord of *Ailesbury*, and thoſe other Perſons, there is but one Witneſs; nobody but *Porter*; neither is there any more but he for the Aſſaſſination; his Evidence is but a ſingle Proof, and there ought to be two poſitive Witneſſes, by the Law, to each Overt-Act.

L. C. J. Holt. No: There ought to be two Witneſſes to each Species of Treaſon, that's all.

Parkyns. There ought to be two Witneſſes to both theſe Parts of the Treaſon.

L. C. J. Holt. I muſt tell you, Sir *William Parkyns*; if any Perſon does deſign and contrive that the Realm ſhould be invaded, or the King depoſed, and another ſet upon the Throne, that conſpiring to invade the Realm, or depoſe the King, are Overt-Acts of High-Treaſon, within the Statute of 25 *Ed.* III. and the ſame Species of Treaſon as deſigning to aſſaſſinate him is. It is compaſſing, deſigning, imagining his Death and Deſtruction. Now the Queſtion is, whether there is not another Witneſs, beſides Capt. *Porter*, to prove another Overt-Act of this Deſign?

Parkyns. I don't find there is; for all the reſt is only Diſcourſe.

L. C. J. Holt. Yes, for what? Do you think providing Arms for that Purpoſe is only Diſcourſe?

Parkyns. The Witneſſes don't ſay for what Purpoſe the Arms were bought.

L. C. J. Holt. Nor do you tell us of any other Purpoſe.

Parkyns. My Lord, it does not appear when they were bought.

L. C. J. Holt. Aye, but what Occaſion had you for ſuch a Quantity of Arms?

Parkyns. My Lord, I did not buy them, after all. I found them. If I had had Liberty to have ſent down for Witneſſes, I could have proved that theſe Arms were in Boxes all ruſty in my Houſe when I firſt came to it.

L. C. J. Holt. Aye: But why were they buried, juſt at the Time when the Plot was broke out, and the whole Deſign diſcovered?

Parkyns. I can't tell, my Lord, how to help it, if they will make an ill Interpretation.

L. C. J. Holt. What Interpretation would you have us make?

Parkyns. My Lord, it is very eaſy to imagine, People don't care to be found with Arms at ſuch a Time; but, however, the Having of Arms is no Treaſon. They are as much a Commodity as any thing elſe.

Mr. Att. Gen. And then the Horſe coming to Town juſt at ſuch a Time, and the Saddles.

Parkyns. I have not bought a Horſe this two Years, and I travelled in no other Manner than I uſed to do. So the Groom tells ye, I uſed to come to Town with three or four Horſes always. I never kept leſs than ſix or ſeven Horſes this twenty Years; ſometimes a great many more; and they were very little Horſes, Pads, no way fit for the Service they are preſumed to be for.

L. C. J. Holt. Have you any thing more to ſay, Sir?

Parkyns. I hope, my Lord, as to the Aſſaſſination I am clear: Perhaps the World would imagine, I have had ſome Inclinations to King *James*'s Service, and perhaps they may not think amiſs; but I never did any thing, nor had an Opportunity to do.

L. C. J. Holt. God be thanked you had no Opportunity.

Parkyns. And I hope my Life ſhall not be taken away without Proof; I hope it will be rather thought, that every one ſhould be taken to be innocent; and it would better pleaſe the King, that I ſhould be acquitted, than to let me be found guilty upon ſlight Grounds and Imaginations, of which little or nothing can be made.

L. C. J. Holt. No queſtion of it: It will pleaſe the King and every Body elſe, that you ſhould be found innocent.

Parkyns. Then I hope, my Lord, you will not ſtrain the Law to take away my Life; according to the Rule, That it is better five guilty Men ſhould eſcape, than one innocent Man ſuffer: For the Blood of a Man may lie upon every Body, if it be cauſeleſly ſhed; and it is very ſevere to ſtrain the Law to take away any Man's Life.

L. C. J. Holt. Look ye, Sir *William Parkyns*, I muſt tell you, you may be under a very great Miſtake: You may think it neceſſary to have two Witneſſes to every Overt-Act, but that is not ſo; for if there be one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, that is all that the Law requires.

Parkyns. Here are two Species of Treaſon, levying War is one Species, and Aſſaſſination is another.

L. C. J. Holt. Your Deſign was, originally, the reſtoring of King *James*, and in order to that the dethroning of King *William.*

Parkyns. That appears but by one Witneſs, which is not according to Law, which requires two.

L. C. J. Holt. One way of effecting your Deſign was by Aſſaſſination, the other by Invaſion, or by Force.

Parkyns. Still, my Lord, here is the ſame Witneſs, and that is but one.

L. C. J. Holt. Yes, there are two.

Parkyns. None but Captain *Porter.*

L. C. J. Holt. What, not as to the Reſtoring of King *James*, which tends to the Dethroning King *William?*

Parkyns. In what Particulars, my Lord?

L. C. J. Holt. Your providing Arms, and going to *Leiceſterſhire*, and ſending *Charnock* on that Errand into *France.* As to the Aſſaſſination, indeed,

deed, there is but one positive Witness, besides other Circumstances, which have their Weight; but as to the other, you said the King would come------

Park. It was my Opinion, that's all.

L. C. J. But you said you had his Word for it.

Parkyns. Does not that answer itself, my Lord? Is it possible it should be true, that I who was in *England*, should have the Word of one that is at such a Distance beyond Sea?

L. C. J. And then your buying of Saddles, for what Purpose were they?

Park. My Lord, does he say it was in order to it?, I am sure he does not, and I hope I shall not be presumed out of my Life.

L. C. J. When you talk'd of the King's Landing, and said, you had his Word for it; you likewise said, your Troop was made up of old Soldiers, besides Volunteers that had been Officers.

Par. Still there is nothing done; he does not say there was one Man raised.

L. C. J. And your going into *Leicestershire* upon such an Errand, as you told him you went upon.

Par. Well, my Lord, I must leave it to your Lordship. I hope you will consider well of it.

L. C. J. We must do that which is right between the King and his Subjects.

Par. And, I hope, my Lord, the Conversion of Subjects is more acceptable than the Destruction of them; and the Government is more concern'd to save the Innocent, than to stretch the Law to punish the Guilty.

L. C. J. It will be more acceptable, and, indeed, the King and Kingdom are very much concerned in this Matter, and at this Time, Sir *William*; and the Government ought to take Care to preserve itself. Have you any more to say, Sir? If you have, pray speak it.

Par. I have no more. I submit it to your Lordship: I think there is but one Witness, and all the other is but Conjecture and Nonsense; and one Witness is not sufficient, by the Law of *England*, for by the Statute there must be two.

L. C. J. I have told you my Opinion.

Par. Besides, your Lordship has known me this many Years, and you know that my Education was not to War and Fighting, but the Gown; and your Lordship knows how peaceably I have lived.

L. C. J. I have known you heretofore, Sir *William*, while you kept your Profession and your Gown.

Par. And now in my old Age, my Lord, I am grown lame, and have lost the Use of my Hands with the Gout, and scarce able almost to go on my Feet. Therefore it cannot in Reason be thought probable, that I should engage in such a Business as this; and therefore I hope you will interpret all Things in a milder Sense, in Favour of Life, rather than for the Destruction of it, and the Ruin of a Man's Fortune and Family.

L. C. J. I tell you, You have had my Opinion concerning the Number of Witnesses. I suppose my Lord and Brother will declare theirs.

L. C. J. Treby. My Lord Chief Justice, it seems, does please to have us deliver our Opinions; I think we ought to be very tender in a Case of Blood: I think the Life of Sir *William Parkyns* is at Stake, and we ought to be careful that he have no Wrong done him. But I think in the Cases of Treason, especially of this Nature, the Life of the King, and the Lives of all the innocent People of the Kingdom are also at Stake; and we must be indifferent in this Case, and by the Grace of God we will be so. The Question that Sir *William Parkyns* proposes, is, Whether there are two Witnesses upon this Evidence, to this Matter of which he is indicted, which is, the Compassing and Imagining the King's Death? One Witness, at least, does positively prove, That you Sir *William Parkyns* did agree to the Design of Assassinating the King's Person, and promise to provide and contribute Horses and Arms to that Purpose. Now suppose this is prov'd but by one Witness, and the Evidence had gone no farther, then your Objection would have had a very good Ground, that this could not be a legal Proof of Treason; but I must tell you, That this Treason of Compassing and Imagining the King's Death may be made evident by other Overt-Acts, besides that of Assassination: To conspire with a Foreign Prince to invade the Realm, to provide Arms, to join with Invaders, and to make an Insurrection against the King, these are Overt-Acts of Imagining the King's Death. For it cannot be supposed, but that he that would have an Invasion and an Insurrection against the King's Person, does intend the Destruction of the King; he that would take away all his Defence, which he might have by the Assistance of his Subjects, and leave him exposed to his mortal Enemies, cannot but be presumed to design the King's Ruin and Murder. Therefore, Sir *William*, such Things being in their Nature a Compassing and Imagining the King's Death; your providing Arms and a Troop are Evidences and Overt-Acts of this Treason; and so will your going up and down and meeting People in order to rise, if that were your Business, in *Leicestershire*, *&c.* as it seems by the Evidence it was.

Par. But that is not said, my Lord, I humbly beg your Pardon for interrupting you; it is not said, That I met them to rise, by no Evidence whatsoever; and therefore, pray, my Lord, do not inforce it beyond what the Evidence has proved; he said, I went to meet my Friends: Was there any thing said it was in order to a Rising?

L. C. J. Treby. I think you mistake your own Words, as you spoke them to the Witness, if I did take them, as I think I did, right, for they were several Times repeated. I will do you no Wrong, Sir *William*, I assure you. You went into *Leicestershire*, and you say, It was to meet your Friends; the Witness says, It was to meet the King's Friends; by the King, it is very plain, you meant not King *William*, but King *James*; for you spoke before of the King's Landing, which was at *Christmas* last, when every body knows King *William* was in *England*. These coupled together---

Par. I beg your Pardon, my Lord; those two Things are not both to be join'd together; the Discourse of the King's Landing was at *Christmas*, as he says; the other thing, my Journey into *Leicestershire*, was a Month afterwards, and therefore they cannot be coupled together.

L. C. J. Treby. The Coupling of them, that I meant, was only to shew who was understood to be spoken of by you, when you named the King; so the Question is, Whether you did not mean the same Person in *January* that you meant in *December*, by the Word King, especially since, as a Discovery you had made, you said farther, that the *West* was as well inclined to the King's Interest as the *North*, and a Lord's Brother was concerned in it? If by the King you had meant King *William*; how impertinent and insensible had been all this Discourse, that the *West* was as well inclined as the *North*, and that a Lord's Brother was concerned in it; concerned in what? In being inclined to King *William*; to what Purpose could that be said?

Par. It may as well be interpreted that Way as the other.

L. C. J. Treby. I must leave that to the Jury. And I confess, if there was not somewhat more in the Case, you might the better argue upon this as to the Interpretation. But laying aside the Consideration of your Riding into *Leicestershire*, *&c.* here is this Providing of Arms, proved by four or five Witnesses, and the Serving of them in that Manner; and there is no Account given by you, that they were provided for the Service of the Government, or that you were employ'd so to do. Certainly it is not lawful to provide Arms, especially for a whole Troop, as for aught I perceive here was, though indeed I am not skilful enough in those Businesses, to know how many make up a Troop; but it's plain here was an Insurrection intended, when the Invasion was made; and that is an Evidence that these Arms were to be employ'd upon that Account, for no other Use was to be made of them, nor is pretended. If you had found those Arms in your House (as you say) it had been your Duty to have deliver'd them up, or disposed of them to the Use and Service of the Government, which Service too, could only be when you had a Commission from the Government, and not of your own Head. And then, besides all this, you acknowledg'd that you had a Troop of old Soldiers.

Par. It is but slidingly that; for he only tells you, that a Troop would be composed of old Soldiers.

L. C. J. Treby. How can that be? when he says, he repeats your own Words, My Troop consists of old Soldiers; can any body say, that his Troop consists of old Soldiers, without having a Troop?

Par. Pray, Mr. *Sweet*, speak; my Life is at Stake, Did I say to you, it did consist, or it was to consist? Recollect yourself, and consider well before you speak.

L. C. J. What was it that he did say? It did consist, or it would consist?

Sweet. He said, his Troop was composed all of old Soldiers.

Par. But does it appear by any Evidence, that I had a Troop? If I had, who were they? None of these Men do appear. Does this Troop consist of Men in the Air? that I should list Men that are all *in Nubibus*, and not one of them to be known. Suppose I should tell him a Lye, or make some Brags, is this Treason? Here is no Person proved to be listed or named.

L. C. J. But Arms were found in your House for a Troop.

Par. But where they were bought, and when they were bought, and made ready, it does not appear; and I affirm to your Lordship, if you would give me but one Day's Time, I would prove, that they were at my House in *Warwickshire* when I first came down thither, which is two Years ago. And I'll fully make it out to your Satisfaction, or I'll be crucify'd, or any thing in the World. I can prove it by a great many Witnesses, by my Friends, and all the Servants that belonged to me, they were there long before this Discourse was had or thought of.

Mr. Just. *Rokeby.* If your Lordship expects that I should deliver my Opinion, I am ready to do it. As to this Matter of Law that Sir *William Parkyns* has proposed, he says, There are not two Witnesses to the same Overt-Act, and therefore no Evidence of Treason; truly, I take it, and always did, that the Law is, there need not be two Witnesses to the same Overt-Act; but if there be two Witnesses, one whereof speaks to one Overt-Act, and another to another Overt-Act of the same Species of Treason, these are two Witnesses within the Law. Now, I think, there are two Overt-Acts in the Indictment of this Treason. The Treason is Compassing the Death of the King; the Overt-Acts are first, the particular Design of the Assassination upon his Person, and the other is, the bringing in of a foreign Force, and preparing Horses and Arms to meet that foreign Force here: All to the same Intent and Purpose, the Compassing and Imagining the King's Death. Now, besides that of the Assassination, there are a great many Witnesses that prove there were Arms prepared; for there were found a great Quantity, when they opened the Boxes; which Boxes, it is plain, he himself sent down to *Haywood*'s House: For tho' *Charnock* writ a Letter, yet it was by his Direction, as he own'd to *Haywood*, when he was here in Town. And then his Servant fetched them away from this Place, and this I take to be another Overt-Act, and proved by several Witnesses. Sir *William Parkyns* speaks of his being a Gown-Man; but I do not know what a Gown-Man has to do with such a Quantity of Arms.

Par. If you will give me Leave to send for some People, I will demonstrate it to you as clear as the Sun, that they were in the House two Years ago, when I came first thither.

Mr. Just. *Rokeby.* There were Preparations two Years ago, it appears, for the Destruction of the King and Kingdom; however, the Men that were accused of it, had the Luck to escape and be acquitted.

Par. My Lord, I hope I shall not be interpreted out of my Life, I desire the Statute may be read.

Mr. Just. *Rokeby.* What Statute do you mean?

Par. The 25th of *Edw.* III. and the new Statute too, let them both be read to the Jury, that they may consider of it.

The Statute of the 25th of Edw. III. *was read.*

Par. There is nothing of two Witnesses there.

L. C. J. No; but there is another Statute of the 5th of *Edw.* VI. *cap.* 11. that may be more for your Advantage: Will you have that read?

Par. Yes, if you please; I know there is another Statute that does direct it, and I expected to have found it in this Statute.

Cl. of Ar. This is an Act made in the 5th and 6th Years of King *Edw.* VI.

The Statute was read to these Words, Unless without Trial he shall confess the same.

Par. There's enough.

L. C. J. You have heard the Statute read, would you infer any thing from it?

Par. I infer that there ought to be two Witnesses, and here is but one.

L. C. J. There are two Witnesses.

Par. Not direct to the same Thing.

L. C. J. I shall leave it to the Jury, whether this Evidence does not prove an Overt-Act, to demonstrate a Design against the King; if the Design be to depose him, and that's manifested by two Overt-Acts, undoubtedly that is Treason within the Statute of 25 of *Edw.* III.

Parkyns. That I agree, but yet there must be two Witnesses of it.

L. C. J. Suppose Dethroning the King be the main Design that strikes at his Life, and you resolve it shall be done one Way or other. One Way by Assassination, the other by Insurrection; or by Invasion and joining with a foreign Army.

Par. My Lord, I conceive there ought to be two Witnesses for each.

L. C. J. No, no; for that very last Act that is to take Effect in a few Days, declares it is sufficient, if there be one to one Overt-Act, and another to another; but still it must be of the same Head or Species of Treason; and deposing the King and assassinating of him, and preparing to raise an Army against him, or to excite an Invasion, are but one Sort of Treason.

Par. It may be so, if they were Overt-Acts of one Sort of Treason; but rising in Arms, and Assassination are as different Things as can be in the World, and therefore there ought to be two Witnesses to each of them.

Mr. J. *Rokeby.* That which I deliver'd as my Opinion was, that one Witness proving one Overt-Act, and another Witness proving another Overt-Act of the same Sort of Treason, are two good Witnesses, according as the Law requires. And I am the more fully confirm'd in it, by the Clause that is in this new Act of Parliament, made for Trials in Cases of Treason, that a Man shall not be convicted of Treason, but by and upon the Oaths and Testimony of two lawful Witnesses, either both of them to the same Overt-Act, or one of them to one, and the other of them to another Overt-Act of the same Treason.

Parkyns. Of the same Treason, aye.

Mr. Just. *Rokeby.* And here it is the imagining the Death of the King, that is the Treason.

Parkyns. Then you may say every Thing else is so; but if you please to let the whole Statute be read.

L. C. J. You shall have it read if you will; but this is all that is in it concerning this Matter. Now a Design to depose the King, which is manifested by some Overt-Act, is an Overt-Act to prove the Design of the Death of the King.

Parkyns. Then it must be manifest, and not by Interpretation; and all these Things are by Interpretation, except it be what *Porter* swears.

L. C. J. If by Overt-Act it be proved, that you designed his Deposition, that is an Overt-Act to prove your Design of his Death.

Parkyns. They are very different Things, Death and Depositions. We have seen a King deposed, and yet he is alive.

L. C. J. Treby. I am sure we have seen a King agreed to be assassinated, and yet, God be thanked, he is still alive.

L. C. J. It is not the Succeeding in the Design, but the Design itself that is the Treason. God forbid that it should have Success to make it Treason.

L. C. J. Treby. But whenever People will agree together to bring in foreign Forces, or to prepare Men and Arms against the King that is in Possession, this is reckoned an Overt-Act of a Design against his Life, and has always been reckoned so by my Lord Chief Justice *Hales*, my Lord Chief Justice *Coke*, and by all those Men that have been reputed the most tender in Cases of this Nature: For any Act that expresses an Intent of dethroning the King, by Means of an Invasion by a foreign Force, and an Insurrection against the King, is a proper Proof of a Design of his Destruction; and if not, then agreeing to shoot him is not an Overt-Act. Men may say also, that there need be actual Shooting to make out the Overt-Act in that Case.

Parkyns. If your Lordship pleases to have the Act read, I shall submit to your Lordship's Judgment.

L. C. J. Let it be read.

Parkyns. If you please to read the Act, the Preamble of it.

Cl. of Ar. This is an Act made in the 7th Year of our Sovereign Lord the King: Is that the Act? It is an Act for Regulating of Trials in Cases of High-Treason, and Misprision of Treason. Is that the Act?

Parkyns. Yes, yes. *(The Act was read.)*

Mr. Just. *Rokeby.* I believe if you look into the great Case in Parliament, the Case of my Lord *Stafford*, you'll find it was declar'd for Law, that one Witness to one Overt-Act, and another Witness to another Overt-Act of the same Treason, they were two Witnesses within the Law, and this was a solemn Resolution in Parliament in the House of Lords.

Par. I believe it has been done; but here is a beneficial Law made, which if my Trial had been put off a few Days, I should have had the Benefit of it.

L. C. J. It would have been the same Thing as to this Matter, for this Act declares the very same Thing, as to the two Witnesses.

Parkyns. And then, my Lord, I could have had Witnesses to have taken off a great Part of this Evidence, and the Law comes to take Effect within one Day, and it turns here upon this Matter of *Sweet*, who is not a good Evidence; for it is manifest he has contradicted himself, and it is manifest he has sworn what cannot be true.

L. C. J. Wherein?—*Parkyns.* That I should say the King would land here, for I had his Word for it.

Mr. Just. *Rokeby.* You might have his Word, and not delivered by his own Mouth; there are other Ways to convey a Man's Word besides speaking.

Parkyns. But then we don't call it his Word, that's Hearsay.

Mr. Just. *Rokeby.* If a Man write his Note that he will do such a Thing, we may very well say, we have his Word for it.

L. C. J. It is not impossible but that you might speak with him.

Parkyns. It is impossible I should speak from hence to *France*.

L. C. J. You might have been over with him; I believe a great many others have, and it's proved Mr. *Charnock* went over.

Mr. Just. *Rokeby.* If any Man should have said at the latter End of the last Month, I believe that there was an Assassination intended against the King, because I have his Word for it, merely from reading his Speech to the Parliament, wherein he affirms that he had several Proofs of it, that had been a proper Expression, tho' he did not hear the King speak it.

Parkyns. Yes, if he had the Speech to produce.

Mr. Just. *Rokeby.* Then if it come by Letter, or Message, or common Fame, he might send you Word by particular Messenger.

Parkyns. Yes, if there was any such Authority as that it were true. But he has manifestly contradicted himself, and Captain *Porter* swears for his own Life, and I must leave it to you, whether they are to be believed.

Mr. Just. *Rokeby.* Captain *Porter*'s Testimony has been sufficiently confirm'd by the Acknowledgment of dying Persons.

L. C. J. Well, Have you any more to say, Sir *William Parkyns?*

Parkyns. No, my Lord, I submit it to your Lordship's Direction.

L. C. J. Then what say you to it, Mr. *Attorney*, or Mr. *Solicitor?*

Mr. Sol: Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King in this Matter, and it is my Turn to sum up the Evidence against the Prisoner at the Bar: He stands indicted for compassing the Death of the King, for designing to depose the King, for promoting a foreign Invasion, for intending an Insurrection here at home, and for aiding and abetting the King's Enemies, and for doing what he could to procure the Subjection of his own Country to Foreigners and Strangers.

Gentlemen, some of these Crimes run into one another; designing the Death of the King by Assassination, and designing to depose the King, amount to one and the same Thing with compassing and imagining the Death of the King.

My Lords the Judges have given you their Opinion in that Point of Law, and I think it is agreeable to all the Resolutions that have been since the Making of the Statute of 25 of *Edw.* III. I think that it has been explained so in the Time of *Richard* the Second; but this I am sure of, that it was so resolv'd in the Time of *Harry* the Fourth, when there was a Design to set up *Richard* the Second again, and it was adjudged to be High-Treason in compassing and imagining the Death of the King. For deposing the King, is destroying him in his politick Capacity, as much as Assassination and Murdering of him is destroying him in his natural Capacity; and the Conspirators in such Cases know what the great End is they aim at, to subvert the Government as it is established by Law, whereby every Man enjoys his own Property, and the Freedom of his Person, and those that will be quiet may have their Liberty and Property preserved entire to them; but some People are so very impatient of submitting to the Law, that they cannot be content to be in Servitude themselves, but they must needs do all they can to bring it upon their Fellow-Subjects. And it were very well if that those who were in Love with Slavery, would but go to some other Places; where they may have enough of it; and not bring it upon those who are so little desirous of such a Thing, as we are, and I hope always shall be.

Gentlemen, to prove Sir *William Parkyns* Guilty of this Treason, whereof he stands indicted, we have produced several Witnesses; and first there is Mr. *Porter*, and he tells you Sir *William Parkyns* told him he had seen a Commission from King *James*, written with his own Hand, for making War against the Person of King *William*.

Parkyns. Sir, I beg your Pardon for interrupting you, but there was not one Word of that said; here is Mr. *Porter*, pray ask him, if ever I saw a Commission from King *James*.

L. C. J. Porter did say so, if I remember any Thing *Porter* said; you told him you had read the Commission, and it was written with his own Hand.

Parkyns. All that I heard of it was, that when I was desired to make one in the Assassination, I refused it because I said I was busy about the Matter of my Regiment.

Mr. Att. Gen. Pray call *Porter* again. *(Capt.* Porter *came in.)*

Mr. Sol. Gen. Pray, Capt. *Porter*, will you give the Court and the Jury an Account what you heard Sir *William Parkyns* say about the Commission that came from King *James?*

Capt. *Porter.* I ask'd Mr. *Charnock* why I might not see the Commission, and he told me he had never seen it himself, but Sir *William Parkyns* had. I did ask Sir *William Parkyns*, whether he had seen it, and he told me he did see it, and read it, and it was to raise War against the Person of the Prince of *Orange*.

Mr. Att. Gen. Whose Hand was it in, did he say?

Capt. *Porter.* It was written with King *James*'s own Hand.

Parkyns. This was my Mistake, I thought he had said I told him I had a Commission for a Regiment.

Mr. *Mountague.* Did he give any Reason, why it was written with King *James*'s own Hand?---Capt. *Porter.* We used to say amongst ourselves, it was, because he would not trust any of his Ministers with it.

Mr. Sol. Gen. I would not do Sir *William Parkyns* any Wrong, but only sum up what is material in the Evidence given against him. I remember very well Mr. *Porter* said, Mr. *Charnock* told him Sir *William Parkyns* had seen the Commission, but I would not offer that as Evidence against the Prisoner what another told him, but he says besides that Sir *William Parkyns* told him himself, that he had seen it, and that it was written with King *James*'s own Hand. He says that they had several Meetings together, Sir *William Parkyns*, and a great many others; and he names the Places, the *Nagg's-Head* in *Covent-Garden*, the *Sun* Tavern in the *Strand*, and the *Globe* Tavern in *Hatton-Garden*; he tells you particularly, that it was agreed that *King* (who was executed), and *Knightley*, and himself should go and view a Place that should be proper for the Assassination, and to give a Report to the Prisoner, and the rest of the Conspirators, what they thought the most proper Place; and that accordingly they did view the Place, and came home at Night, and met the Company, whereof Sir *William Parkyns* was one; and they gave an Account how the Place was viewed, and which was thought most proper, and then all the Company agreed to it. He says indeed, that Sir *William Parkyns* was not one that was to execute it in his own Person, but one *Scudamore* was to be the Man employed by him; and he did say it was a Thing that was very necessary to be done, and would facilitate the Introduction of King *James*, and the bringing him back again: And there is likewise this concurring Evidence of Mr. *Porter*'s with what I shall observe by and bye, that Sir *William Parkyns* was to procure five Horses, three whereof he was to mount himself, and two he was to send Captain *Porter* to mount; and if there were further Occasion he could procure more from Mr. *Lewis*, Gentleman of the Horse to my Lord *Feversham*; and accordingly we have produced to you two Witnesses, *Freeman* and *Turton*, the one a Tapster, the other an Hostler that lived at the *George-Inn* in *Holbourn*, who give you an Account that upon *Friday* before the first Day that was designed for the Assassination, there did come three Horses to Town, for Sir *William Parkyns*; but it being put off upon the Disappointment, they were sent out of Town again. Upon the *Friday* afterwards, the Day before the Discovery, then there were four Horses brought to Town, and a 5th was of Mr. *Lewis*, which was a Roan Gelding.

Park. Pray, Sir, will you pleaſe to obſerve what Sort of Horſes they were; and particularly the Height of them, that it may be known how fit they were for this Buſineſs.

Mr. Sol. Gen. I will do you no Wrong, Sir *William*, if I can help it. The Jury have heard the Evidence; and by and bye they will hear my Lord's Directions: But they do ſay there were 4 brought to Town, and a 5th was ſent, a Roan Gelding; firſt, the Witneſs ſaid the Horſe came from *Mountague-Houſe*, but then preſently he recollected himſelf, and acknowledged the Miſtake; and afterwards ſaid it was from *Somerſet-Houſe*. So there were the 5 Horſes, 3 whereof Sir *William Parkyns* was to mount, and 2 Captain *Porter*, as he himſelf ſays; and theſe Facts I inſtance in, as making a concurring Evidence, and very near to two Witneſſes to prove this Part of the Conſpiracy.

Then, Gentlemen, Captain *Porter* goes further, and ſays, that he had heard (but Sir *William Parkyns* did not tell him ſo himſelf) that Sir *William Parkyns* had a Commiſſion to raiſe a Regiment of Horſe, and was preparing ſo to do, againſt the Time of the Invaſion, to join with the Forces that were to come from abroad. To confirm which, we have called Mr. *Sweet* to give you an Account that he had been acquainted with Sir *William Parkyns* for three Years, and that he had often talk'd with him about the King, that is, his preſent Majeſty, whom he called the Prince of *Orange*, and the Little Gentleman; and about King *James*, whom he uſed to call always King; and he ſaid the King was to land very ſpeedily, and that he had a Troop which conſiſted of old Soldiers, and that there were ſeveral Volunteers that were Officers; he ſaid he was to take a Journey into *Leiceſterſhire*, and accordingly he went; and when he returned back again he ſaid, the Weſt and the North were very well inclined to the King's Intereſt, or to that Purpoſe. And to ſtrengthen his Evidence we prove, that he did go accordingly into *Leiceſterſhire*, and we prove it by his Servant that went with him, where he met with ſeveral Perſons, particularly one *Yarborough*, and a Parſon; what they did tranſact the Servant cannot prove, but he is a concurring Witneſs to prove, that he went into *Leiceſterſhire*; and we have all the Reaſon in the World to believe that he went on that Errand that he ſpoke of before, that is, to meet the King's Friends, as he called King *James*. And then there is a further concurring Evidence of his having a Regiment, or a Troop, it is not material, whether it be one or the other; and that is the Matter of the Arms, 4 Dozen of Swords, 32 Carbines, 35 Caſes of Piſtols, that were hid in the Garden of his Houſe: And theſe Arms we have traced further, he ſent them from his Houſe to *Haywood*'s Houſe; there he thought they would not lie ſafe, and therefore Sir *William Parkyns* ſends for them privately; they were to come away at Night, and be brought back to his Houſe, and they were accordingly brought back in the Night to his Houſe, and there they were buried; and the ſame Perſon ſaw them taken up afterwards, which brought them to Sir *William Parkyns*'s Houſe, and proves they were the ſame Boxes that were buried, and which upon Opening proved to be theſe Arms, that were firſt ſent to *Haywood*'s, and afterwards brought back to his own Houſe.

So that this, Gentlemen, is a concurring Evidence both to what *Sweet* ſays, and to what *Porter* ſays; and thoſe are the Two Witneſſes to this Part of the Treaſon, that there was a Proviſion of Arms and Men for this Purpoſe, which he ſaid he had a Commiſſion for.

Now, Gentlemen, againſt all this he makes but a very ſmall Objection.

As to the Matter of two Witneſſes to every Overt-Act, that has been over-ruled by the Court; and as to the Arms, he ſays he found them at his Houſe when he firſt came to it; and then they were old ruſty Arms, but of this he gives you no manner of Evidence. But if they were there when he came to the Houſe, how came he at this Time of Day to hide them, and ſecrete them? Why might they not be as publick now as they were before he came, which he has had Time enough to prepare to prove ſince the Finding of them? And he does not give you ſo much as any colourable Reaſon why he ſo ſecreted them. And therefore 'tis a moſt juſt and violent Suſpicion, that they were for the Purpoſes that the Witneſſes have given you an Account of; and you have Reaſon to believe they were provided for to arm that Number of Men, which he was to raiſe to aſſiſt the *French* when they came to land here. So that if you believe what the Witneſſes have ſworn, you cannot ſay but that he is guilty of the Treaſon charg'd upon him; and we doubt not you'll find him ſo.

Mr. *Cowper.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of the ſame Side of Counſel for the King. Sir *William Parkyns* has given us a good Caution, which I ſhall take care to obſerve: And that is, not to ſtrain either Fact, or Law, to his Prejudice. But, my Lord, when ſuch a Matter as this, a Crime of this Nature, is ſo far proved againſt the Priſoner at the Bar, that nobody can in his private Judgment reaſonably acquit him; then I think it a good Piece of Service to the Publick to make the Matter ſo plain, that it may be put beyond all Manner of Doubt, both for the Eaſe of the Jurors, and for the Satisfaction of all others that hear this Trial.

My Lord, Sir *William Parkyns* has truly divided his Indictment into two Parts, the one that accuſes him of being concerned in the Aſſaſſination, and the other that accuſes him of being concerned in Inviting the *French* into the Kingdom, and Ingaging to meet them with an armed Force.

My Lord, As to the firſt Part, I muſt do Sir *William Parkyns* that Right, that there is but one poſitive Evidence as to the Aſſaſſination; but that Evidence tells ye he agreed to it at ſeveral Meetings; nay, that he was one who ſaid it was neceſſary to be done, in order to the other Deſign he was engaged in, the facilitating the Landing of the *French*, and King *James* his Deſcent and Reſtauration. There is, I ſay, indeed, but one Witneſs of that Matter, but the Evidence of that one Witneſs is confirmed by many concurring Circumſtances; by his ſending for Horſes to Town the Day before the firſt *Saturday*, when this execrable Treaſon was to have been executed; by ſending them out of Town again that Day upon the Diſappointment; by ſending for them again the *Friday* before the ſecond *Saturday* that the King was to have been aſſaſſinated; by his having more Horſes than were uſual with him that Day; by his taking care then of three Horſes that were none of his own, and one of them brought very ſuſpiciouſly from *Somerſet-Houſe*; and that all theſe eight Horſes ſhould be immediately hurried and carried away upon the Diſappointment the ſecond *Saturday*, and nothing ever heard of them afterwards. I ſay one of them was brought very ſuſpiciouſly; for, my Lord, you obſerve it came from *Somerſet-Houſe*, and was ſent by *Lewis* according to the Priſoner's Promiſe to Capt. *Porter*, which *Lewis*, it is apparent by all the Witneſſes of this Matter, was privy to this Deſign.

My Lord, there is another Circumſtance beſides this, which, I think, has not been obſerved; and that is, his ſending for *Sweet* up to Town before the ſecond time that the King was to have been aſſaſſinated; he came up indeed before both the times: The firſt time he was told by the Priſoner, he had once deſigned to have uſed him in a Buſineſs; but upon ſecond Thoughts he had Compaſſion for his Family. And when he came the ſecond time, he was firſt aſk'd what Condition he had left his Family in, whether he had provided them Money. He ſaid No; and there upon he was chid: And the Priſoner ſaid, he might then as well have ſtaid at home. All theſe Circumſtances, beſides the one poſitive Evidence, favour ſtrongly of his having a great Hand in the Deſign of Aſſaſſinating the King.

But then, my Lord, As to the other Part; his Inviting the *French*, and preparing to meet them, that is poſitively proved by two Witneſſes. Capt. *Porter* tells you, That the Priſoner was at the two Meetings in *Leadenhall-ſtreet*, and St. *James*'s-*ſtreet*, where it was expreſsly reſolved by all that were preſent, and the Priſoner among the reſt, to ſend *Charnock* over to invite the *French* to invade this Kingdom, and to promiſe to meet King *James* at his Landing with two thouſand Horſe. He ſwears, That Sir *William Parkyns* did particularly agree to what was reſolved upon at both the Conſults. And *Sweet* tells you, that he had prepared for the ſame Deſign; for that Sir *William Parkyns* told him the King would land, he had his Word for it; and he himſelf had a Troop of old Soldiers: *My Troop does conſiſt* (he ſpoke it in the preſent Tenſe; for it being a Doubt, Sir *William Parkyns* did himſelf that Right as to examine the Witneſs again, and he repeated it as his Words) *My Troop conſiſts of old Soldiers, or is compoſed of old Soldiers*; and he was to have ſeveral Volunteers that had been Officers.

My Lord, Theſe two poſitive Witneſſes are Evidence that goes to the ſame Species of Treaſon, nay, to the ſame Deſign, the raiſing a Rebellion, and the Depoſing the King, which is Killing him in his politick Capacity; I ſay, theſe Two go home to the ſame Deſign.

And, my Lord, this Evidence upon this Branch of the Indictment, is corroborated too by very ſtrong Circumſtances. There is a Journey to *Leiceſter*, which *Sweet* ſpeaks of, that Sir *William Parkyns* told him he would undertake: This Journey it is proved by his Servants that he did undertake; that he met there with ſeveral Perſons, and came back and made his Report to *Sweet* of the Succeſs of his Journey, and how well diſpoſed the King's Friends were, by which Name he always meant King *James*; for when he ſpoke of our preſent King, he called him the *Little Gentleman*, or ſometimes King *William*, and ſometimes, as the Witneſs at laſt ſaid poſitively, the Prince of *Orange*: But when he ſpoke of the King, without any thing elſe, he always meant King *James*; and beſides, he ſpoke of a King that was beyond Sea at *Chriſtmas* laſt, which could not be King *William*, who was then, and had been in *England* ſo long before.

My Lord, the Priſoner in his Defence ſays, That this Servant of his that went with him into *Leiceſterſhire*, had been formerly *Charnock*'s Servant, and was ſent by *Charnock* with the Meſſage to *Kenſington*, and not by him. Yet I muſt obſerve, that the Evidence ſwore poſitively he was ſent by Sir *William Parkyns*, his Maſter, and brought the Note in the Almanack back to the Perſon to whom he was directed to carry it, who lodged at the Confectioner's Houſe; and when he had ſo done, that the Perſon that lodged at the Confectioner's did not remit him to *Charnock*, but to his Maſter Sir *William Parkyns*, with a Meſſage that he would be at Home, and ſtay there ready, whenever he ſhould have occaſion for him; and this was upon the very *Saturday* the King was to have been aſſaſſinated.

My Lord, Sir *William Parkyns* has complained, that if he could have had his Evidence here, he could have proved the Arms had been two Years in his Houſe, and that he found them there when he came thither firſt. If we ſhould admit that Matter, we might confeſs, and avoid it; for it is apparent that theſe Arms were on this Occaſion put up in a ſuſpicious Manner in Boxes, and ſent to *Haywood*'s (who is a ſuſpicious Perſon, by reaſon of his Relation to *Charnock*, upon whoſe Letter and Recommendation they were received), and concealed till the Plot was diſappointed; and then they were carried away from that Place, and buried in Sir *William Parkyns*'s own Garden. This was juſt after the Breaking out of the Plot; and they were buried for the better ſecuring them as choice Goods. And whereas the Priſoner ſays they were old and ruſty when he found them, it now appears they were clean and new-furbiſhed Arms, and the Hilts were off the Swords, and packed together.

My Lord, he has Recourſe to another Argument in the laſt Place, the moſt moving, I muſt confeſs, of all, and that is the Argument of Pity: He has ſpoke of his Education in the Profeſſion of the Gown, of his Infirmities, his Age, and his Family. Arguments of Pity I am very unfit to give an Anſwer to, and ſhould be very unwilling to extinguiſh any Motions of it; but this I muſt obſerve, even by Way of Anſwer to that Argument, That the Time was when he ſhould have pitied himſelf, and not engaged in ſuch an abominable and mercileſs a Deſign; That he ſhould have had Pity upon his Country, which he plotted to bring under the greateſt Confuſion and Deſolation; That he ſhould have had Pity upon the beſt of Kings, and the beſt of Men; but then there was no Pity, when they thought they had laid their Deſigns ſo that they had him in their Power, but they reſolved barbarouſly to murder him, and perſiſted in the Reſolution of Aſſaſſinating him after they were once diſappointed; That, it ſeems, did not diſcourage them, but they undertook it a ſecond Time; and it does not appear that they ever had any Remorſe at laſt for it; but the Plot broke out, and ſo their whole Deſign was fruſtrated.

My Lord, This is the Sum, I think, of his Defence; I have, as well as I was able, given an Anſwer to the Objections made to it, and I muſt now leave it with you, Gentlemen of the Jury: And tho' theſe Conſiderations that I have mentioned may not quite remove all Compaſſion, yet they may ſerve to confirm you in a Reſolution of doing the King, and Kingdom, and yourſelves Juſtice; and that is all we aſk of you.

L. C. J. Gentlemen of the Jury, Sir *William Parkyns* is indicted of High-Treaſon, for Deſigning, Imagining, and Compaſſing the Death of the preſent King. There have been ſeveral Witneſſes produced that have given Evidence upon this Indictment; the firſt of them is Mr. *Porter*, who has been a Witneſs heretofore againſt ſeveral upon the like Occaſion; and he gives you this Account, That about the latter End of *May*, or the Beginning of *June* laſt, there was a Meeting of divers Perſons at the *Old King's-Head* Tavern in *Leadenhall-ſtreet*, in the City, where they dined together; and there was Sir *William Parkyns*, Captain *Porter* himſelf, Sir *John Fenwick*, Sir *John Freind*, and divers others that he has mentioned to you. At that Meeting they did conſult together, which Way the late King *James* might be reſtored, and it was thought very neceſſary that there ſhould be a *French* Force ſent over hither to join with others for his Reſtoration. And they did among themſelves agree and determine, what Number of Forces might be convenient for that Purpoſe; they did propoſe 10000; 8000 Foot, 1000 Horſe, and 1000 Dragoons; and that a Meſſage ſhould be ſent over to King *James*, to perſuade him to ſollicit the *French* King to furniſh him with ſuch a Number of Men, to be ſent over into *England*. Mr. *Charnock*, that was then in the Company, was the Perſon agreed upon among them to be the Meſſenger to be ſent upon this Errand; which Employment he did undertake, upon their Promiſe, that they would raiſe among themſelves 2000 Horſe for to meet the late King at his Landing.

This being at that Time determined, and Mr. *Charnock* having accepted this Employment, he did make Preparation to go upon this Errand. In ſome Time after (a Week or a Fortnight, or thereabouts) there was another Meeting, at which were ſeveral of the ſame Perſons that were preſent at the former, and among them Sir *William Parkyns* was one: And this Meeting was at one Mrs. *Mountjoy's*, that keeps a Tavern in St. *James's-ſtreet*, where they did diſcourſe of what they had formerly agreed upon, and did again conſider, whether they ſhould proceed to ſend Mr. *Charnock* with that Meſſage; to which they all agreed, that Mr. *Charnock* ſhould go, and he accordingly went: And Captain *Porter* met him about five or ſix Weeks after the Meeting at Mrs. *Mountjoy's*; and *Charnock* told him he had been in *France*, and that ſince his Return he had been with the ſeveral Perſons who had ſent him, and had acquainted them with the Anſwer of K. *James*; which was, That at that Juncture of Time the *French* King had ſuch Occaſion for his Forces, that he could not ſpare them, or furniſh him with ſo many to come over here. This is the firſt Matter that *Porter* gives you an Account of.

But then Captain *Porter* tells you farther, how the Deſign of Aſſaſſinating the King was ſet on Foot about the latter End of *January*, or the Beginning of *February* laſt; about which Time Sir *George Barcley* was ſent over with a Commiſſion from the late King *James*; which ſeems to have given great Encouragement to that Party of Men: For Sir *George Barcley*, Captain *Porter*, and Sir *William Parkyns*, with divers others, had ſeveral Meetings at the *Globe* Tavern in *Hatton-Garden*, the *Nagg's-Head* Tavern in *Covent-Garden*, the *Sun* Tavern in the *Strand*, and other Places. And at theſe Meetings they entred into Conſideration, what was the beſt Way to reſtore the late King *James* to the Throne; and it was agreed among them, that the beſt Means for the effecting that Reſtoration would be to kill King *William*, which they reſolved to undertake; and at theſe Debates and Reſolutions Sir *William Parkyns*, the Priſoner at the Bar, was preſent. Captain *Porter* being aſked whether Sir *William Parkyns*, at theſe Conſults, did conſent to the King's Murther, he ſaid they did all agree to the Aſſaſſination of the King; and Sir *William Parkyns* ſaid, he thought it was very neceſſary to be done, to facilitate the Reſtoration of the late King.

Gentlemen, This Deſign of Aſſaſſinating the King being thus reſolved upon, the next Thing conſidered among them was, how it might be effected. There were ſeveral Ways propoſed: One was by an Ambuſcade; for the King having a Houſe in the Country by *Richmond*, his Majeſty uſed to go once a Week a-hunting thereabout, and to return at Night; and therefore an Ambuſcade on that Side of the Water, near the Houſe, was propoſed. Then another Propoſal was made to fall upon the Guards on this Side the Water, and at the ſame Time that the King's Coach was to be ſet upon. And theſe two Places being propoſed, there was ſome Difference of Opinion among them; whereupon it was agreed that ſome Perſons ſhould be ſent to view the Ground on both Sides the Water, which Perſons were Captain *Porter*, *King* that was executed, and one *Knightley*: And ſo ſome Days before the 15th of *February* they did go on both Sides the Water, and viewed the Ground, and return'd in the Evening to the *Nagg's-Head* Tavern, according to Agreement; where were met together Sir *George Barcley*, Mr. *Charnock*, and the Priſoner at the Bar Sir *William Parkyns*. And there they made their Report of their View of the Ground; upon which both the Propoſals were debated; and at laſt they did all agree that the Attack ſhould be made upon the King on this Side of the Water, in a Lane that was between *Brentford* and *Turnham-Green*; and the Attack upon the Guards was likewiſe to be made thereabouts.

Sir *William Parkyns* was to furniſh five Horſes, whereof three of them were to be mounted by Men of his own providing; the other two were to be mounted by Men of Captain *Porter's* providing; Mr. *Porter*, Mr. *Charnock*, and one *Rookwood* were to be principally engaged in Attacking the Guards. The Number of Men agreed upon for the whole were about Forty, or few more, and Sir *George Barcley* was to have a Party out of them all, of about Eight; and as thoſe others went to fall upon and charge the Guards, Sir *George Barcley*, with his Party of Men, was to attack the King in his Coach, and by ſhooting into the Coach to kill the King and all that were with him.

The Time agreed upon for putting this Deſign in Execution was on *Saturday* the 15th of *February*. That Day it was expected the King would go a-hunting. And two Men were planted at *Kenſington* to give Notice when the King went; and upon ſuch Notice, theſe Men were to march out in ſmall Parties, and to lodge in the Inns and Publick-Houſes about *Brentford* and *Turnham-Green*, upon Notice of the King's Return from the other Side of the Water, and Sir *George Barcley* was to be in Readineſs to ſet upon the Coach in the Lane; and the other Party to attack the Guards.

But this horrid Deſign was very happily diſcovered, which prevented the King's going abroad on that Day; and though they were diſappointed for that Time, yet the Deſign was not at an End: But their Reſolutions continue to make the like Attempt when they could have another Opportunity. And for that Purpoſe there was another Meeting, as Captain *Porter* tells you, upon the *Friday* following, at the *Sun* Tavern in the *Strand*, at which Sir *William Parkyns*, Sir *George Barcley*, *Rookwood*, and *Charnock*, and Captain *Porter*, were preſent; and they did agree to attack the King and the Guards the next Day, in the ſame Place and Manner that they had formerly agreed upon. But by good Providence the King had Notice of it, ſo that he did forbear to go abroad that Day; whereby theſe Conſpirators were totally diſappointed of their barbarous and villainous Deſign which they had reſolved upon, and had made ſuch Preparations to compaſs.

It is true, Captain *Porter* does tell you, Sir *William Parkyns* was not to be one that ſhould be actually preſent at the Aſſaſſination; but he was to furniſh five Horſes; three of them to be mounted by Men of his own providing, and two by Men that Captain *Porter* was to provide. And you are told poſitively that Captain *Porter*, at this laſt Meeting, did complain that two of his Horſes were fallen lame, and acquainted Sir *William Parkyns* with it; and he promiſed to help him to two more by the means of one *Lewis* that was Gentleman of the Horſe to my Lord *Feverſham*.

Then you are told, that Sir *William Parkyns* ſent to *Sweet* to come to Town the 11th of *February*, and *Sweet* comes to Town accordingly on *Wedneſday* the 12th of *February*; and then he had Diſcourſe with Sir *William Parkyns* at his Lodgings; where Sir *William* told him, that becauſe of his Family, he would not employ him in the Buſineſs he intended for him, and therefore bid him go home again; and withal directed him to return to Town the *Friday* following, and order his Groom to bring his Horſes to Town; he mentioned three Horſes which ſhould be the ſtrongeſt he had. The Groom brought up the three Horſes, and *Sweet* came to Town with him, and ſtaid till *Saturday*. Sir *William Parkyns* ſaid, he thought to go out of Town in the Afternoon, but did not, but ſtayed till *Monday*, when he went out of Town.

But upon the *Friday* following the Horſes of Sir *William Parkyns* were brought to Town again, which now were Four, and were ſet up at the *George* Inn in *Holbourn*; and it appears that Mr. *Lewis* furniſhed one Horſe; for there were five Horſes upon the Account of Sir *William Parkyns*, of which a Roan Horſe was one, which came from *Somerſet*-Houſe. This is proved by the Hoſtler; and that *Lewis* himſelf came in on *Saturday* in the Afternoon to inquire for Sir *William Parkyns*; but he was gone, and the Horſes were taken away, and he once came with Sir *William Parkyns* to the Inn. Theſe are Circumſtances that do concur with and confirm Captain *Porter's* Evidence concerning the providing Horſes for this Deſign.

Then there is another Particular of Captain *Porter's* Evidence concerning the Commiſſion from King *James*, which is remarkable: It was told you, that he aſkt *Charnock* whether he had ſeen the Commiſſion: He ſaid, No, but Sir *William Parkyns* had: And Sir *William Parkyns* was aſkt by *Porter*, as they were ſitting by the Fire-Side, whether he had ſeen the Commiſſion; and Sir *William Parkyns* anſwered, that he had ſeen it, and had read it, and it was written with King *James's* own Hand; and that the Subſtance of it was to make War upon the Perſon of the preſent King, who was called in the Commiſſion, as you may ſuppoſe, the Prince of *Orange*. So that, Gentlemen, as to the Deſign of the Aſſaſſinating the King, and of this Commiſſion, which was underſtood by them to be for that Purpoſe, this is the Sum and Subſtance of *Porter's* Evidence, ſo attended with and confirmed by theſe Circumſtances, as you have heard.

Beſides, the other Witneſs, *Sweet*, who was a great Acquaintance of Sir *William Parkyns*, tells you, That about *Chriſtmas* laſt he was informed by Sir *William Parkyns*, that the King would come, which he underſtood to be meant of King *James*. He aſked Sir *William Parkyns*, how he knew it? and he ſaid, He had his Word for it; and that his Troop conſiſted of old Soldiers, and he had thirty Saddles; and beſides, there would be ſome Volunteers, which were Old Officers. Then he ſaid, He was to go into *Leiceſterſhire*, and he did go with one *Scudamore*; and this was in *January*, about the latter End, as I remember. They lay that Night at *Stony-Stratford*, and the next Night at *Leiceſter*, and *Scudamore* went with him; and afterwards one *Yarborough*, and a Parſon, came to him out of *Yorkſhire*: And when he came back he ſaid, He found all there to be very well; and the Weſt was as well inclined to the King's Intereſt as the North; and a Lord's Brother was concerned.

Then in the next Place you are told, That at *Michaelmas* laſt Mr. *Charnock* did write a Letter to one *Haywood*, who had married his Siſter, and lived near Sir *William Parkyns* in *Warwickſhire*, to deſire him to receive ſome Goods into his Houſe that were to come from Sir *William Parkyns's*, and lay them up very carefully; for they were choice Goods, which Sir *William* durſt not leave in his own Houſe, becauſe he had left it. And accordingly there were theſe Boxes and Cheſts ſent to *Haywood's*, and received by him into his Houſe, where they continued till the latter End of *February*. *Haywood* about this Time, when the Deſign of the *Aſſaſſination* was on Foot, met with Sir *William Parkyns* in Town, and aſked him how he would diſpoſe of thoſe Goods? Thereupon Sir *William Parkyns* ſent his Servant into the Country; and Notice was given on *Aſh-Wedneſday*, the *Wedneſday* after the firſt Proclamation that iſſued upon the Diſcovery of this Conſpiracy, that theſe Goods ſhould be removed: And a Man, in the Evening, went to *Haywood's* Houſe with a Cart and Horſes, and removed theſe Cheſts; they were three in Number; and thoſe being opened, there were eight leſſer ones taken out, and carried away about Nine or Ten a-Clock at Night to Sir *William Parkyns's* Houſe in *Warwickſhire*, where they were buried in the Garden, and afterward were dug up; which was at the Searching Sir *William's* Houſe upon the breaking out of the Plot; and when they were opened, it did appear what Sort of Goods they were: They were Arms, a conſiderable Quantity of them; Four Dozen of Swords without Hilts, Twenty-five Pair of Piſtols, and a great Number of Carbines, Thirty-two as I remember, and a Parcel of Hilts pack'd up in a Box by themſelves. This, Gentlemen, is ſworn to you by the Perſons that were preſent at the Digging them up, and Opening the Boxes.

Then, Gentlemen, you are told, That though Sir *William Parkyns* pretends

tends they were Arms that he found in the House when he came thither, yet they were not old rusty Arms, as he pretends, but they were very bright, and fit for Use and Service.

There is one Circumstance more that seems to affect Sir *William Parkyns*, about the Business of the Assassination; and that is proved by *Eubank*, Sir *William*'s own Servant. There was a Note sent upon *Saturday*, the 22d of *February* in the Morning, to one *Brown* at *Kensington*, by Sir *William Parkyns*'s Man; and this *Brown* writ in the Servant's Almanack, that he would be in Town himself in a little Time, and bid him carry it to a Man that lodged at a Confectioner's over-against *Grays-Inn* Gate in *Holbourn*: Sir *William Parkyns*'s Man accordingly goes to this Confectioner's, and speaks with the Person there that he was directed to go to; and he says he was a *Scotch* Man, and talked broad like a *Scotch* Man, and he bid him go and tell his Master, That he would stay within for him till he came: and he did accordingly.

Gentlemen, This is the Sum and Substance of the Evidence that is given against Sir *William Parkyns*. Now you are to consider what Sir *William* says for himself: He does admit, and agree, That what *Porter* says is very positive and full; but that is but the Evidence of one Witness: For, says he, by the Law no Person ought to be convicted of High-Treason upon the Testimony of one Witness. As to the Matter of Law he is in the right: No Man ought to be convicted of Treason upon the Testimony of a single Witness. Now, first suppose the Design to assassinate the King had not been proved; consider then whether there be not Two Witnesses besides. *Porter* proves, That *Charnock* was sent into *France*, by Sir *William Parkyns*, and others, upon that Errand; to which, if you add the Testimony of *Sweet*, that swears, that Sir *William Parkyns* told him the King would come, and he had a Troop, and had bought Saddles; and what is said concerning his going into *Leicestershire*, and his having a Quantity of Arms: If all which be understood in Pursuance of the Design against his present Majesty, then there are at least Two Witnesses of several Overt Acts of the same Treason.

For, Gentlemen, I must tell you, tho' there had been no Evidence of a Design to Assassinate the King, but the Design and Purpose had been to Depose him, and set the late King upon the Throne, or join with a Force to invade the Realm, that is High-Treason within the Statute of 25 *Edw.* the Third, as being a Designing the Death and Destruction of the King. There hath been a full Proof by Two Witnesses, if what *Sweet*, and the other Witnesses besides *Porter* say, to prove Sir *William Parkyns* to be concerned in that Design, which shall be considered further of by and bye.

But in the next Place, suppose that the Meetings at the *King's-Head* in *Leadenhall-Street*, and at *Mountjoy*'s, had not been proved; but the Design to Assassinate the King is proved by one Witness, and the providing Men and Arms to fight against him is proved by one other Witness; this is a Proof of the same Treason: For though the Overt Acts be several, yet they both tend to the same End, the Destruction of the King, though in a different Manner; and though the Law requires two Witnesses to the same Sort of Treason, yet it does not require two Witnesses to any one Overt Act. For if one Witness prove one Overt Act at one Time, and another Witness prove another Overt Act at another Time, these are two Witnesses within the Meaning of the Law; and so it has been always practised, and never denied to be Law that I know of.

Besides, it is observable upon this Point, which my Brother has mentioned, That this new Act of Parliament, which does not yet take Effect, provides, that there shall be either two Witnesses to one Overt Act, or one Witness to one, and another to another of the same Species of Treason; and you have had the Opinion of all of us now that are here, that these are Overt Acts of one and the same Species of Treason.

But then Sir *William Parkyns* objects, That *Sweet* does not prove any Overt Act. Now for that, you are to consider the Force of *Sweet*'s Evidence, who tells you the Discourse of Sir *William Parkyns*, about *Christmas* last, of the King's Coming, of his Saddles, and of his Troop consisting of old Soldiers, and Volunteers that were old Officers. But says Sir *W. Parkyns*, this is only Words, and Words are not Treason. But then consider, that they are Words that relate to Acts and Things. You hear he had a great Quantity of Arms, beyond what he, as a private Man, could have Occasion for, or would use. He does not give you any Account what he was to do with those Arms, or to what Purpose he should keep them, nor why he caused them to be removed in the Night, after they had lain privately in *Haywood*'s House, and caused them to be carried back to his own House, and buried them in the Ground, and at such a Time when there was a Plot, and after the Plot was discovered, and a Proclamation out for his own Apprehension.

Sir *William Parkyns*'s Discourse with *Sweet*, of King *James*'s Coming, and his Troop consisting of such Men, plainly shews what those Arms were for. For, Gentlemen, Men's Discourses and their Words explain their Actions; and an indifferent Action in itself may be so explained by Words, that it will be unlawful. It is lawful for a Man to buy a Pistol; but if it can be plainly proved from his Words or his Speeches, that the Design of Buying it was to use it against the Person or Life of the King, that will be an Overt Act. Now, when Sir *William Parkyns* said, The late King would come, and that he had a Troop which consisted of such Soldiers; then these Arms being found in that Manner, I must leave to your Consideration whether it is not a Proof, for what Purpose he did provide them, and to what Use he intended to put them; especially since he gives you no Account, what Use or Occasion he had for them. He says, indeed, he found them in the House two Years ago; how probable that is, you may consider.

Then there is another Thing, his Going into *Leicestershire* with *Scudamore*, and his Meeting there with *Yarborough* and other People in that private and hasty Manner. He went out on the *Thursday*, and came Home again upon *Monday* Night; and then he meets with *Sweet*, and tells him that all was well; and the West was as well inclined to the King's Interest as the North. What King must he mean? He had no Commission from King *William* to go into *Leicestershire* to discourse with People, to see how they stood affected to his Interest. *Sweet* comes and tells you, that when Sir *William Parkyns* spoke of the King, he understood he meant King *James*. I must leave it to your Consideration, how you will interpret these Words.

It is true, Gentlemen, it is not fit there should be any strained or forced Construction put upon a Man's Words or Actions, when he is tried for his Life. You ought to have a full and satisfactory Evidence to convince you, that he is Guilty, before you pronounce him so; but however, you are to consider the Nature of Things, and the Circumstances that attend them. If you can suppose that he went into *Leicestershire* to King *William*'s Friends, and that he was of Opinion, the West was as well affected to King *William* as the North; then you make a different Construction from *Sweet*, who tells you, that always when he spake of the King, he understood it of King *James*; and at *Christmas*, when he spoke of the King's Coming, it must be meant King *James*; for King *William* was here before, and he pretends not he had any Authority to raise a Troop for King *William*.

So that, Gentlemen, I must leave it to you upon the whole Matter; if you are satisfied, that Sir *William Parkyns* is guilty of the Matters of which he stands charged, you will find him guilty; you have heard the Evidence, and will consider of it; and if, upon the whole, you are not satisfied that he is guilty of the Matters charged in this Indictment, then you are to acquit him.

Then an Officer being sworn to keep the Jury *according to Custom, they withdrew to consider of their Verdict, and in less than Half an Hour returned into Court.*

Cl. of Ar. Gentlemen of the Jury, Answer to your Names. *William Northey*——

Mr. *Northey*. Here.

(*And so of the rest.*)

Cl. of Ar. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?----*Jury*. Our Foreman.

Cl. of Ar. Sir *William Parkyns*, hold up thy Hand. (*Which he did.*) Look upon the Prisoner; how say ye, is he guilty of the High-Treason whereof he stands indicted, or not guilty?---*Foreman*. Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treason committed, or at any Time since?

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treason.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that Sir *William Parkyns* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods or Chattels, Lands or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge; and so you say all?---*Jury*. Yes.

Cl. of Ar. Gentlemen, the Court discharges you, and thanks you for your Service.

While the Jury was withdrawn to consider of the Verdict, Sir John Freind *was brought from* Newgate *to the Bar, in order to his being called to Judgment, and after the Verdict, he address'd himself to the Court thus:*

Freind. My Lord, I humbly beseech your Lordship to give me leave to read this Paper.

(*To which the Court gave no Answer.*)

Freind. My Lord, will your Lordship give me Leave to read it?

L. C. J. Ay, if you will. (*Reads.*)

Freind. My Lord, I humbly move in Arrest of Judgment; that I am not convicted of Treason by Two Witnesses, as I ought to have been within the Statute of the 25th of *Edw.* the Third: For Mr. *Porter* swears, That I, with others, in *May* or *June* last, sent to the *French* King to invade *England*; he is the only Witness to that Matter. Mr. *Blair* swears, That I shewed him a Commission in *Surrey-street*, about two Years since, sign'd by King *James*, and countersign'd *Melford*, to be a Colonel of Horse, and that I gave him some Moneys for the Cherishing of the Men. My Lord, here is no Levying of War sworn by Mr. *Blair*; and Conspiring to levy War not being Treason, I am convicted by one Witness, and therefore I pray Counsel may be assigned me, to plead this Matter.

L. C. J. Sir *John Freind*, that which you move now is not in Arrest of Judgment; it is Matter that does arise upon the Evidence, and what you now say, arraigns the Verdict, and the Proceedings upon your Trial. There were Two Witnesses against you, that is plain. You were not indicted for Levying War, but for Compassing and Imagining the Death of the King; and we told you the Design of the Invasion, and Conspiring to depose the present King, and restore the late King, was an Overt Act of that High-Treason. The Commission was not so much stood upon, but the Advancing Moneys upon this Account, to *Blair* your Lieutenant Colonel, to give to the Men, that was a plain Overt Act, and so there were certainly Two Witnesses against you.

Freind. My Lord, I hope I can clear myself: I thank God, I am as Innocent as the Child unborn, of the Assassination of the King. I would not have the People think that I am such a Man.

L. C. J. But you remember, it was sworn you knew of it; and we have told you, that the Design of Restoring the late King by Force, and Deposing the King, are Overt Acts of imagining his Death, if such an Intention be proved, as it was in your Case, and the Jury have found it so.

Freind. My Lord, I humbly beseech you, because I do not understand Matter of Law, and am advis'd to move this in Arrest of Judgment; I desire my Counsel may be heard to it.

L. C. J. We cannot hear Counsel, but upon a Matter that arises upon the Record itself, that is, the Indictment. We cannot enter into any Examination of this Matter that you now speak of, you had a long Trial Yesterday.

Freind. My Lord, I am sorry to give your Lordship any Occasion of Trouble; but I humbly beseech you, if it may be, that I may be heard by my Counsel, for the Satisfaction of the World; pray, my Lord, hear what they can say.

L. C. J. They cannot say any Thing; no Counsel in the World that understand themselves, can argue any Thing against what has been so often settled and always practised.

Freind.

Freind. My Lord, if it be to be granted, I beſeech your Lordſhip to grant it.

L. C. J. It cannot be granted; beſides, the Matter you now move upon is improper; it was all conſidered upon your Trial. It was told you, we did all agree, that a Conſpiracy to levy War to depoſe the King is Treaſon, or to invade the Realm is Treaſon. All this was conſider'd at your Trial, and that is now over.

Parkyns. My Lord, if your Lordſhip pleaſes, I deſire I may have the Liberty of ſome Friends and Relations, and a Miniſter to come to me.

L. C. J. Yes, yes, by all Means.

Parkyns. If your Lordſhip pleaſes, that they may come and be private with me, and pray let me have a Rule of Court for it, otherwiſe I ſhall not have any Benefit of it.

L. C. J. Yes, yes, it is very fit you ſhould have it; there ſhall be an Order of Court for it: See that the Keeper take Care it be done with Safety.

Freind. My Lord, I deſire the ſame Liberty of a Miniſter, and my Relations and Friends to come to me; that for what Time I have to live, I may make the beſt Uſe I can of it for my Soul, which I hope God will enable me to do.

(*Then the Court was adjourned until Five a-Clock on the Afternoon, and about Six the Juſtices returned, and the Court was reſumed.*)

Cl. of Ar. Set Sir *John Freind* to the Bar; (*Which was done.*) Sir *John Freind*, hold up thy Hand. (*Which he did.*) Thou ſtandeſt convicted of High-Treaſon, for traitorouſly Compaſſing and Imagining the Death of our Sovereign Lord King *William* the Third. What canſt thou ſay for thyſelf, why the Court ſhould not give thee Judgment according to the Law?

(*Then being made to kneel, he afterwards ſtood up.*)

Freind. I have ſaid already, what I have to ſay in Arreſt of Judgment.

Mr. Com. Serjeant. Sir, you have heard the Judgment of the Court, as to what you have ſaid; if you have nothing elſe to offer, the Court muſt proceed to Judgment.

Cl. of Ar. for *Middleſex.* Sir *William Parkyns*, hold up thy Hand. (*Which he did.*) Thou ſtandeſt convicted of High-Treaſon in Compaſſing and Imagining the Death of the King, and adhering to the King's Enemies. What canſt thou ſay for thyſelf, why the Court ſhould not give thee Judgment to die, according to the Law?

(*He was made to kneel, and riſe up again.*)

Parkyns. I have nothing more to offer.

Cl. of Ar. Then, Cryer, make Proclamation.

Cryer. O yes; all Manner of Perſons are commanded to keep Silence, while Judgment is in giving, upon Pain of Impriſonment.

(*Which Proclamation was made on both Sides the Court; and then Mr. Common Serjeant ſitting with the Reſt of the Court upon the Bench, pronounced the Sentence.*)

Mr. Com. Serj. You the Priſoners at the Bar, Sir *John Freind* and Sir *William Parkyns*, you have been indicted for High-Treaſon, in Compaſſing the Death and Deſtruction of the King: For your Trial, you have put yourſelves upon the Country, which Country has found you Guilty. The Offence is the greateſt in the Judgment of the Law that a Man can commit; and it is juſtly and reaſonably ſo. For Robbery and Murder are Injuries to private Perſons, but Compaſſing the Death of the King, is Compaſſing the Deſtruction of the Father of your Country, and letting in Rapine, Death, and Deſolation upon Thouſands of People. And even this, the heinouſeſt of Offences, is capable of Aggravation; for there have been always Excuſes, and ſometimes Juſtifications for Rebellion: And as to Murder and private Revenge, there may be ſomewhat ſaid in Mitigation from the Violence of Men's Paſſions. But to ſit, and conſpire, and conſult, and debate the Deſtruction of a Prince; no Man yet ever had the Confidence to make an Excuſe for it. I would not add to your Affliction; I am ſenſible of the ſevere Judgment that is to follow, and which you have brought upon yourſelves, and cannot but pity you for the great Burden of Guilt that you have laid yourſelves under. I only ſay this to offer it to your ſerious Conſideration, in the few Moments you have to prepare for another World, and another Judgment. All that remains for me, is to pronounce the Judgment of the Law in theſe Caſes, and the Court does Award it.

That you, and each of you, go back to the Place from whence you came, and from thence be drawn on a Hurdle to the Place of Execution, where you ſhall be ſeverally Hanged up by the Neck, and cut down alive; your Bodies ſhall be ript open, your Privy-Members cut off, your Bowels taken out and Burnt before your Faces; your Heads ſhall be ſevered from your Bodies, your Bodies reſpectively to be divided into Four Quarters, and your Heads and Quarters are to be at the Diſpoſal of the King: And the Lord have Mercy upon your Souls.

Then the Priſoners were carried back to *Newgate.*

On Friday April 3. 1696. *Sir* John Freind *and Sir* William Parkyns *were drawn on Sledges from* Newgate *to* Tyburn, *where they deliver'd the following Papers to the Sheriffs.*

Sir JOHN FREIND's *Paper.*

KNOWING that I muſt immediately give an Account to God of all my Actions, and that I ought to be ſpecially careful of what I ſay in theſe laſt Hours, I do ſolemnly profeſs, that what I here deliver is from my very Soul, with all the Heartineſs and Sincerity of a dying Chriſtian.

The Cauſe I am brought hither to ſuffer for, I do firmly believe to be the Cauſe of God and true Religion, and, to the beſt and utmoſt of my Knowledge and Information, agreeable to the Laws of the Land, which I have evermore heard do require a firm Duty and Allegiance to our Sovereign; and that as no foreign, ſo neither any domeſtick Power can alienate our Allegiance. For it is altogether new and unintelligible to me, that the King's Subjects can depoſe and dethrone him on any Account, or conſtitute any that have not an immediate Right in his Place. We ought, I think, not to do this; and ſurely, when it is done, to aſſiſt him in the Recovery of his Right, is juſtifiable, and our Duty. And however Things may ſeem at preſent, I do believe, I am ſure I heartily pray, that he ſhall be one Day reſtored to his rightful Throne and Dominions.

As for any ſudden Deſcent of his Majeſty upon theſe his Dominions, in order to the Recovery of them, I declare I had no certain Knowledge of it; nor can I tell what Grounds there was to believe it, ſo little Reaſon had I to be in a preſent Preparation for it. I ſuppoſe it is not expected I ſhould here endeavour to clear myſelf of the *Aſſaſſination*, which was not the Thing alledged againſt me; however, it was mention'd, through what Means I know not. As it was inſinuated to my Diſadvantage, I forgive ſuch as were therein inſtrumental; and I do alſo, from the very Bottom of my Soul, freely forgive, and beg of God to do ſo too, ſuch as were any ways acceſſary towards the taking away my Life, which I really look upon to be their Misfortune more than mine.

I profeſs myſelf, and I thank God I am ſo, a Member of the Church of *England*, though, God knows, a moſt unworthy and unprofitable Part of it; of that Church which ſuffers ſo much at preſent for a ſtrict Adherence to Loyalty, the Laws and Chriſtian Principles; *For this I ſuffer, and for this I die.*

Though I have a perfect Charity for People of all Profeſſions, and do heartily wiſh well, and would endeavour to do ſo to all my Fellow-Subjects, of what Perſuaſion ſoever. And indeed I have met with a great deal of Uprightneſs and Sincerity among ſome People of very different Opinions in religious Matters.

And I hope and deſire it may not be taken as an uncharitable Cenſure, or undue Reflection, that I objected to the Legality of Popiſh Evidence, being adviſ'd ſo to do for my better Security, upon the Foundation of a Statute-Law.

Having owned myſelf a Member of the Church of *England*, I muſt take this Opportunity, and I do it for God's Glory, to apply myſelf to you that are Royaliſts of that Church, and of the ſame Faith and Principles with myſelf: And I beg of you, for God's ſake, and the Love of your Souls, to be very conſtant and ſerious in all religious Offices, and holy Duties, of divine Worſhip and Service, which I have too much neglected, as I own to my great Sorrow: Let no Excuſe, no Dangers, prevent or hinder you in the moſt neceſſary and ſerious Matters; and be, I beſeech you, very careful and circumſpect in all your Actions, Behaviour, and Converſation, as I earneſtly exhorted all that came to me.

I have, I thank God, a great deal of Satisfaction in my preſent Sufferings, and have found it ſo ever ſince I have been under them: And bleſſed be God it doth continually increaſe upon me. And I do now lay down my Life with all Chearfulneſs and Reſignation, in ſure and certain Hope of a Reſurrection to eternal Life, through our Lord Jeſus Chriſt; through whoſe Merits alone I hope for the Pardon of my Sins, and the Salvation of my Soul.

And ſo, O Lord! into thy Hands I commend my Spirit; for thou haſt redeemed me, O Lord! thou God of Truth! JOHN FREIND.

Sir WILLIAM PARKYNS's *Paper.*

IT hath not been my Cuſtom to uſe many Words, and I ſhall not be long upon this Occaſion, having Buſineſs of much greater Conſequence to employ my Thoughts upon. I thank God I am now in a full Diſpoſition to Charity, and therefore ſhall make no Complaints, either of the Hardſhips of my Trial, or any other Rigours put upon me. However, one Circumſtance I think myſelf oblig'd to mention. It was ſworn againſt me by Mr. *Porter*, That I had own'd to him that I had ſeen and read a Commiſſion from the King to levy War upon the Perſon of the Prince of *Orange*. Now, I muſt declare, that the Tenour of the King's Commiſſion, which I ſaw, was general, and directed to all his loving Subjects, to raiſe and levy War againſt the Prince of *Orange*, and his Adherents; and to ſeize all Forts, Caſtles, *&c.* which, I ſuppoſe, may be a cuſtomary Form of giving Authority to make War; but I muſt confeſs I am not much acquainted with Matters of that Nature: But as for any Commiſſion particularly levell'd againſt the Perſon of the Prince of *Orange*, I neither ſaw nor heard of any ſuch.

It's true, I was privy to the Deſign upon the Prince, but was not to act in it; and am fully ſatisfied that very few, or none, knew of it but thoſe who undertook to do it.

I freely acknowledge, and think it for my Honour to ſay, that I was entirely in the Intereſt of the King, being always firmly perſuaded of the Juſtice of his Cauſe: and I look'd upon it as my Duty, both as a Subject, and an *Engliſhman*, to aſſiſt him in the Recovery of his Throne, which I believe him to be depriv'd of contrary to all Right and Juſtice; taking the Laws and Conſtitutions of my Country for my Guide.

As for Religion, I die in the Communion of the Church of *England*, in which I was educated.

And as I freely forgive all the World, ſo whoever I may any ways have injur'd, I heartily aſk them Pardon. WILLIAM PARKYNS.

Jeremy Collier, a Nonjuring Miniſter, publickly abſolv'd them at the Gallows.

After which they were executed according to their Sentence.

CLVI. *The Trial of* Ambrose Rookwood, *for* High-Treaſon, *the* 21ſt *of* April, 8 Will. III. 1696. *At the Seſſions of* Oyer *and* Terminer *for the County of* Middleſex *ſitting in the Court of* King's-Bench *at* Weſtminſter.

THE Court being ſat, at which were preſent the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, Mr. Juſtice *Nevil*, Mr. Juſtice *Powell*, and Mr. Juſtice *Eyre*; the Court proceeded in this Manner.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Perſons that have any Thing more to do, at this Seſſions of *Oyer* and *Terminer*, holden for the County of *Middleſex*, draw near and give your Attendance. *God ſave the King.*

Then the Grand Jury were called over, and the Appearances marked, and Witneſſes being ſworn in Court, to give Evidence to them upon a Bill of Indictment againſt Alexander Knightley, *they in a little Time after withdrew to hear the Evidence.*

Then the Keeper of Newgate *was order'd to bring his Priſoners to the Bar. (Which he did.) to wit,* Robert Lowick, Ambroſe Rookwood, *and* Charles Cranburne; *who were thus arraigned.*

Cl. of Ar. Robert Lowick, hold up thy Hand. *(Which he did.)*
Ambroſe Rookwood, hold up thy Hand. *(Which he did.)*
Charles Cranburne, hold up thy Hand. *(Which he did.)*

You ſtand indicted in the County of *Middleſex*, by the Names of *Robert Lowick* of the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, Gentleman; *Ambroſe Rookwood* of the ſame Pariſh, Gentleman; and *Charles Cranburne* of the ſame Pariſh and County, Yeoman; for that you, together with one *Chriſtopher Knightley*, of the ſame Pariſh and County, Gentleman, not yet taken; not having the Fear of GOD in your Hearts, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as falſe Traytors againſt the moſt ſerene, moſt illuſtrious, moſt clement, and moſt excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* your ſupreme, true, rightful, lawful, and undoubted Lord, the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King ſhould bear, and of right ought to bear, withdrawing, and utterly to extinguiſh intending and contriving, and with all your Strength reſolving, deſigning, and conſpiring the Government of this Kingdom of *England*, under him our ſaid Sovereign Lord the King that now is, of Right, duly, happily, and well eſtabliſh'd, altogether to ſubvert, change, and alter, as alſo our ſaid Lord the King to Death and final Deſtruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and moſt miſerable Servitude to *Lewis* the *French* King to ſubjugate and inthral, the 10th Day of *February*, in the Seventh Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Pariſh of St. *Paul*, *Covent-Garden*, aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traitorouſly, did compaſs, imagine, and contrive, reſolve, deſign, and intend, our ſaid Lord the King that now is, to kill, ſlay, and murther, and a miſerable Slaughter among the faithful Subjects of our ſaid Lord the King, throughout this whole Kingdom of *England*, to make and cauſe, and the ſame your moſt impious, wicked, and deviliſh Treaſons, and traiterous Compaſſings, Contrivances, and Purpoſes aforeſaid, to fulfil, perfect, and bring to effect, you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, together with the ſaid *Chriſtopher Knightley*, and very many other falſe Traytors, to the Jurors unknown, afterwards, to wit, the ſame 10th Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and divers others Days and Times, as well before as after, there and elſewhere in the ſame County, Falſely, Maliciouſly, Adviſedly, Secretly, Traitorouſly, and with Force and Arms, did Meet, Propoſe, Treat, Conſult, Conſent, and Agree, him our ſaid Lord the King that now is, by Lying in wait, and Guile, to Aſſaſſinate, Kill and Murder; and that execrable, horrid, and deteſtable Aſſaſſination, and Killing the ſooner to execute, and perpetrate, afterwards (to wit) the ſame Day and Year, and divers other Days and Times, at the Pariſh aforeſaid, in the County aforeſaid, Traitorouſly did Treat, Propoſe, and Conſult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what Manner, our ſaid Lord the King, ſo by Lying in wait, the more eaſily you might kill; and did conſent, agree, and aſſent, that forty Horſemen, or thereabouts, whereof the ſaid *Chriſtopher Knightley*, you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, ſhould be four; and every one of you traitorouſly took upon himſelf to be one, with Guns, Muſkets, and Piſtols, charged with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Weapons being Armed, ſhould lie in wait, and lie in Ambuſh, our ſaid Lord the King in his Coach being, when he ſhould go abroad, to invade, and that a certain and competent Number of thoſe Men, ſo armed, ſhould ſet upon the Guards of our ſaid Lord the King then attending him, and being with him, and ſhould fight with them, and overcome them, whilſt others of the ſame Men ſo armed, our ſaid Lord the King ſhould aſſaſſinate, ſlay, kill, and murther; and you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, together with the ſaid *Chriſtopher Knightley*, the Treaſon, and all the traitorous Intentions, Deſigns, and Contrivances aforeſaid, to execute, perform, fulfil, and bring to Effect, afterwards (to wit) the aforeſaid Tenth Day of *February*, in the ſeventh Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Swords, Rapiers, and other Weapons, Ammunition and warlike Things, and military Inſtruments, falſely, maliciouſly, ſecretly, and traitorouſly did obtain, buy, gather together, and procure, and cauſe to be bought, obtained, gathered together, and procured with that Intention, then in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murder of our ſaid Lord the King that now is, as aforeſaid to be uſed, employed, and beſtow'd; and the ſame Premiſſes the more ſafely and certainly to execute, do, and perform, the aforeſaid *Chriſtopher Knightley*, with one *Edward King*, late of High-Treaſon, in contriving and conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted, by the Conſent and Agreement of divers of the Traytors and Conſpirators aforeſaid, the ſaid Tenth Day of *February*, in the Seventh Year aboveſaid, went and came to the Place propoſed, where ſuch intended Aſſaſſination, Killing, and Murder of our ſaid Lord the King by Lying in wait, ſhould be done, performed, and committed, to ſee, view, and obſerve the Convenience and Fitneſs of the ſame Place for ſuch Lying in wait, Aſſaſſination, and Killing, there to be done, performed, and committed: And that Place being ſo viewed and obſerved, afterwards, (to wit) the ſame Day and Year, their Obſervations thereof to ſeveral of the ſaid Traytors and Conſpirators did relate and impart, (to wit) at the Pariſh aforeſaid, in the County aforeſaid: And you the aforeſaid *Charles Cranburne*, the ſame Day and Year there, in order the ſaid execrable, horrid, and deteſtable Aſſaſſination, and Killing of our ſaid Lord the King, by the Traytors and Conſpirators aforeſaid, the more readily and boldly to execute, perform, and commit, adviſedly, knowingly, and traitorouſly did bring and carry between divers of thoſe Traytors and Conſpirators, forward and backward, from ſome to others of them, a Liſt of the Names of divers Men of thoſe who were deſigned and appointed our ſaid Lord the King ſo as aforeſaid by Lying in wait to kill and murder; againſt the Duty of the Allegiance of the ſaid *Chriſtopher Knightley*, you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, and againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided.

How ſay'ſt thou, *Robert Lowick?* Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Lowick. Not Guilty.

Cl. of Ar. Culprit, How wilt thou be try'd?

Lowick. By God and my Country.

Cl. of Ar. God ſend thee good Deliverance. How ſay'ſt thou, *Ambroſe Rookwood?* Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty? —— *Rookwood.* Not Guilty.

Cl. of Ar. Culprit, How wilt thou be Try'd?

Rookwood. By God and my Country.

Cl. of Ar. God ſend thee good Deliverance. *Charles Cranburne*, How ſay'ſt thou? Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty? —— *Cranburne.* Not Guilty.

Cl. of Ar. Culprit, How wilt thou be Try'd?

Cranburne. By God and my Country.

Cl. of Ar. God ſend thee good Deliverance.

Cranburne. My Lord, I deſire your Lordſhip would grant me the Favour for my Wife to come to me in private, and that I may have Pen, Ink, and Paper.

Sir *John Holt.* *L. C. J.* Pen, Ink, and Paper, you muſt have; but as to the other, we muſt conſider of it. Keeper of *Newgate*, What has been uſual in thoſe Caſes?

Keeper. My Lord, we let nobody come to them in private but their Counſel.

L. C. J. That's provided for by the Act that allows them Counſel: But has it been uſual heretofore to permit any Body elſe to be with them in private; the Wife, or any other Relations?

Keeper. It has not.

L. C. J. It is very dangerous if it ſhould; therefore let him have his Wife come to him in the preſence of the Keeper.

Cranburne. And Pen, Ink, and Paper, I hope, my Lord?

L. C. J. Yes, yes, that you ſhall have.

Cranburne. You don't deny me, my Lord, that I may have my Wife come to me?

L. C. J. No, we don't, but ſhe muſt not be in private with you, for fear of an Eſcape.

Rookwood. I beg the ſame Favour, my Lord, to have my Brother come to me, and Pen, Ink, and Paper.

L. C. J. You ſhall have the ſame Rule; but you, Keeper, muſt have eſpecial Care whom you do permit to come to them, and be private with them; for it is ſtill at your Peril if any ill Accident happens by your Indulgence to them: And yet it is fit they ſhould have all that is reaſonable for preparing for their Defence at their Trials.

Lowick. And I deſire, my Lord, I may have my Siſter come to me, and the Liberty of her being in private with me.

L. C. J. Your Friends may come to you at ſeaſonable Times, in the preſence of the Keeper; you ſhall have any thing that is reaſonable, but the Safety of the Government muſt be look'd after. Therefore, Keeper of *Newgate*, take back your Priſoners, and bring them here this Day Sevennight at Seven a Clock in the Morning, without any other Order.

They ſtaid at the Bar about half an Hour, the Judges conſulting among themſelves about the Precept for the Petty Jury upon a late Act of Parliament, which has appointed ſix Days for the Jury to be ſummon'd before they appear to try any Cauſe, and upon the laſt Act in Regulating Trials in Caſes of High-Treaſon; which requires that the Priſoner ſhall have a Copy of the Pannel of the Jury duly return'd, at leaſt two Days before his Trial.

Then the Priſoners were carried away, and the Grand Jury withdrew to conſider of the Evidence againſt Knightley, *and in a Quarter of an Hour came back, and being called over, delivered in a Bill to the Court.*

Cl. of Ar. Gentlemen, you are content the Court ſhall amend Matter of Form, or falſe *Latin* in this Indictment, without altering any Matter of Subſtance without your Privity. —— *Jury.* Yes.

Cl. of Ar. Then, Gentlemen, you may go for this Time; and you are to take Notice if there be Occaſion at any Time to call you together, you ſhall have ſufficient Warning given to you beforehand. This is *Billa Vera* againſt *Alexander Knightley* for High-Treaſon.

Then the Judges reſumed the Debate among themſelves, and at laſt reſolved that there ſhould go three ſeveral Venires *for the Petty Jury, returnable this Day ſevennight; one to try between the King and* Robert Lowick, *the ſecond to try between the King and* Ambroſe Rookwood, *and a third between the King and* Charles Cranburne; *becauſe, though the Indictment be againſt them jointly, yet it was a ſeveral Offence in every one of them, and they might ſever in their Challenges, and that would be troubleſome, and therefore it was thought beſt to ſever them in their Trials; and therefore the Court adjourned for an Hour or ſomething more, while the Precepts for the Jury were preparing, and according to the Adjournment met, and ſigned and ſealed the Precepts, and then adjourned the Seſſions of* Oyer *and* Terminer *until this Day ſevennight, at Seven in the Morning.*

Die Martis *Viceſimo primo* Aprilis, *Anno Regni Regis* Willielmi *Tertii Octavo, Annoq; Dom.* 1696.

THE Court ſat about Eight a Clock, at which were preſent a great Number of Noblemen, and Perſons of Quality, who were in the Commiſſion, and Seven of the Judges; to wit, the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr. Juſtice *Nevil*, Mr. Juſtice *Powel*, Mr. Juſtice *Eyre*, and Mr. Baron *Lewis*.

Cl. of Ar. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All Manner of Perſons that have any Thing more to do at this Seſſions of *Oyer* and *Terminer*, adjourned over to this Day, draw near and give your Attendance. And God ſave the King.

Cl. of Ar. Cryer, make Proclamation.

Cryer. O yes, Sheriffs for the County of *Middleſex*, return the Precepts to you directed, upon Pain and Peril will fall thereon.

The Under-Sheriff returned the Precept.

Cl. of Ar. Mr. *Baker*, pray, Whom do you intend to begin with?

Mr. *Baker.* With *Ambroſe Rookwood.*

Cl. of Ar. Cryer, make Proclamation.

Cryer. O yes, You good Men of the County of *Middleſex*, ſummoned to appear here this Day, to try between our Sovereign Lord the King, and the Priſoners that are, and ſhall be at the Bar, anſwer to your Names, as you ſhall be called, every one at the firſt Call, and ſave your Iſſues.

The whole Pannel was called over, and the Appearances of thoſe that anſwered recorded; and the Defaulters were again called over.

Cl. of Ar. Keeper of *Newgate*, ſet *Ambroſe Rookwood* to the Bar. (*Which was done.*) You the Priſoner at the Bar, *Ambroſe Rookwood*, thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, before they be ſworn.

Sir *B. Shower.* If your Lordſhip pleaſes, We have a Doubt or two to propoſe to Your Lordſhip, in reſpect of the Trial this Day: But before I offer it, we beg Your Favour for a Word in behalf of ourſelves.

My Lord, We are aſſigned of Counſel, in Purſuance of an Act of Parliament, and we hope that nothing which we ſhall ſay in Defence of our Clients ſhall be imputed to ourſelves. I thought it would have been a Reflection upon the Government and Your Lordſhip's Juſtice, if being aſſigned we ſhould have refuſed to appear; 'twould have been a Publication to the World, That we diſtruſted Your Candour towards us in our future Practice upon other Occaſions. But, my Lord, there can be no Reaſon for ſuch a Fear; I am ſure I have none; for we muſt acknowledge, we who have been Practiſers, at this Bar eſpecially, that there was never a Reign or Government within the Memory of Man, wherein ſuch Indulgence, ſuch Eaſineſs of Temper, hath been ſhewn from the Court to the Counſel, as there always hath been in this. Never was there ſuch Freedom and Liberty of Debate and Argument allowed to the Bar, and we thank Your Lordſhip for the ſame.

My Lord, We come not here to countenance the Practices for which the Priſoner ſtands accuſed, nor the Principles upon which ſuch Practices may be preſumed to be founded; for we know of none, either Religious or Civil, that can warrant or excuſe them. But the Act of Parliament having warranted the appearing of Counſel for Perſons accuſed to make Defence for them, we hope Your Lordſhip will give us Leave to make what Objections we can on their Behalf.

L. C. J. Holt. Look ye, Sir *B. Shower*, go on with your Objections; let us hear what you have to ſay.

Sir *B. Shower.* My Lord, It appears to be a Doubt to us, upon this Act of Parliament, whether this Cauſe can be tried this Day: And if it be a Doubt, we hope, though it ſhould not have that Weight with the Court, that we apprehend it has; yet Your Lordſhip will excuſe us, and ſettle it according to your Judgment. The Act requires, That all that ſhall be Accuſed and Indicted for High-Treaſon, whereby any Corruption of Blood may, or ſhall be made to any ſuch Offender or Offenders, or to any the Heir or Heirs of any ſuch Offender or Offenders, or for Miſpriſion of ſuch Treaſon, ſhall have a true Copy of the whole Indictment; and afterwards ſhall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff and delivered unto them; and every one of them ſo Accuſed and Indicted reſpectively two Days at the leaſt before he or they ſhall be Tried for the ſame. Now if your Lordſhip will pleaſe to caſt your Eye upon this *Venire facias*, and it will appear to be returned but this Day, and that is not according to the Intent of this Law. And it is impoſſible then, if it be as we apprehend it, and put it, that this Trial ſhould go on at this Time; and that this Conſtruction ſhould be ſo as we ſay, not only the Words, but, as we take it, the Intent and Meaning of the Act of Parliament too are for us, that there ought to have been a Copy of the Pannel after the Return two Days before the Trial. For in the firſt Place, My Lord, the Words are plain: It muſt be a Copy of the Pannel duly returned by the Sheriff. Now though it be a Copy of the Array of the Pannel which we have delivered to us, yet it is not a Copy of the Pannel of the Jurors returned; for it is no Return till it come into Court. And the King's Counſel muſt admit, that in the Caſe of all Writs returnable, it cannot be ſaid that there is a Return, where there is a Writing upon the back, or a Label annexed, till it be actually returned into Court. As in the Caſe of a *Fieri facias*, or a *Mandamus*, an Action for falſe Return cannot lie till the Writ be actually returned. For ſuch Action muſt be brought into the County of *Middleſex*, where the Court reſides, before whom the Return is made, and not in the County where the Sheriff lived that made the Return; for it is not a Return till filed in Court. Now here the Words of the Act are; *He ſhall have a Copy of the Pannel of the Jurors who are to try him, duly Returned by the Sheriff two Days before the Trial.* Now we humbly inſiſt that the Words duly Returned muſt be antecedent to the having the Copy, or elſe he cannot be ſaid to have a Copy of the Pannel duly Returned. The Act of Parliament does not ſay which ſhall be duly Returned; and therefore there does ariſe a Doubt, whether your Lordſhip will not direct us to have a Copy after the Return made, which is but this Day.

Mr. *Pripps.* If your Lordſhip pleaſes to ſpare me a Word of the ſame ſide: We take it, that by this Act of Parliament the Jury muſt be duly returned before the Pannel is delivered to us. Now the Return is the Anſwer that is Indorſed upon the Writ with the Pannel annexed, and deliver'd into Court; for the Return is to the Court, and till it be delivered into Court, it cannot properly be ſaid to be a Return We acknowledge the Copy of this Pannel has been delivered unto us, two or three Days ago. But the *Venire* being not returned till To-day, we think we have not a Copy of the Pannel within the Intent of, and according to the Act of Parliament. And I deſire to put your Lordſhip this Caſe: This Act of Parliament does likewiſe provide, that the Priſoner ſhould have a Copy of his Indictment five Days before his Trial, to enable him to conſult with his Counſel how to plead and defend himſelf; ſuppoſe then a Copy of a Bill that is intended to be preſented to the Grand Jury, be deliver'd to the Perſon accuſed five Days before the Grand Jury are to meet, and they afterwards meet, and find it, and the Party is brought immediately, and arraign'd upon it: This is a true Copy of the Indictment, yet certainly the Intent of the Act of Parliament is not anſwered, for it was not a true Copy of the Indictment at the Time it was deliver'd. And I take this Caſe to be under the ſame Reaſon. This is not a Pannel duly returned, till now; and therefore by Conſequence we have not that Advantage that this Act of Parliament intended to give us; for which Reaſon we humbly apprehend we ought not to be tryed To-Day; which we ſubmit to your Lordſhip.

L. C. J. What ſay you to it, *Mr. Attorney?*

Mr. *Att. Gen.* My Lord, with Submiſſion, this Objection will receive a very plain Anſwer. If I underſtand it aright, they ſay that they ought to have a Copy of the Pannel after it is returned, and that it cannot be ſaid to be duly delivered, according to the Proviſion in this Act of Parliament, till after the *Venire facias* be duly returned into the Court, and then they are to have it two Days before they are tried. They ſay the *Venire facias* is returned but To-Day, and ſo the Copy delivered to them, is not purſuant to the Act of Parliament; and ſo they cannot be tried To-day: This I take to be the Objection. But with Submiſſion, My Lord, it will be plain both by the Words of the Act, and the Reaſon and Intention of it, that there is no Occaſion at all, nor no Neceſſity of having the Writ returned before the Copy of the Pannel be delivered. The Words of the Act of Parliament are theſe; *That every Perſon and Perſons who ſhall be accuſed, indicted, and tried for Treaſon, or Miſpriſion of Treaſon, after the 25th of* March, 96, *ſhall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them two Days before they be tried.* Now, firſt, My Lord, I think it is apparent what the Meaning and Deſign of the Act of Parliament was, that the Priſoner ſhould know two Days before the Trial, who were the Jury that were to paſs upon him, that he might have an Opportunity to conſider how he ſhould make his Challenges as he thought fit, and Time to enquire into the Qualifications of them, that if there were any particular Ground of Challenge, he might not loſe that Benefit; ſo that if he has a Copy of the Pannel array'd by the Sheriff, which is afterward returned by the Sheriff into Court, and there is no Variation of that Pannel afterwards; then certainly the End and Intent of the Act is entirely purſued: For by that Means the Priſoner has the Names of all the Jury returned, and are afterwards called, and has a full Opportunity of making ſuch Challenges as he thinks fit. And as the Reaſon and Intent of the Act is anſwered by this Conſtruction, ſo the very Words of the Act are anſwered; For it is not ſaid in the Act, that he ſhall have a Copy of the Pannel after it is return'd, but it is ſaid a Copy of the Pannel duly returned by the Sheriff; that is, when the Sheriff has arrayed a Pannel, then he is to have a Copy of that Pannel; and if afterwards the Sheriff return the ſame Pannel into Court, is not this a Copy of the Pannel duly return'd? With Submiſſion it is, and ſufficient to anſwer both the Words and Intention of the Act of Parliament. It is true, My Lord, if the Act of Parliament had ſaid he ſhould have a Copy of the Pannel after it was return'd, then we cou'd not have ſaid but that the Objection wou'd hold. But when the Words are general, and it is moſt reaſonable to be interpreted that the Copy is to be delivered when the Array is made, becauſe that anſwers the Intent and End of the Act of Parliament,

Sir Thomas Trevor.

Parliament, which was to enable the Priſoner to make his Challenges, we take that to be ſufficient; and if another Interpretation ſhou'd be made, it would render the Trial in ſuch Caſes liable to all the Miſchiefs in the World, and make it impracticable that any Perſon ſhould be tried; at leaſt it wou'd introduce a new Method of Proceedings that never was practiſed, nor ought to be introduced, unleſs this Act of Parliament by expreſs Words had appointed and conſtituted ſuch a new Method; and we ſuppoſe your Lordſhip will never make any ſuch Conſtruction, that the Act intended a new Method, unleſs expreſsly declared; for if it were, as they would have it, that the Copy of the Pannel was not to be delivered till after the Return of the Writ, then the Priſoner cannot be tried upon the Return of the Writ; for upon the Return of the Writ, the Jury muſt be brought to the Bar, the Priſoner muſt be brought to the Bar, and adjourned over to a further Time, that in the mean Time a Copy may be deliver'd to them. I believe that they can never ſhew any Precedent that there was ſuch an Adjournment of a Jury of Life and Death, over to another Day, for a Perſon to have a Copy of the Pannel, to enable him to make his Challenges; and either that muſt be the Conſequence, or elſe the Jury muſt not come upon the Return of the *Venire facias*, but there muſt go a *Habeas Corpora*, and the Priſoner tried upon that *Habeas Corpora*: For firſt there muſt be the Return of the Writ, then the Copy of the Pannel delivered, then the *Habeas Corpora* returnable another Day; and upon that the Trial muſt be had: But I believe there can be no Inſtance given of a Trial for Treaſon upon a *Habeas Corpora*. Now if the Parliament had intended that they would not have the Copy of the Pannel deliver'd till after the Return of the *Venire facias*, they would certainly have expreſs'd and provided how the Method of Trial ſhould have been; that is, that either the Jury ſhould have been adjourn'd over till another Day, or elſe brought to the Bar upon a *Habeas Corpora*; which is the only Way that can be thought of. Indeed, My Lord, I do agree, that if the Sheriff ſhould give a Copy of the Pannel, and afterwards ſhould vary that Pannel, tho' but in one Name, that would not anſwer the End of the Act of Parliament, becauſe the Priſoner is deprived of the Opportunity of knowing the Name of the Perſon that he ſo altered, in order to his making his Challenges againſt him: But if the Sheriff do return the ſame Perſons that are in that Copy delivered to the Priſoner, then we do, to all Intents and Purpoſes, anſwer the End of the Act of Parliament, and avoid the abſurd Conſtruction that they would make of this Act for the Changing the Method of Trials, and no Body can well tell what Method ſhould be purſued: But certainly if the Act of Parliament intended a new Method ſhould be purſued, they wou'd have deſcribed and ſettled what it ſhou'd be.

Sir John Hawles. Mr. *Sollicitor General*. If your Lordſhip pleaſes to ſpare me a Word of the ſame Side; My Lord, this is an Objection that has been foreſeen, and I think has been prevented; for, with Submiſſion, I take it, the Act has been ſufficiently anſwered both as to the Words, and as to the Intent of it in the Priſoner's having the Copy of the Pannel before the Jury be returned; there muſt be ſuch a Thing as a Pannel array'd before the Jury be ſummon'd, and therefore it is ſufficient that the Priſoner have a Copy of that Pannel ſo many Days before his Trial; which was only intended for that particular Reaſon, that he might be provided ſufficiently to make his legal Challenges. Certainly within the Intent of the Act of Parliament it is well enough if he had but a Copy of the Pannel two Days before the Return of the Writ, provided the Jury was not alter'd that was array'd, nor any other Names put in but thoſe that he had a Copy of before: Now, my Lord, I think this Act of Parliament muſt be taken according to the Intent and Meaning of it, or elſe it will bear hard upon the Priſoner, and harder ſure than it was deſigned it ſhould: This Act ſays, he ſhall have a Copy of his Indictment ſo many Days before his Trial; now I would fain know whether they would have it conſtrued, that the Copy does not need to be delivered till after Iſſue joyn'd, which muſt be if their Doctrine holds true, that the Act is to be conſtrued according to the ſtrict Letter of it, for Trial is the Trial of the Iſſue; what if the Indictment be delivered five Days before the Trial, tho' after Iſſue joyn'd it is well enough according to ſuch an Expoſition, for the arraigning of the Priſoner is no Part of the Trial, and yet it was the Intent of the Parliament that he ſhould have a Copy of the Indictment five Days before he was arraigned, and that for this Reaſon, becauſe he might have ſeveral Pleas to plead, and Objections to make before he pleaded the General Iſſue; he might have Pleas in Abatement, which after Plea pleaded of Not guilty he could not have the Advantage of, nor could he afterwards move to quaſh the Indictment, which he might otherwiſe have good Reaſon for, if he had the Copy before he was put to plead, ſo that I take it the Act is to be interpreted every where according to the Intention of it, and the Priſoner at the Bar, according to the Intention of the Act, has had a Copy of this Indictment five or ſix Days before his Arraignment, and therefore we have acted according to the Purpoſe and Meaning of the Parliament; and likewiſe he has had a Copy of the Pannel of the Jurors that are to try him, which is duly returned by the Sheriff, which is likewiſe according to the Act of Parliament. As for what they ſay that even a Copy of the Indictment before it be found would not be good according to this Act; that's true, but the Caſe is not the ſame, nor the Reaſon of the Caſe alike between that and the Pannel of a Jury, becauſe it is ſufficient in Law to make it a good Pannel if it be array'd by the Sheriff before the Jury be ſummoned, for the Sheriff muſt array and compleat his Pannel to let his Bailiff know who muſt be ſummoned; but in the Caſe of an Indictment, tho' a Bill be firſt form'd by the Clerk, yet it is not look'd upon as a formal Indictment in point of Law, till it be found by the Jury as their Verdict, and preferred to the Court; and it is not neceſſary that this Indictment ſhould be formed for the Jury before they find it, for they are properly to make their own Preſentments themſelves; and the ancient Practice was, that they only preſented the Fact, and the Matter was put into Form afterwards by the Court, and in many Caſes it is ſo at this Day, as we have had ſome Inſtances lately; but as to the arraying of a Pannel it always was ſo, and always muſt be ſo array'd by the Sheriff before the Jury ſummoned, and there's the Difference between the giving a Copy of an Indictment and the Copy of a Pannel, the one is taken Notice of in Point of Law to be neceſſary, the other is not. This giving a Copy of the Pannel, my Lord, we ſay, is within the Intent of the Act, which was only to enable Perſons accuſed to make their juſt Challenges, and that they may as well do when a Copy is delivered after it is array'd by the Sheriff, as when it is return'd by the Sheriff, and being ſo done, with Submiſſion, it is well done within the Words, and within the Intent of this Act of Parliament.

Mr. *Conyers*. My Lord, the Words of this Act of Parliament are, that they ſhall have a Copy of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them, and this, two Days before the Trial: My Lord, that this is the Pannel of the Sheriff of the Jurors that are to try them, aſſoon as it is array'd, has been obſerv'd already; now it would be a forc'd Conſtruction to conſtrue theſe Words that follow, duly returned by the Sheriff, to be meant, that a Copy ſhould be delivered after the Jury is returned, becauſe that would be a Delay of Juſtice, and keeping off the Trial longer than was intended by this Act of Parliament, and more than will anſwer the End of this Law; for the End of it was to give the Priſoner all Benefit and Advantage of Exceptions againſt any of thoſe that were to try him, and if he has this Pannel two Days before his Trial, he has that Benefit the Law intended him. Now, my Lord, as to what has been ſaid of an Indictment, which by this Law, he is to have a Copy of too, that is plainly quite another Caſe; for it is not an Indictment till it be found, and ſo anſwers not the Words nor Intention of the Act till found by the Grand Jury; till then it is not a Copy of his Charge, and therefore by no Conſtruction can it be called a Copy of the Indictment. I think I need not trouble your Lordſhip any further in this Matter, becauſe this Objection was foreſeen, and has been already conſidered of by the Court upon the Priſoner's Arraignment.

Sir *Barth. Shower*. My Lord, in Anſwer to what Mr. Solliciter has ſaid, that there is as much Reaſon to expect that the Copy of the Indictment ſhould not be delivered till after Plea pleaded, as that the Pannel ſhould not be delivered till after the Jury return'd, becauſe in the Caſe of the Indictment it is ſaid ſo many Days before the Trial, and the Trial cannot be till Iſſue joyn'd, there can be no Weight in that Objection at all; for the Words of the Act are quite differently penned in the Caſe of the Indictment from what they are in the Caſe of the Pannel; for tho' it be ſaid it ſhould be done five Days before the Trial, yet it is added, "in order to the adviſing with Counſel how to plead;" which muſt be before Plea pleaded, and therefore it muſt be abſolutely neceſſary to be done before the Arraignment. My Lord, I have propoſed my Doubt, it may have Conſequences on the one Side and the other, we ſubmit intirely unto your Lordſhip's Judgment; it is a new Law, and never has received any Opinion; the Words of it are, *duly return'd by the Sheriff*, and the Queſtion is, Whether a Copy of the Pannel upon the Array before it be return'd be a Copy of the Pannel duly return'd, tho' the ſame Pannel be afterwards duly returned.

Mr. *Phipps*. My Lord, Mr. Attorney General owns, that the Pannel after it is arrayed may be amended and altered by the Sheriff; and it was never intended by this Act of Parliament, that any Copy of the Pannel ſhould be delivered to the Priſoner but of thoſe Men that were really returned; ſo that we take it, we ought to have it two Days after the Return and before the Trial; for certainly it muſt be a Copy of the Men returned, which if the Sheriff may alter at any Time before the Return, the Intent of the Act of Parliament can never be anſwered by any Copy but what is a true Copy of the Return. Mr. *Conyers* would anſwer the Objection that I made about a Copy of the Indictment by this, that it is not an Indictment till it be found by the Jury; but I think it is no Anſwer to our Objection at all, though it be but a Copy of the Bill intended to be preſented to the Grand Jury, yet if the Grand Jury afterwards find it, it is as true a Copy of the Indictment as this is a Copy of the Jury intended to be returned, and afterwards returned. As to what they ſay, that this will introduce a new Method of Trial, contrary to all Form or Proceedings, that can be no Objection neither; for if it be ſo, we can't tell how to help it, the Parliament have thought fit to have it ſo, and we muſt ſubmit to take it as the Law has made it: If there be a Neceſſity for a *Habeas Corpora* upon the Proviſion made in this Act, ſo it muſt be, for we muſt take the Law as it is. We ſubmit our Objection to your Lordſhip; we think we have not had the Benefit of this Law.

Mr. *Cowper*. Surely, my Lord, what Mr. *Phipps* has now ſaid has no Weight in it; that becauſe the Sheriff had it in his Power to alter the Pannel before it was returned, therefore this is not now a true Copy of the Pannel of Jurors who are to try the Priſoner, duly returned by the Sheriff; which are the Words in the Act. It is true, if the Sheriff had in fact altered the Pannel from what it was, and return'd it ſo alter'd into Court, no doubt of it, the Priſoner would be very well intitled to make this Objection, that he had not a Copy of the Pannel, or the Names of the Jurors that were ſummoned to try him; but now we can aver, that we have purſued this Act of Parliament literally; for in Anſwer to their Objection, we may aſk this Queſtion of them upon the Words of the Act, Have you not had a true Copy of the Names of thoſe that are to try you, and are duly returned by the Sheriff for that Purpoſe? and was not that Copy delivered unto you above two Days ago? They cannot ſay they have not had it ſo, and if they cannot ſay ſo, then both the Words and Meaning of the Act of Parliament are in every Reſpect anſwered; if when the Jury come to be called the Priſoner finds the Pannel to be altered, he has Reaſon to object, and will have the Benefit of the Objection, that he has not that Advantage which the Law intended him, but till that prove to be the Fact, we think here is a full Compliance with this Law.

Mr. *Sol. Gen.* Sir *Barth. Shower* miſtakes my Objections about the Copy of the Indictment; for we ſay, if the Intent of the Act of Parliament be complied with, it is ſufficient, eſpecially where the Words are any Way doubtful; according to the Words of this Act of Parliament a Copy of the Indictment need to be delivered but five Days before the Trial; but it appearing that the Intention of theſe Law-makers was, that he ſhould have a Copy of the Indictment to enable him to plead to it if he had Cauſe, therefore tho' the Words be "before the Trial," we have taken it that he ſhould have a Copy five Days before his Arraignment, and ſo we have complied with the Meaning of the Law in that point, as we have alſo in this, which was, we take it, only to enable the Priſoner to make his Challenges,

lenges, and if that be done two Days before his Trial, with Submiſſion, it fully anſwers this Law.

L. C. J. Have you done, Gentlemen?

Counſ. Yes, my Lord.

L. C. J. Then look you, Sir *B. Shower*, as to this Point that you now inſiſt upon, we have had it under Conſideration heretofore; we were here this Day ſeven-night, and then we did conſider in what Method we ſhould proceed, ſo that the Priſoner might have the Benefit intended him by this Act of Parliament: The Act of Parliament does deſign, in the firſt place, that every Priſoner that is to be tried for High-Treaſon ſhould have a Copy of his Indictment, at leaſt five Days before the Trial; that, I think, was all the Makers of this Act of Parliament intended at the firſt; but then there being ſubſequent Words, which ſhew the Reaſon why they gave him the Copy ſo long before the Trial; which is, that he might adviſe with his Counſel what to plead; theſe Words, we conceive, have given the Priſoner a further Time than what was originally intended, therefore we have thought it neceſſary that the Priſoner ſhould have a Copy of his Indictment five Days before he be arraigned, which is five Days before he was put to plead; and your Client, the Priſoner at the Bar, has had the Benefit of this Act in that reſpect before we arraigned him; then after he has pleaded, the Queſtion was, when he was to have a Copy of the Pannel? Now the Deſign of this Act of Parliament was, That the Priſoner ſhould have a Copy of the Pannel two Days before his Trial, in order that he might conſider of the Perſons that were to try him; that he might inform himſelf of their Qualities, Tempers, and Diſpoſitions; that ſo he might make uſe of the Benefit the Law gives him of Challenging Five and Thirty, without ſhewing any Cauſe, if he did not like the Men, and as many more as he ſhould think he had good cauſe to challenge: Now in this Caſe, the whole Deſign of this Act of Parliament is anſwered, for he has had a Copy of the Pannel, as you yourſelves acknowledge, two Days before the Day of his Trial, ſo that he has the full Benefit that the Act of Parliament intended; he is by this Copy as well enabled to make his Challenges as the Law deſign'd he ſhould be, and has had the ſame Time allowed him, that the Act of Parliament meant he ſhould have; then ſuppoſing the Deſign of this Act of Parliament be fully anſwered and complied with in the Caſe, the next Queſtion is, Whether the Words of the Act are ſatisfied? For we would be very loth, in a Caſe of this Nature, where an Act of Parliament intends a Favour to a Priſoner that ſtands at the Bar for his Life, to abridge him of any Part of that Favour which the very words of the Act would allow him, though the Intent of the Act of Parliament were anſwered otherwiſe: Now in the firſt place it is obſervable, that the Act of Parliament does not ſay, that the Priſoner ſhall have a Copy of the Return, nor does it ſay, he ſhall have a Copy from the Court, but he ſhall have a Copy of the Pannel of the Jurors duly returned that are to try him; now if the Sheriff array his Pannel ſeveral Days before the Trial upon the *Venire facias*, and does give him a Copy of that very Pannel, which Pannel is afterwards returned in Court, has not he then a Copy of the Pannel duly returned? Does not this anſwer all the Words of the Act? For you yourſelves ſay that it is not ſaid in the Words of the Act, that the Copy ſhall be delivered after the Pannel returned, nor does there need a Copy of the very Return. Surely we muſt not carry it farther than the Words, if the Meaning be complied with, and we think this anſwers both Words and Meaning: It is a Copy of the Pannel, and a Copy of that Pannel that's duly returned. Now to make another Conſtruction would indeed not only alter the uſual Courſe of Trials, but be contradictory to the very Proceſs itſelf. We are by the Courſe of Law to award Proceſs to ſummon a Jury to appear at a certain Time, to try the Iſſue joined between the King and the Priſoner; and yet when we have done this, and the Jury thereupon are ſummoned and do appear, they may go as they came; for the Iſſue cannot be try'd, becauſe after the Return, the Priſoner muſt have a Copy of the Pannel two Days before he can be tried. I do think the Deſign of the Act of Parliament, and the very Words of the Act are fully ſatisfied in giving a Copy of the Pannel two Days before the Return. We had this Matter under our Conſideration before, and upon Debate among ourſelves, we did think fit to award the Precept returnable this Day, and reſolved to try the Priſoner this Day, unleſs better Reaſons were offered us to alter our Opinion, and we are not ſatisfied that any ſuch better Reaſon has been given, but that this Trial ought to go on, the Priſoner having the full Benefit that was deſigned him by this Act of Parliament. And the Giving a Copy of the Pannel that is return'd, tho' before the Return, ſufficiently ſatisfies the Words of the Act: No other Conſtruction can be made without great Abſurdities: This is my Opinion.

Sir *B. Shower.* My Lord, I hope we ſhall be excuſed for our Client, we have another Doubt to propoſe to the Court.

L. C. J. You have had my Opinion upon this Point, if my Lords and Brothers are of another Opinion, they will tell you.

Judges. No, my Lord, we are all of the ſame Opinion.

L. C. J. My Lord Chief Juſtice of the Common Pleas, and my Brothers are all of the ſame Opinion.

Sir *B. Shower.* My Lord, we ſay we have another Doubt to propoſe upon this Act of Parliament: It is a new one, and never put in Practice till now, and therefore we hope your Lordſhip will pleaſe to excuſe us, if we offer our Objections, becauſe there has yet never been a Determination about it, and we are aſſigned of Counſel by your Lordſhip.

L. C. J. Never make Apologies, Sir *Bartholomew*, for it is as lawful for you to be of Counſel in this Caſe, as it is in any other Caſe where the Law allows Counſel. It is expected you ſhould do your beſt for thoſe you are aſſigned for, as it is expected in any other Caſe that you do your Duty for your Client.

Sir *B. Shower.* My Lord, our Exception is this, we ſay that this Trial cannot go on at this Time, upon this Act of Parliament, becauſe we have no true Copy of the whole Indictment; it does not appear, in the Copy we have delivered to us, before whom it was taken, or whether it was taken at all, or in what Place it was taken; it ſays only *Middleſex* in the Margin, and then *Juratores pro Domino Rege preſentant:* That might be before the Juſtices of the Peace at the Quarter-Seſſions, or it might be at the Monthly-Seſſions at *Hicks's-Hall*, or it might be at the Seſſions at the *Old Baily*, or it might be before Commiſſioners of *Oyer* and *Terminer*, as perhaps it really was; but *non conſtat* where it was taken, nor how it comes hither: It might be before your Lordſhip here, as we believe it was, but this Copy not letting us know where and how it was taken, we think we have not the Benefit of this Law; for the Party accuſed is by this Act of Parliament to have a Copy to adviſe with Counſel, that he may be enabled to plead. And that is the Reaſon why the Words of this Act are ſo penned, that he ſhall have a Copy of the whole Indictment, which we cannot plead to, unleſs we know where it was taken, if we ſhould have Occaſion to plead any ſpecial Matter. And beſides, my Lord, there is another Reaſon why we ſhould have the whole Indictment to enable us to plead, becauſe if we had the *Caption*, it might perhaps appear, that the Indictment was taken before the Time of the Fact alledged in the Indictment, and then that would make it vicious; it might be before the 9th of *February*, when this Treaſon is ſaid to be committed, and then we ought not to be brought to Trial. Now the Deſign of this Act of Parliament, in giving the Priſoner a Copy of the Indictment ſo long before the Trial, was not only to enable him to make his Defence upon the Trial, but alſo to adviſe with Counſel to plead; for ſo the Words are, "the better to enable him to plead." Now we ſay, to anſwer this End, it is neceſſary we ſhould have a Copy of the whole Indictment, as it ſtands before your Lordſhip in Court. And another Reaſon is this, it is no Indictment, unleſs it be preſented by the Jury, as their Inquiſition upon Oath, unto ſome Court that has Juriſdiction of the Matter: What we have delivered to us is only a Copy of a Bill as to be delivered to a Grand Jury to be found; *non conſtat*, that it is found. Now the Intent of the Act of Parliament being to give the Priſoner this Advantage to enable him to plead, he may have ſeveral Pleas, of which he might take a legal Advantage if he had a Copy of the whole, which he knows not how to come at now; and in truth it is very neceſſary, becauſe if he be tried upon an Indictment found in another Country, then theſe Commiſſioners have not a legal Authority to try him; and if the Trial ſhould go on, and he be acquitted, he is ſubject to be indicted and tried again, and never can relieve himſelf by the Acquittal upon ſuch an Indictment before Perſons that had no Authority to try him. I doubt he can never plead the Acquittal, becauſe he cannot make out, that he was duly tried and acquitted: And for theſe Reaſons we humbly ſubmit it to your Lordſhip, whether we have had the Benefit of this Law, in having a Copy of the whole Indictment to enable us to plead; and if we have not, till we have that Benefit, we humbly conceive this Trial ought not to go on.

Mr. *Phipps.* My Lord, the Queſtion is, Whether the Style of the Court, the Perſons before whom it was taken, and to whom the Preſentment is made, the Time when it was taken, and the Place where, ought not to appear in the Indictment? this Law requiring that the Priſoner ſhould have a Copy of the whole Indictment to enable him to plead; for if it ſhould happen, that the Indictment was taken before Perſons that had no Juriſdiction, then I believe it will not be denied but that the Priſoner might plead to the Juriſdiction, and there might be ſeveral other Pleas that he might take Advantage of. I would deſire to know of the King's Counſel, whether ever they ſaw a Copy of an Indictment given in Evidence, or pleaded without the *Caption*. It is not a true Copy without it; there ought to be the Time, the Place, and the Style of the Court before whom it is taken.

Mr. *Att. Gen.* Truly, my Lord, I think I need ſay no more to this Objection, than it does not come at a proper Time; for, with Submiſſion, if the Priſoner will upon this Act ſay he has not had a Copy of his Indictment to enable him to plead, he ought to have taken the Advantage of it before he did plead; that is the proper Time for him to object this Matter to the Court; for if, after he has had ſuch a Copy as this Priſoner has had, he does ſubmit to plead, with Submiſſion it is too late to come at his Trial and make this Objection, he cannot be received to make it after.

L. C. J. That is a full Anſwer, Mr. *Attorney.*

Mr. *Att. Gen.* I think it is, my Lord, with Submiſſion, not that we would wave giving other Anſwers to it, if it were in a proper Time; but the Method of proceeding muſt be, and we think we have no Occaſion at this Time to ſay any Thing more to this Objection.

L. C. J. No, no, that is a full Anſwer in this Point; for look ye, you that are of Counſel for the Priſoner, when once you have pleaded, you admit you have had a Copy; for the Copy was given you to enable you to plead, and when you have pleaded, you have paſs'd by all Advantage that you could have from the Copy, as to any Plea that you can make: For it's taken for granted ye had a Copy to enable you to plead, and to adviſe with your Counſel about it; ſince you did plead, and did not inſiſt upon it at the Time of your Arraignment that you had not ſuch Copy.

Sir *B. Shower.* My Lord, we have propoſed one Doubt, and we humbly ſubmit it to the Court.

Mr. *Sol. Gen.* It was their own Fault, that this Objection was not made in Time.

L. C. J. That Doubt of yours may ſerve at another Time, but now certainly it is quite out of Time.

Mr. *Sol. Gen.* Nay, my Lord, even upon the Arraignment that would not ſerve their Turn neither.

L. C. J. We will not enter upon that now, pray go on to ſwear the Jury.

Cl. of Arr. You the Priſoner, look to your Challenges, as I told you before. Cryer, call Sir *Jeremy Sambrook.*

Cryer. *Vous avez.*

Sir *B. Shower.* Mr. *Rookwood*, you are to make your own Challenges.

Rookwood. I do not challenge him.

Cl. of Arr. Then hold Sir *Jeremy* the Book.

Sir *Jer. Sambrook.* My Lord, I am uncapable of ſerving upon this Jury, for I have been deaf theſe ſeveral Years, theſe Dozen Years; I cannot hear what is ſaid in Court, though I am now ſo near the Court; I could not hear what your Lordſhip ſaid, nor what was ſaid at the Bar. I have a Certificate here, if your Lordſhip pleaſe to have it read; and moſt of the Perſons of Quality here about the Court know it to be true.

Mr. *Att. Gen.* My Lord, I am afraid it is ſo.

L. C. J. Nay, if it be ſo, it is not fitting that he ſhould be upon the Jury, when he can't hear what's ſaid: You muſt excuſe Sir *Jeremy Sambrook.* Go on to the next.

Cl. of Ar. George Ford.
Cryer. *Vous avez.*
Cl. of Ar. Look upon the Prisoner.
Rookwood. I challenge him.
L. C. J. Mr. *Ford*, you must not go away, for you are upon another Pannel, wherein you may be employed, tho' you are now challenged.
Cl. of Ar. William Underhill.
Rookw. I challenge him.
Cl. of Ar. William Withers.
Rookw. I challenge him.
Cl. of Ar. Samuel Powell.
Rookw. I do not except against him.
Cl. of Ar. Then swear Mr. *Powell.*
Cryer. Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.
Cl. of Ar. Thomas Trench.
Rookw. I challenge him.
Cl. of. Ar. John Wolfe.
Rookw. I challenge him.
Cl. of Ar. James Bodington.
Rookw. I challenge him.
Cl. of Ar. John Raymond.
Rookw. I challenge him.
Cl. of Ar. Richard Marsh. (*He did not appear.*)
Cl. of Ar. George Haws.
Rookw. I challenge him.
Cl. of Ar. Francis Barry.
Rookw. I challenge him.
Cl. of Ar. Arthur Baily.
Rookwood. I except not against him. (*He was sworn.*)
Cl. of Ar. John Webber.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Ar. Thomas Glover.
Rookw. I challenge him.
Cl. of Ar. Dormer Sheppard.
Rookw. I challenge him.
Cl. of Ar. George Tredway.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Arr. Matthew Bateman.
Rookw. I challenge him.
Cl. of Ar. Timothy Thornbury.
Rookw. I challenge him.
Cl. of Ar. James Partherich.
Rookw. I challenge him.
Cl. of Ar. Thomas Freeman.
Rookw. I challenge him.
Cl. of Ar. Joseph Blithit.
Rookw. I challenge him.
Cl. of Ar. Timothy Lennoy.
Rookw. I have nothing to say against him. (*He was sworn.*)
Cl. of Ar. John Harris.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Ar. John Billers.
Rookw. I challenge him.
Cl. of Ar. Richard Bourne.
Rookw. I challenge him.
Cl. of Ar. George Carter.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Ar. Francis Chapman.
Rookw. I challenge him.
Cl. of Ar. Alexander Forth.
Rookw. I challenge him.
Cl. of Ar. Thomas Playsted.
Rookw. I challenge him.
Cl. of Ar. William Etley.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Ar. John Marsh.
Rookw. I have nothing to say against him. (*He was sworn.*)
Cl. of Ar. Samuel Hooper. (*He did not answer.*)
L. C. J. Did Mr. *Hooper* appear?
Cl. of Ar. Yes, my Lord; he is mark'd as appearing.
L. C. J. Then you ought to call him again, and set a Fine upon his Head.
Cl. of Ar. Cryer, call *Samuel Hooper.*
Cryer. *Samuel Hooper*, come into Court and give your Attendance, upon Pain of ten Pound, for the Court has recorded your Appearance.
Cl. of Ar. John Hall.
Rookw. I challenge him.
Cl. of Ar. Nicholas Roberts.
Rookw. I challenge him.
Cl. of Ar. William Partridge.
Rookw. I challenge him.
Sir *B. Shower.* How many has he challenged, Mr. *Hardesty?*
Cl. of Ar. I will tell you, Sir *Bartholomew.*——He has challenged 24.
Sir *B. Shower.* Well then, go on, Sir.
Cl. of Ar. Peter Laveane.
Rookw. I challenge him.
Cl. of Ar. Thomas Moody.
Rookw. I challenge him.
Cl. of Ar. Richard Bealing.
Rookw. I challenge him.
Cl. of Ar. Thomas Evans.
Rookw. I challenge him.
Cl. of Ar. Thomas Rammage.
Rookw. I challenge him.
Cl. of. Ar. Edward Townshend.
Rookw. I challenge him.
Cl. of Ar. William Gunston.
Rookw. I challenge him.
Cl. of Ar. Samuel Freebody.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Ar. Philip Wightman.
Rookwod. I challenge him.
Cl. of Ar. There are now Thirty-two challenged.——*John Wyberd.*
Rookw. I challenge him.
Cl. of Ar. William Strowd.
Rookw. I challenge him.
Cl. of Ar. Daniel Byfeild.
Rookw. I do not except against him. (*He was sworn.*)
Cl. of Ar. Benjamin Noble.
Rookw. I have nothing to say against him. (*He was sworn.*)
Cl. of Ar. Cryer, count them. *Samuel Powell,*——
Cryer. One, *&c.*
Cl. of Ar. Benjamin Noble.
Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Twelve sworn were these.

Samuel Powell,	*Timothy Lennoy,*	*John Marsh,*
Arthur Bailey,	*John Harris,*	*Samuel Freebody,*
John Webber,	*George Carter,*	*Daniel Byfeild,* and
George Tredway,	*William Atley,*	*Benjamin Noble.*

L. C. J. Look ye, Mr. *Phipps*, your Objection upon the Indictment slipt me, and therefore I would speak to it now: You said it might be as well a Copy of the Indictment before it be found, as well as this a Copy of the Pannel before it be returned. Now that can't be, for an Indictment is not an Indictment till it be found, it is only a Writing prepared for the Ease of the Jury, and for Expedition; it is nothing till it is found, for the Jury make it an Indictment by finding it, they may alter what they please, or refuse it absolutely. And if the Jury, upon examining the Witnesses, would only present a Matter of Fact with Time and Place, the Court might cause it to be drawn up into Form, without carrying it to the Jury: Again, There needs no *Billa vera*; for that is only the Jury's Owning that which the Court has prepared and drawn up for them: But a Pannel is a Pannel when it is arrayed, before it be returned, and a Copy of the Pannel given before it be returned, is a Copy of the Pannel returned, if it be afterwards returned, as it must.

Sir *Barth. Shower.* But, my Lord, that Notion strengthens our Objection that we last made, that makes it necessary that we should have a Copy of the *Caption*, as well as the other Part, to make it a true Copy of the whole Indictment.

L. C. J. That's another Thing, we will talk of that another Time; but I speak of this only as to his Objection, which slipt my Memory, because I would have nothing remain unanswered.

Mr. *Phipps.* My Lord, when the Bill is found, the Copy that we delivered before is as much a true Copy of the Indictment as our Copy of the Pannel is a Copy of the Jury returned.

L. C. J. A Pannel is a Pannel, when it is arrayed, but a Bill is not an Indictment till it be found; one cannot say a Man *indictatus existit*, till it be found; all that we say of it before it be found is, that there was *quædam Billa* preferred to the Grand Jury, and if the Jury bring it in *Ignoramus*, whereby they disown the Presentment, it is cancelled, and there is no Record of it, nor nothing, only a *Memorandum* in the Clerk's Book perhaps, that such a Thing was. Well, go on.

Cl. of Ar. Cryer, make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Justices of *Oyer* and *Terminer*, the King's Serjeant, the King's Attorney General, before this Inquest to be taken, of the High-Treason whereof *Ambrose Rookwood*, the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

Cl. of Ar. Ambrose Rookwood, hold up thy Hand. (*Which he did.*) You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Ambrose Rookwood*, of the Parish of St. *Paul Covent-Garden*, in the County of *Middlesex*, Gent. for that he, together with *Christopher Knightley*, not yet taken, *Robert Lowick*, and *Charles Cranburne*, and divers others, false Traytors, *&c.*—*prout* in the Indictment, *mutatis mutandis*—and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraign'd, and upon his Arraignment hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to enquire, whether he be Guilty of the High-Treason whereof he stands indicted, or Not Guilty; if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-Treason committed, or at any Time since: if you find him Not Guilty, ye are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him Guilty: if you find him Not Guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr. *Mountague.* May it please your Lordship, and you Gentlemen of this Jury, this Indictment that has been read to you, does charge the Prisoner with High-Treason for Compassing and Imagining the Death of the King, for endeavouring to subvert the Government, and to subject the People of *England* to the Slavery of *Lewis* the *French* King; and for this End the Indictment sets forth, that the Prisoner at the Bar did privately meet with several false Traytors, to consult how they might compass the Death of the King, and commit those other Treasons; and that the 10th of *February*, at *Covent-Garden*, in this County, it was agreed among them, that they should get together Forty Horsemen, whereof the Prisoner at the Bar was to be one, and they were to lie in Ambush, and set upon the King in his Coach upon his Return from going abroad; some were to attack the Coach, others to attack the Guards, and there were some to kill the King in the Coach: And the Indictment does likewise charge the Prisoner with gathering together Horses, and providing Arms for this Purpose. To this Indictment, Gentlemen, he hath pleaded Not Guilty; we shall call our Witnesses, and prove the Fact, and when we have so done, we do not at all doubt but you'll do your Duty.

Sir *B. Shower.* My Lord, before the Witnesses are called we have a Doubt to propose to your Lordship upon this Act of Parliament, and that

is, whether we are to take our Exceptions to this Indictment before the Evidence be opened or given?

L. C. J. It ſhould properly be before the Jury is ſworn.

Sir *B. Shower.* The Words of the Act, my Lord, are "before the Evidence given."

L. C. J. That Act provides, That if you do not take the Advantage of it before the Evidence given, you ſhall not move that in Arreſt of Judgment.

Sir *B. Shower.* It only ſays before Evidence given, and no Evidence has yet been given.

L. C. J. But you are certainly very irregular in point of Practice, nobody ever took Exceptions to an Indictment after the Jury was ſworn.

Sir *B. Shower.* If your Lordſhip pleaſes to let the Words be read of the Act of Parliament, they are theſe: That no Indictment ſhall be quaſh'd, unleſs Exception be taken in the Court where the Trial ſhall be, before any Evidence given in Court upon that Indictment. Which, we ſay, ſtrongly implies, that the Law-makers thought it might be done at any Time before the Evidence was given in open Court, beſides that the Law takes Notice that after Conviction it ſhould be of no Avail; it would have been a very improper Expreſſion before Evidence given in open Court, if it had meant before the Jury were ſworn and charged; for the Word Evidence ſuppoſes the Trial commenced; If they had intended it otherwiſe, that is, that it ſhould be before the Jury is ſworn, they would have expreſs'd it to be done at the Arraignment; but mentioning it to be done in the Court where the Trial is to be, before Evidence given, that ſuppoſes the Indictment to be at Iſſue before the Party needs to make his Exceptions. Therefore, my Lord, we hope we are regular in offering our Exceptions now.

L. C. J. Pray, what ſay you to it, Mr. Attorney?

Mr. *Att. Gen.* Truly, my Lord, I think they are no Way regular; for, with Submiſſion, I take it, that though this Act of Parliament has indulged them with ſeveral Things which were not allowable by Law before, yet as to this Part they are not allowed to take Exceptions to the Indictment, otherwiſe than they could before this Act was paſs'd: Nay, ſo far from that, that if your Lordſhip looks into the Act, you find they are reſtrain'd in this Point from an Advantage that they had before, that is, they ſhall not move any ſuch Things as are there mentioned, after Verdict in Arreſt of Judgment: So that this Part is reſtrictive to the Priſoner, and takes away ſome Advantage that he had before; which was, moving in Arreſt of Judgment after Verdict; but it leaves the making Exceptions as to any Time before the Verdict, as it was before, which was before Plea pleaded, but not after the Jury ſworn: For it cannot be denied that in point of Practice, ſuch a Thing as this that is now offered could not have been done before the Act. I would be glad to know whether they can ſhew any Precedent of any ſuch Thing as they now contend for. They ſay, the Words of the Act are, Exception muſt be taken before Evidence given; but that muſt be taken at ſuch a Time as they might by the Courſe of Law do it before: For when the Jury is ſworn, they muſt give a Verdict, and I do not know how they can be diſcharged without giving a Verdict; therefore unleſs the Act had given Directions for a particular Manner of proceeding in this Matter, which it has not done, your Lordſhip will not, I preſume, do it in any other Manner than as it was before the Act made; and if there be no Precedent to be ſhown of any ſuch Thing as this, of taking Exception to an Indictment after the Jury ſworn and charged with the Priſoner; then there is no Power in this Act of Parliament, given to them to take Exceptions to this Indictment at this Time; we take it the Motion is very irregular upon all Accounts.

Mr. *Sol. Gen.* My Lord, we firſt ſay, that it is not proper for them to make any ſuch Motion as this upon this Act of Parliament, till they tell us what their Exception is, that we may ſee whether it be within the Words and Meaning of this Act of Parliament. The only thing now that is proper for us to conſider, is the Iſſue joined, and the Inquiry whether the Priſoner at the Bar is Guilty of the High-Treaſon of which he is Indicted, to which Indictment he has pleaded Not Guilty: That's the Thing that is now before your Lordſhip to be tried, they have Room for Exceptions to the Indictment afterwards, for ſome Exceptions I mean, (I do not know what their Exceptions are) but if they be ſuch as may be taken after the Verdict, then I am ſure they are irregular now in their Motion, and they can ſhew no Precedent, when it was done after Plea pleaded and Iſſue joined, as it is in this Caſe.

Mr. *Conyers.* The Advantage that the Act gives the Priſoner, of having a Copy of his Indictment ſo long before Trial, is to enable him to plead, or to take Exceptions to quaſh it; but I never heard a Motion to quaſh an Indictment after a Jury is charged to hear the Evidence. Certainly they ought to do it before Plea pleaded, and not now to come to make a Motion to quaſh the Indictment, after they have pleaded, and the Jury ſworn: Therefore we ſubmit it, upon the conſtant Practice in like Caſes, to the Judgment of the Court.

Sir *B. Shower.* In Anſwer to that which Mr. Attorney hath ſaid, That it is an improper Time; I thought truly I had moved it for the Advantage and Eaſe of the King's Counſel, that they might not proceed upon this Trial, when perhaps after all their Trouble, the Foundation, which is the Indictment, may fail. I have a great many Exceptions to the Indictment; they ſay we ſhould name what our Exceptions are: I will acquaint them with them as faſt as I can; if your Lordſhip pleaſe, the Indictment is very looſe and uncertain.

L. C. J. Certainly the Motion is irregular in point of Practice.

Sir *B. Shower.* My Lord, we were afraid, we ſhould be excluded from taking theſe Exceptions after the Evidence given.

L. C. J. So you are by the expreſs Words of the Act.

Sir *B. Shower.* Then certainly we may do it before the Evidence given.

L. C. J. But the Act does not ſay, Ye ſhall do it any Time before the Evidence given, eſpecially in ſuch an irregular Manner, after Iſſue joined, and the Jury ſworn. Suppoſe Mr. Attorney had given ſome Evidence.

Sir *B. Shower.* Then, my Lord, I agree we had been without the Words; therefore I now move it before the Evidence, becauſe the Act of Parliament has given me Liberty to do it before the Evidence given: For the Law having given this Liberty to the Priſoner, to make ſuch Exceptions within ſuch a Time, your Lordſhip will not reſtrain us from making Uſe of that Liberty further than the Law has reſtrained, but we may make Uſe of our Exceptions before the Evidence given, either to induce your Lordſhip to quaſh the Indictment, or the Jury to find us Not Guilty, as we hope your Lordſhip will direct them to do: for what is more common upon Indictments after the Jury are ſworn, than if Facts appear upon the Record not to be ſufficiently alledged, the Court will direct the Jury to find the Party Not Guilty. We think this Act does give us this Liberty, otherwiſe I know not to what Purpoſe it was made; the very Meaning ſeems to be, that the Exceptions of the Counſel for the Priſoner might be of Prejudice to the King; and therefore it ſays after the King's Evidence given, and the Fact diſcovered, no ſuch Exceptions ſhall be made: Therefore we muſt make it before the Evidence given, otherwiſe this Act of Parliament, that was deſigned in Favour of the Priſoner, will prove a very great Hardſhip upon him, eſpecially in Caſe of an imperfect Indictment, as we apprehend this is, and he will be in a worſe Condition than ever he was; he muſt take his Exceptions now or not at all. The Act ſays, He is not to take it after Evidence given; and by Conſtruction the King's Counſel would have it, That he ſhould not give it before: And conſequently he has no Time at all to give it.

L. C. J. Have not you had Time to do it before now, Sir *Bartholomew Shower?* Certainly you had. You had Time this Day Seven-night, when you were arraign'd; you have had your Opportunity if you would have taken it; the Jury are now charg'd, the Indictment is opened, they have been told what they are to enquire of, and now you would break in and take Exceptions to the Indictment.

Sir *B. Shower.* My Lord, this is a new Act of Parliament, it ſays we ſhall take our Exceptions before the Evidence given; which, we take it, is any Time before the Evidence given; and if your Lordſhip will not allow us to do it now, it may be, we may loſe the Benefit of it abſolutely.

L. C. J. It is one Queſtion whether we ſhall allow it or no; and another Queſtion whether you can claim it or no: Certainly it is an irregular Motion, and the like of it was never offered in any Caſe before, be it Criminal or Civil: For if it be a Criminal Caſe that is not Felony or Treaſon, when the Iſſue comes to Trial upon an Indictment, Did you ever know any Exception taken to the Indictment after the Jury were charged? Certainly it is contrary to all Practice; and it is not fair, the Court is not well dealt with; you have had an Opportunity before, and will you now put the Court and the Jury to ſo great deal of Trouble, to ſtay till the Jury be called over? The Priſoner called to his Challenges, he has challenged Thirty-four, the Jury is ſworn, the Indictment is read to them, the Charge given them, the Counſel have opened the Indictment; and now when the Buſineſs is only to try the Iſſue with which the Jury are charged, you come to turn us quite round, by taking Exceptions to the Indictment.

Mr. *Phipps.* My Lord, we take it the Act gives us this Time to do it in.

L. C. J. You know you had another Time more proper to do it in.

Mr. *Phipps.* My Lord, If we have not Time now; then this Clauſe, with humble Submiſſion, ſignifies nothing at all.

L. C. J. The Clauſe was made in this Reſpect, to your Diſadvantage, becauſe you ſhould have a Copy of the Indictment, whereby you might have an Opportunity to adviſe with Counſel, that they might inſtruct you how to plead, and to take any manner of Exception before Plea pleaded, it ought to be before the Trial, and now becauſe of this Advantage, it provides that you ſhall take your Exceptions before the Trial, and not move them in Arreſt of Judgment, that is the Meaning of the Act.

Mr. *Phipps.* Then, my Lord, there needed no Time at all to be mentioned in the Act, but have left it as it was at Common Law.

L. C. J. Yes, yes, there did need a Time to be limited; for this Clauſe was made I ſay in your Diſadvantage, in depriving the Priſoner of the Benefit of ſuch Kind of Exceptions in Arreſt of Judgment, becauſe of the Advantage that was given in the former Part of the Act, where you had Time given you to make your Exceptions, for which End you are to have a Copy of the Indictment five Days before you are called to plead.

Sir *B. Shower.* We could not come before, my Lord, as we apprehend, becauſe the Words of the Act are "before Evidence given."

L. C. J. But I tell you, this Clauſe was not for your Benefit, but for your Diſadvantage.

Sir *B. Shower.* My Lord, what we preſs ariſes from the very Words of the Act of Parliament, if the Meaning of the Law-makers was as the King's Counſel now contend to have it; they would never have uſed thoſe Words "before Evidence given in open Court," but have ſaid they ſhould have had no Advantage of the Exception, unleſs it were before Plea pleaded; it does not ſay it ſhall be after the Verdict, or before the Verdict, but before the Evidence given: Now if they had meant what theſe Gentlemen ſay, they would have appointed it to be before the Verdict, which would have included the Trial; becauſe then it had been like the Penning of other Acts of Parliament, the Statutes of *Jeofailes* and the like, which ſay, That after a Verdict, ſuch and ſuch Exceptions ſhall not arreſt a Judgment: But if they can ſhew me any Statute that is penn'd like this, they give me an Anſwer: All thoſe Statutes are, That no Judgment ſhall be arreſted or delay'd upon ſuch or ſuch Exceptions after a Verdict: But here it ſays they ſhall not arreſt Judgment, unleſs the Exception be taken before Evidence given in open Court. My Lord, We ſubmit it to you, we think the Law-makers did intend ſomewhat by that particular Way of Expreſſion, different from all other Acts of Parliament; and truly if it be not as we offer to your Lordſhip, we think it can have no Meaning at all.

Mr. *Att. Gen.* Truly, my Lord, we think it is very plain what the Parliament meant, by this Clauſe in this Act; the Deſign was, to reſtrain the Priſoner from moving in Arreſt of Judgment, for Miſ-ſpelling, or falſe Latin, or little Matters of Form, if he did not move it in a proper Time, having ſuch a Liberty allow'd him, as to have a Copy of the Indictment ſo many Days before he was compelled to plead: They inſiſt upon it, that the Words are, Before Evidence given; It is ſo: But what can be the Meaning of that? It muſt be at ſuch Time as the Law allows; it is not making a new Method of Trial; you ſhall take Exception before the Evidence, that is, before the Trial, for it can never be intended, that

they meant to alter the Courſe, and let the Counſel break in between the Time of the Jury's being ſworn, and the Evidence given; that by no Law could ever have been done before.

Sir *B. Shower.* Pray, Mr. *Attorney*, when would you have us do it?

Mr. *Att. Gen.* Regularly before Plea pleaded, at leaſt-wiſe before the Jury be ſworn.

L. C. J. Undoubtedly this is not regular, it is contrary to all the Courſe of Practice, it is not fair Dealing with the Court. But then there is another Conſideration in the Caſe, that I would have you think upon: If ſo be this had been at a Trial by *Niſi Prius*, then the Judge of *Niſi Prius* is only to try the Iſſue; but now here the very Record is before us, and we are Judges of the Record, as well as we are to aſſiſt the Jury in Trying the Iſſue. Now take it in any other Caſe of the like Nature; Suppoſe a Trial at the Bar in any Civil Cauſe, though this be contrary to Practice, and the Court not fairly dealt with, yet when we have the Record before us, and find an Error in the Record, cannot we quaſh the Indictment and diſcharge the Jury? That is the Queſtion, Mr. *Attorney*, though I muſt confeſs, I do not know that it has been practicable.

Mr. *Att. Gen.* No, my Lord, in a Caſe of Treaſon, where the Jury are once charg'd, they are to give a Verdict, they muſt either Acquit or Convict.

Sir *B. Show.* It was done in *Whitebread*'s Caſe *.

Mr. *Att. Gen.* But I know what has been uſually thought in that Caſe, and I believe they cannot ſhew me another.

L. C. J. Nay, that this is a very irregular Motion, is very plain.

Mr. *Sol. Gen.* Certainly, my Lord, you muſt take it as the Law was before this Act, for this Clauſe does nothing for the Priſoner, but is againſt him.

L. C. J. I know it is not for the Advantage of the Priſoner, therefore I put it as a Caſe in an Action, or an Indictment, as the Law was before, whether this being a Trial in the ſame Court where the Indictment was found, and we find an Inſufficiency in the Record before us, whether we cannot quaſh the Indictment?

Mr. *Sol. Gen.* Your Lordſhip mentions Civil Actions; with Submiſſion, nothing of that kind could be done after once the Cauſe came to Trial, but in Criminal Cauſes according to the Courſe of Practice, which will always be the Law till particularly altered: I believe nobody can pretend, that after Iſſue join'd, and a Jury charg'd, any one can move to quaſh the Indictment. I think I have heard it often ſaid in this Court, that in Capital Caſes, as High-Treaſon, you may put in a Plea in Abatement of, but not a Motion to quaſh an Indictment; I am ſure it was diſallowed where I moved to quaſh an Indictment of Murder, let them but ſhow any Precedent of this Nature.

Sir *B. Shower.* We will ſhow you, though this is the firſt Caſe upon this Act of Parliament, therefore to ſhow any Practice upon it would be very hard to require of us.

L. C. J. But can you ſhow it before this Clauſe in this Act of Parliament? which, as I told you, is not for your Advantage; it does not give that Liberty that you deſire.

Sir *B. Shower.* All the Clauſes in this Act of Parliament ſhow'd their Intention was this, that the Senſe of the Law-makers was, that we ſhould have this Liberty at any Time before Evidence given, for if there be ſuch Words as ſhow'd they thought it might be quaſh'd at any Time, though they were miſtaken in the Practice, yet we ſhall have the Liberty that they intended us; and the Wording of this Act ſhows, that the Parliament thought it might be done after the Trial begun, before Evidence given, becauſe they reſtrain us from taking thoſe Exceptions after the Evidence given; and it is no Prejudice to the King at all really, it is rather for the Advantage of the Proſecution, becauſe there is none of the Evidence diſcloſed, and therefore if the Indictment ſhould be found faulty, ſtill the Evidence remains undiſcovered upon another Indictment; and I have often heard it ſaid at this Bar in Caſes of Indictments for Felony or Treaſon, as Murder, or the like; if any one did come as *amicus curiæ*, and acquainted the Court, that they were going to proceed upon an erroneous Record, or give an erroneous Judgment, or do any other erroneous Act, he ought to be received with Kindneſs, becauſe he would prevent a Wrong doing.

L. C. J. That is in the proper Time, not to interrupt the Trial when the Jury is once ſworn.

Sir *B. Shower.* We are ready to offer our Exceptions, and we hope it is no Prejudice at all to the King before the Evidence of the Fact is given.

Mr. *Phipps.* My Lord, I perceive that this Clauſe, as they would have it, is intended to prevent us from moving that in Arreſt of Judgment, which we could have moved before, and ties us up to do it before Evidence given; now I would fain know, if we could not before this Act move in Arreſt of Judgment, for miſ-ſpelling, or falſe Latin, or improper Latin.

Mr. *Att. Gen.* You might, no Doubt of it.

Mr. *Phipps.* They ſay we might; why then, if we could have a Time to move it after the Verdict, and that Time is abridg'd by the Act of Parliament, which directs that it ſhall be before Evidence given in open Court, ſure we may take any Time before the Evidence given, and ſhall not be reſtrain'd further than the Letter of the Law has reſtrain'd us; for this Act was intended for the Benefit of the Subject, and ought to be conſtrued as much in their Favour as the Letter of it will permit.

Mr. *Att. Gen.* No doubt of it, it is to be done before Evidence given; but the Queſtion is, at what Time it muſt be before the Evidence given, whether it muſt not be at ſuch Time as by the Courſe of Practice and Uſage of the Law it ſhould have been done before; if you will ſatisfy my Lord and the Court that ever ſuch an Exception was taken, or an Indictment quaſh'd between the Swearing of the Jury and the giving the Evidence, ye ſay ſomething; but I believe not one Inſtance of that Nature can be given, and therefore it is very irregular for them to do it.

L. C. J. They don't pretend to it, for aught I hear, for I would put them upon it, to ſhow me whether they could do it before.

Sir *B. Shower.* I don't queſtion, my Lord, but it might be, with Submiſſion.

Mr. *Conyers.* Did you ever know it before that any one undertook to inform the Court as *amicus curiæ*, but it was to prevent a wrong Judgment? And for that you have your proper Time either before Plea pleaded by Motion to quaſh the Indictment, or after Verdict to arreſt a Judgment; this Act of Parliament has reſtrain'd you in particular Inſtances that are mention'd from doing it after Verdict in Arreſt of Judgment; but having given you a Copy of the Indictment before you pleaded, you have had a proper Time to make theſe Exceptions; and if you have laps'd your Time you come too late to do it now, for ſure nobody ever made a Motion to quaſh an Indictment after Iſſue join'd, and the Jury ſworn.

Mr. *Sol. Gen.* My Lord, I would only mention one Caſe, and that was of Sir *Richard Manſell*, upon an Indictment of Murder, for Killing the Apothecary in *Holbourn*; I did myſelf move to quaſh the Indictment, becauſe it was not expreſs'd in what Year of the King the Fact was done; but the Court was of Opinion we could not move to quaſh an Indictment for that, or any ſuch notorious Crime, till after the Fact determined.

L. C. J. No, we were always of that Opinion, never to allow Motions to quaſh Indictments for Perjury, Murder, or any great Offence, but it muſt be moved in Arreſt of Judgment afterwards.

Mr. *Cowper.* My Lord, theſe Gentlemen ſeem to beg the Queſtion upon this Act of Parliament, as if it had appointed this to be the Time of making Exceptions to the Indictment; the Act of Parliament does not ſay you ſhall make your Exception immediately before the Evidence given in open Court, as if it had pointed out and directed to them that particular Time, that then they ſhould take their Exception and no other Time: The Act has only ſet a Bound, that they ſhall not do it afterwards; but as to the particular Time, it is left as it was before, to the regular Courſe and Method of Proceedings, which is before Plea pleaded.

Mr. *Phipps.* My Lord, they do not anſwer my Objection; it is, it ſeems, a Reſtriction of a Liberty that we had before of moving in Arreſt of Judgment; if ſo, we ought not to be reſtrained further than we are by the Words of the Act of Parliament, which ſay, before Evidence given, that is, at any Time before Evidence given, as well after as before Plea pleaded.

Sir *B. Shower.* I would aſk theſe Gentlemen, whether the Law-makers intended that we ſhould have no Advantage of excepting againſt falſe Spelling and improper Latin?

Mr. *Conyers.* Yes, they did, but that you ſhould do in your proper Time.

Sir *B. Shower.* Then the Time for doing it muſt be that which the Words of the Law ſay, before the Evidence given in open Court, and that's now.

Mr. *Conyers.* No, you might have come at the Day of Arraignment, and have taken the Advantage of it then before you had pleaded.

L. C. J. Ye have had my Opinion what I think of it, my Lords and Brothers, I ſuppoſe, will tell you theirs.

L. C. J. Treby. My Lord Chief Juſtice has delivered his Opinion in this Matter, and he thinks fit that we ſhould deliver ours. I think this Motion of the Priſoner's Counſel to quaſh this Indictment after the Jury ſworn, is irregular and quite out of Seaſon; the Intent of this Clauſe in this Act of Parliament, certainly was not in Favour of the Priſoner; it abridgeth him of a Liberty he had before, but gives him nothing: For the Law-makers did think they had given the Priſoner an extraordinary Favour in the foregoing Part of the Act, in giving him a Copy of the Indictment five Days before he ſhould plead, and a Copy of the Pannel two Days before he ſhould be tried, and allowing him Counſel; and all theſe Advantages were to enable him to quaſh the Indictment, or the Proceſs returned, for the Clauſe extends to both; the Words are, *That no Indictment nor Proceſs or Return thereupon, ſhall be quaſh'd on the Motion of the Priſoner or his Counſel for Miſ-writing, Miſ-ſpelling, falſe or improper Latin, unleſs Exception concerning the ſame be taken and made in the reſpective Court where ſuch Trial ſhall be by the Priſoner or his Counſel aſſign'd before any Evidence given in open Court upon ſuch Indictment, nor ſhall any ſuch Miſ-writing*, &c. *after Conviction be any Cauſe to ſtay Judgment:* Therefore they made this extraordinary Proviſion to reſtrain the Priſoner, in Part, by this Clauſe; as much as to ſay you have an Advantage of the Copy of the Indictment, and you may make uſe of that to quaſh it by Motion, if you think fit, as you may alſo the Proceſs, but it ſhall be *before Evidence given.* 'Tis true, thoſe are the Words, but the uſing that Term, *viz. quaſhing* ſuch Indictment or Proceſs, ſhows it muſt be done in ſuch a Way and Time as is proper for quaſhing; and the very Words are, that it ſhall be *upon Motion.* Now we are to expound thoſe Words. And I ſay, a *Motion* to *quaſh* an Indictment, muſt be underſtood a Motion in the proper Seaſon, which I think is before Plea pleaded; but at leaſt before the Jury is ſworn. There were three Times when the Priſoner might have had the Advantage of a Fault in the Indictment before this Act. 1. By Motion to quaſh it before Plea pleaded. 2. Then afterwards in Arreſt of Judgment: And 3. After that by Writ of Error. Now this Clauſe of this Act takes away the Privilege of moving in Arreſt of Judgment for Miſ-writing, &c. but ſaves the Advantage upon a Writ of Error, and upon a Motion to quaſh the Indictment. We are to conſider what is a proper Time for a Motion to quaſh an Indictment; the Motion is to be made to the Court, and to them alone. It is not to be made to the Court and the Jury. When the Jury is ſworn, all Application is to be made to the Court, as having a Jury preſent which they are to aſſiſt in the Trial and Determination of the *Fact* only. What Uſe then is there of the Jury, when you make this Motion, which conſiſts only in Points of *Law?* They muſt ſtand by and be out of Office all the while this Motion is making: And it is not reaſonable, nor certainly ever was intended, that after a Jury is ſworn to try a Matter of Fact, they ſhould ſtand idle, while you move a Thing which you ſhould have moved before they came to the Bar: Suppoſe you ſhould now move ſome Exception to the *Venire*, and the Return thereupon, ſhould we, when we and you alſo have admitted the Jury to be ſworn, quaſh the Proceſs whereby they are return'd? And yet we may as well do that as this. For, the Act provides in the very ſame Words concerning Quaſhing *Proceſs* and *Indictments.* But, when the Jury is ſworn, and ready to receive their Evidence, ſure, then it is out of all Seaſon to make ſuch a Motion; therefore I do not think the Parliament intended by this Clauſe (which was a kind of Exception to the Favour

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* *See* Trial 75. Vol. II. *p.* 711.

the Priſoner receiv'd by having the Copy of the Indictment) to inſtitute a new Method of Proceedings for Motions to quaſh Indictments, even when a Jury is at the Bar and ſworn to try the Iſſue, and there is nothing proper to be proceeded upon, but only to hear the Evidence produc'd for the Proof of that Iſſue, till the Jury is diſcharged. But ſtill this I would ſay; this is a new Caſe, and upon a new Statute. I am truly of Opinion, that the Motion is altogether unſeaſonable and irregular, and it ſhould have been made before, and you had a full Opportunity to make it this Day Seven-night before Plea pleaded, and you might likewiſe To-day before the Jury was ſworn; therefore when the Jury are now at the Bar actually enter'd into, and imploy'd upon the Service, the Court ought not to be interrupted by ſuch a Motion. Yet nevertheleſs I would propound this, that, ſeeing it is a new Caſe and upon a new Statute, the Court would forgive the Irregularity, (for I think it does need Forgiveneſs) and if the King's Counſel will conſent to it (to prevent any Error or any Pretence of Hardſhip upon a new Law) that we ſhould hear their Exceptions.

Sir Edward Ward. *L. C. Baron.* This Act of Parliament, as it has given a Beneſit to the Priſoner that he had not before, in allowing him a Copy of his Indictment, in order to his making Exceptions; ſo it has reſtrained him as to the Time of making thoſe Exceptions: That he ſhould have Time, there is no Doubt; the Time limited for it, as this Act ſays, muſt be before Evidence given, becauſe they thought it unreaſonable that there ſhould be any Quaſhing of the Indictment after ſuch Time as the King had given any Evidence whatſoever in the Caſe; for that would be a Diſcovery of the King's Evidence, and great Inconveniencies would enſue thereupon; but the Queſtion is at what Time this is to be done; Whether it may be at any Time before Evidence given or no; it did intend ſurely that the Motion to quaſh the Indictment and the Exceptions to it might have their proper Effect, and that muſt be before the Trial; for it was not the Intent of the Act to alter the Method of Proceedings, and it is to no Purpoſe after the Jury is ſworn, for then their proper Office is to determine the Fact; now if before this Act of Parliament it never was allow'd to take any ſuch Exception as this after the Jury ſworn, it will be conſiſtent with the Words of the Act of Parliament, which are, *That it ſhall be done before Evidence given:* If then it be in the regular Time for Motions, which is before Plea pleaded or Jury ſworn, that is, before Evidence given; for it is not ſaid, as Mr. *Cowper* obſerved, that it ſhould be immediately before the Evidence given, I think ſure ſuch an Expoſition as was formerly made ought to be made in this Caſe, the Time not being preciſely fix'd by this Act; if there were a certain Time determin'd when Men ſhould take their Exceptions, as we know it has been in Practice before Iſſue join'd, then after the Jury is ſworn it is an improper Time then, I think, to make ſuch Exceptions: I do not ſuppoſe this Act, as to the Method of Proceedings ——, than it was before, but this Exception ought to be taken before Plea pleaded: Truly it is a new Act of Parliament, and this is ſo far within the Words of the Act that it is before Evidence given, as the Counſel for the Priſoner ſay. If this can be govern'd and ruled by Proceedings and Practice in former Times in Caſes not of Felony or Treaſon, but only in Criminal Caſes: If nobody ſhould ſuffer by any Interpretation, I ſhould think it ought to bear a conformable Conſtruction to what the Practice was before, I take it you have loſt the regular Time for making your Exception, and you invert the whole Method of Proceedings upon Trials: For to what Purpoſe is it to take Exceptions to quaſh the Indictment when the Jury are once charged with it? If it be an Indictment that ought to be quaſh'd, the Jury ought not to be charged, you have had two Times, and they are both of them elaps'd, for this Matter, that is, at the Arraignment, and before the Jury ſworn; yet I would propoſe it to the King's Counſel as my Lord Chief Juſtice of the Common Pleas has done, it being a new Caſe, that it ſhould be better conſider'd of and agreed upon, that in theſe Caſes we may go on upon a certain Rule that it may be eſtabliſh'd for all Time to come.

Mr. *J. Nevile.* I would begin with the Propoſal, becauſe, I believe, I may not be ſo clear in my Opinion, otherwiſe I muſt deliver my Thoughts according to my Judgment, but I would have the King's Counſel conſider of the Propoſal.

Mr. *Att. Gen.* My Lord, for us to conſent to that in ſuch a Caſe as this, where the Court thinks it not regular, would be pretty hard to deſire of us; if any Thing of Advantage ſhould happen on the other Side, I verily think the Counſel for the Priſoner will not be ſo ready to conſent to wave any ſuch Advantage, nor am I for aſking them to do it; this Clauſe goes only to ſome Faults in the Indictment; Miſ-ſpelling, Miſ-writing, falſe and improper Latin, that is all that they are reſtrain'd from moving in Arreſt of Judgment; any Thing elſe, any Uncertainty or other Matter, that is not comprehended under theſe Particulars, they may take Advantage of to move in Stay of Judgment after a Verdict; this Clauſe does only abridge them from moving in Arreſt of Judgment for Miſ-writing, Miſ-ſpelling, falſe or improper Latin; therefore if your Lordſhip ſhould think it reaſonable we ſhould conſent to let them in to make any Exception now, it muſt be confin'd to thoſe particular Objections of falſe and improper Latin, there can be no Colour to make the Liberty larger, becauſe for any Thing elſe they are not reſtrain'd from moving it in Arreſt of Judgment, for there can be no Hardſhip in that Caſe, as I think, they have no Reaſon to complain that there has been in any other Part of the Caſe; but for thoſe Particulars that there may be no Complaint of Hardſhip, if your Lordſhip thinks it reaſonable we ſhould conſent, it may be we may be prevail'd upon to do it, though whatever Hardſhip does happen it is their own Fault, and the Priſoner may thank his own Counſel for that Hardſhip: If we aſſiſt them now to let them in, it ought to be taken as a great Kindneſs; and truly, my Lord, I am unwilling to do any Thing that your Lordſhip and the Court ſhould think hard upon the Priſoner. Certainly it is the Fault of their own Counſel, now the Law has allow'd the Priſoner Counſel, not to take the proper Time, and purſue the uſual Methods; and it is a Strain beyond what is uſual, that we muſt help their Faults by our Conſent; however, if the Court think it reaſonable, I ſhall not be againſt it, but then I am ſure the Court will take Care they ſhall be confin'd to thoſe Particulars that are mentioned in the Act.

L. C. J. No Doubt of it: Therefore Sir *Bartholomew Shower*, are your Exceptions for Miſ-ſpelling, Miſ-writing, or falſe or improper Latin? for if they be ſuch Things as you may move in Arreſt of Judgment, and have that Advantage, then there is no Colour that we ſhould break through all the Rules of Proceedings to admit ſuch an irregular Motion as this.

Sir *B. Shower.* My Lord, in the Caſe of the Life of a Man I will not take upon me to ſay what is Miſ-ſpelling, Miſ-writing, or falſe or improper Latin, or what is ſubſtantial; but all that I ſay is, I have Five Exceptions, every one of them imports a Doubt, as I take it, worthy the Conſideration of the Court, and ſome of them effectual enough to quaſh the Indictment; but for me, when a Man's Life is at ſtake, and it partly depends upon me as his Counſel, to ſay what is proper or improper Latin, or to admit it to be Matter of Subſtance, and then To-morrow to have it come and told me, you ſhould have mov'd this To-day, then I am ſure they would have Reaſon to ſay, it was the Fault of the Priſoner's Counſel; for he would have choſen very ill Counſel, in me, I confeſs, if I ſhould conſent to put any ſuch Diſadvantage upon him. I beg the Favour that I may have the Liberty to propoſe my Objections, which I think are worth Conſidering of; it is for the Advantage of the King for us to take our Exceptions all together, becauſe, elſe if any of them prove material, the Trouble of the Trial will be but Miſpence of Time.

L. C. J. No, we cannot hear all your Objections, but thoſe that are mention'd particularly in the Act of Parliament; for ſuch as are not mentioned in the Clauſe, you have a proper Time to move them in Arreſt of Judgment.

Sir *B. Shower.* Then we will put thoſe that are within the Act.

Mr. *Att. Gen.* If we do any Thing by Way of Conſent in this Matter, we muſt inſiſt upon it, that they be confin'd to the Particulars in the Act; we deſire they may open their Objections to the Court, and if the Court ſhall think they are properly under thoſe Heads, then they will conſider of them, if the Court be of another Mind, then they muſt be reſerv'd till the proper Time.

L. C. J. Do you conſent then, Mr. *Attorney*, that they ſhall now take thoſe Exceptions that are mentioned in the Act of Parliament?

Mr. *Att. Gen.* If the Court think it reaſonable upon thoſe Terms, I do.

Mr. *J. Powys.* Let them open them if your Lordſhip pleaſe, and let us keep the Power in our own Hands to do as our Diſcretions ſhall direct.

L. C. J. Truly I do not know whether we can do any Thing in this Matter, I queſtion much whether it be Diſcretionary in us to break through all the common Method of Proceeding, and admit of ſuch Irregularities.

L. C. J. Treby. I have a great Inclination to hear them, that we may get rid of theſe pretended Exceptions, which I am apt to think will, when opened, diſappoint the Expectations that may be raiſed by this mentioning them in general; for, I have that Opinion of the Ability and Circumſpection of the Counſel, that I believe if they had had Exceptions ſufficient to quaſh the Indictment, we ſhould have heard of them at a Time more proper than this now between the Swearing the Jury and giving Evidence to them. But, poſſibly, the Counſel may think fit to make an Eſſay, and try what can be got out of this unuſual Expreſſion in this new Act.

L. C. J. No, no, I know this is a Piece of Art, and the Court is not well dealt with in it.

L. C. J. Treby. Indeed I am very willing to hear them for that Reaſon.

L. C. J. I look upon it only as mere Trick, and a Piece of Art to take the Opinion of the Court.

Sir *B. Shower.* My Lord, it was my Miſtake then; for I take it, if the Act of Parliament had intended otherwiſe, they would have expreſs'd it otherwiſe.

L. C. J. Does the Act of Parliament give you another Liberty, and a greater than you had before? Does it not deſign to abridge you of a Liberty that you had before? Certainly it never intended that the Court ſhould admit of any irregular Proceedings.

Mr. *J. Powell.* You ſhould have tim'd your Motion better; for certainly now the Jury is charg'd they muſt give a Verdict either of Acquittal or Conviction; and if you move to quaſh the Indictment, and your Exceptions are material, the Jury cannot proceed; you ſee what a Paſs your Motion has brought it to, 'tis certainly a mighty irregular Motion.

L. C. J. Treby. What Judgment would you have us give? I would aſk you that: If any Exception were moved before the Jury were ſworn, and it proved material, the proper Judgment were, that the Indictment be quaſh'd; but now they are ſworn, what Judgment muſt we give? Muſt we not expect the Verdict of the Jury firſt upon the Fact? And muſt we then give Judgment upon your Exception?

Sir *B. Shower.* I know not whether your Lordſhip may not give Judgment firſt to quaſh the Indictment, and then diſcharge the Jury.

L. C. J. Treby. And what if we do not find Cauſe to quaſh it, then you'll ſay, we muſt go on with the Evidence, as we were going before this Interfering? Are we to be doing two Things at once? I am pretty certain you can ſhow me no Precedent for any like Proceedings in any Caſe: It is confounding the Offices of the Judge and Jury.

Mr. *Phipps.* If your Lordſhips try'd the Validity of our Exceptions, and find Occaſion to quaſh the Indictment, there will be no need of a Jury.

L. C. J. Upon the Statute of *Jeofailes* in a civil Cauſe, ſuppoſe at a Trial at Bar, it appears upon the Face of the Declaration, that there is ſuch a Miſtake as will be cured by the Verdict; but if the Party had demurred, and ſhown it for Cauſe, it would have been fatal. Do you think, when he has wav'd the Beneſit of Demurrer and pleaded to Iſſue, that you ſhall move this and help yourſelf by ſuch a Motion, becauſe it will be helpt after a Verdict?

Sir *B. Shower.* If this Act had been worded as that Statute of *Jeofailes* is, it may be we might not.

L. C. J. Why, it is not ſaid, in the Statute of *Jeofailes*, that it ſhall be good after Iſſue joined, before the Jury is charg'd or ſworn, but that it ſhan't be good after the Verdict.

Sir *B. Shower.* It is before the Evidence given.

L. C. J. Could he do ſo in any Caſe before this Act, and does the Act enlarge your Liberty, or abridge it?

L. C. J. Treby. Sir *Bartholomew Shower*, you inſiſt upon Part of the Words of the Act of Parliament; it ſays, no Indictment or Proceſs ſhall be quaſh'd upon the Motion of the Priſoner or his Counſel, unleſs it be made before any Evidence, &c. Now, I ſuppoſe, the Parliament uſe that Expreſſion, *upon the Motion*, in the ſame Senſe as it is uſed in Law, *viz.* for ſuch a one as ſhould be in the Time when Motions for quaſhing the Indictments are properly to be made; now, when is that? It is plain, it was always before the Jury come to the Bar, nay before the Plea of the Party. If that be the proper Time to make ſuch a Motion, then that Expreſſion in this Act of a *Motion to quaſh the Indictment* will very well help to conſtrue the other Part of the Clauſe that you inſiſt upon: For if the Motion be made before Plea pleaded, it is certainly before the *Evidence given* in your Senſe. And I conceive, that under that Expreſſion [*Evidence given*] which ſignifies the main Part, the Parliament intended to comprehend the whole Proceeding to Trial, beginning, if not from the Pleading *Not Guilty*, at leaſt, from the *Swearing* the Jury. *Before Evidence given in Court*, may reaſonably be expounded, *Before the Priſoner hath fully entred into that Conteſtation of the Fact, which is to be determined only* by Evidence in Court. I attended the Court of *King's-Bench* a long Time, and I believe that I have heard it ſaid a hundred Times, upon Motions to quaſh Indictments of great or odious Offences: No, try it, ſays the Court, we will not quaſh it, plead to it, let the Fact be tried, you may then move it in Arreſt of Judgment. Thoſe Expreſſions ſhew'd that the proper Time for a Motion to quaſh an Indictment was before Plea, tho' they, in their Diſcretion, would not grant a Motion to quaſh, in Caſes of ſuch great Offences. But ſure they did not think that when a Jury came to the Bar, it was a tolerable Time to move to quaſh an Indictment; there was no Expectation of hearing of ſuch a Motion then. And certainly this Clauſe which is made wholly againſt the Priſoner, ſhould not be conſtrued to help him to ſuch a new extraordinary and abſurd Liberty.

Sir *B. Shower.* My Lord, with Submiſſion, that Practice goes upon another Reaſon, the Court would not quaſh it at all upon a Motion; this Act of Parliament ſuppoſes that you will quaſh upon a Motion at any Time before Evidence given: We never heard of a Motion to quaſh an Indictment for Felony or Treaſon, but ſtill the Court would always ſay, Demur, or Plead, or move in Arreſt of Judgment; but by this Law it ſeems the Senſe of the Parliament was, that it might be quaſht upon a Motion.

Mr. Sol. Gen. Sir *B. Shower* is come to what I ſaid, that in Truth there is no ſuch Thing as quaſhing an Indictment for Treaſon or Felony, as I mentioned in Sir *Rich. Manſel*'s Caſe, and I think the Rule that was given in that Caſe will ſerve now in this Caſe; I am for conſenting, if they be kept within the Limits of the Act of Parliament; but I muſt deſire the Opinion of the Court before we do conſent.

L. C. J. Holt. Aye, aye, Go on, Brother *Nevile*.

Mr. Juſt. *Nevile.* I muſt confeſs I cannot but doubt, as this Act is, there were two Times that they had Liberty of taking theſe Exceptions to Indictments; but indeed, in Murder and Treaſon they were ſeldom admitted, till they came to move in Arreſt of Judgment; but ſtill there was always a Privilege, and a Time given to the Priſoner, be the Crime what it would, to take that Advantage which the Law gave him, to prevent Judgment againſt him. Now I agree, it is irregular and unſeaſonable to offer it now, and quite different from all former Practice; you might have done it before now, the Act ſays expreſly it muſt be done before Evidence; but you might have taken Advantage before the Jury was ſworn, nay before you had pleaded, but you have lapſed your Time. Yet truly, notwithſtanding you have lapſed your Time, I cannot ſatisfy myſelf to take away the Liberty that the Law has given the Priſoner ſometime or other, to except againſt the Indictment. It is plain that before this Act, after Verdict he might have moved in Arreſt of Judgment, now he cannot do ſo; whether the Fault be in the Counſel I cannot tell, but the great Prejudice is to the Perſon that is to be try'd, who will now be wholly precluded from making any Advantage of the Exceptions he has to the Indictment, becauſe by the Act he cannot move in Arreſt of Judgment. This ſeems a ſtrong Implication that the Parliament intended he muſt have ſome Time or other, but before Evidence given, to offer his Exceptions. I ſay this only to thoſe particular Things that are mentioned in the Act, Miſ-writing, Miſſpelling, Falſe or Improper Latin; as to theſe four particular Things which the Party is barr'd from moving in Arreſt of Judgment, I cannot ſatisfy myſelf but that he ſhould have one Time or another to take this Advantage before the Evidence given, and therefore I think he ſhould have it now: It is true, it is altogether irregular, the Jury being ſworn, and it ought to have been done before; but I hope if it be admitted now, it will be with ſuch Obſervation, that nobody will ever offer at it for Time to come. As this Caſe is before us, and the Act of Parliament, which perhaps may have led the Counſel into that Miſtake, that it might be any Time before Evidence given, tho' they know the proper Time, and the regular Method in other Caſes; yet I doubt it is hard to put ſuch a Conſtruction upon this Act on the ſudden, quite to debar the Priſoner of the Benefit of his Exceptions to the Indictment.

Mr. Juſt. *Powell.* I have already declar'd my Opinion, that the Priſoner has had his proper Time for making his Exceptions, but he has lapſed that Time; but I am not againſt that Motion in a Caſe of Life, upon an Indictment for ſo great a Crime as Treaſon is; and where the Conſequence is ſo great, if it may conſiſt with the Rules of Law, and it be the Senſe of the Court, and the King's Counſel conſent to let them be heard, I ſubmit to it, nay I would Second or Third that Motion that they may be heard.

Mr. Juſt. *Eyres.* Truly I am of the ſame Opinion, I think we ought not to alter the ancient Courſe of Law by Words of Implication, nor go any further than the Act of Parliament does expreſs. The Act appoints that a Copy of the Indictment ſhould be delivered to the Priſoner ſo many Days before, to enable him to make his Exceptions, and therefore deprives him of the Benefit of thoſe Exceptions after Conviction in Arreſt of Judgment. I ſee no Words in the Act of Parliament that do alter the Courſe of Proceedings as to this Matter, from what it was in all Civil and Criminal Cauſes before; Perſons muſt take their Advantage of Excepting in their proper Time, but when it comes to Iſſue, the next Thing to be done is the Trial; and truly I muſt needs ſay the Counſel are to blame, that knew this ſo very well, that if they have any Advantage of Excepting, they did not take that Advantage ſooner, it is their Fault; but ſeeing it is ſo, I am of Opinion not to forecloſe the Priſoner, as the Caſe ſtands. I would be tender of Life, but at the ſame Time I declare my Opinion upon this Act of Parliament as the reſt of my Brothers have done, to prevent the Objection for the Time to come; yet ſeeing there is this Misfortune, and there would be a Hardſhip upon the Priſoner by the Default and Neglect of his Counſel in the Caſe of a Man's Life, I would be ſo tender as to indulge them to make their Objections now.

Mr. B. *Powys.* I am of the ſame Opinion the Priſoner has laps'd his Time, for I take it this Clauſe of this Act of Parliament has not altered the common Courſe of Proceedings; nay, I take it, it ſignifies very little in this Caſe; for certainly it was intended to diſable the Priſoner, and not enable him at all; and therefore, as the Caſe is, I think it very Irregular and Impracticable to introduce ſo great a Novelty, as to admit the Motion for quaſhing the Indictment, when the Jury is ſworn, and when the Fact is the only ſingle Point to be determin'd, and every Thing elſe ought in legal Courſe to come before or after; but for us to confound Time, one Time for Pleading, another Time for Trial, and another for Arreſt of Judgment, all at once, and to have a Jury attending meerly to hear Counſel at the Bar moot Points of Law, which might be determin'd either before or after the Trial, is ſo very irregular, that it really introduces nothing but Confuſion, which Courts of Juſtice ought to avoid above all Things, and ought to keep to the proper Seaſons that the Law allows. Therefore, truly, I think in Strictneſs of Law we ought not to allow it; but it being in a Caſe of Life, and it being a new Caſe upon a new Act of Parliament, if the King's Counſel thinks fit to Conſent, I ſhall be for it; if not, I think in Strictneſs of Law we cannot allow it.

Mr. Att. Gen. My Lord, I am very unwilling to deny the Priſoner any Advantage that he might have had by this Act of Parliament, though his Counſel have ſlipt the proper Time; if Sir *Bartholomew Shower* will ſay his Exceptions are to any of the four particular Heads mentioned in this Clauſe of the Act of Parliament, for we muſt confine them to that, then we do conſent that he ſhould make them now.

L. C. J. Truly, Mr. *Attorney*, if you do conſent that they take their Exceptions now, we may conſider of it whether it can be; but I know not how we could admit them to that Liberty otherwiſe, for if there be any Thing material, they may move it in Arreſt of Judgment.

Mr. Att. Gen. And I believe they won't ſay their Objections are ſo ſlight, as to be only Matter of Form; they ſay they are Subſtantial, and then your Lordſhip will hear them in a proper Time.

Sir *B. Shower.* I don't know whether I am miſtaken in the Law, I am ſure you are miſtaken in the Indictment.

L. C. J. Well, do you conſent to let them make their Objections, as to thoſe four Heads in the Act of Parliament?

Mr. Att. Gen. Yes, my Lord; if it be any Matter of Subſtance, that is out of the Caſe at preſent, for the Proviſion of the Act of Parliament is only for meer Matter of Form, and I ſhould be very unwilling in any Point that is material, to make a Precedent in ſuch a Caſe as this.

L. C. J. I confeſs if you had conſented farther, I do not know how we ſhould have admitted of it.

L. C. J. Treby. I tell you how I thought it might be done; you might have committed an Irregularity, for which in a Caſe of Life, and upon a new Law, I believe and hope we ſhould have been forgiven.

L. C. J. Well, for my Part I will not commit any Irregularity upon any Account whatſoever; I cannot ſee how by Law they can take any Exceptions to the Indictment; Mr. *Attorney* cannot conſent, and if he did, I think it could not be, unleſs he did alſo conſent to diſcharge the Jury; but I ſee they will not offer any Objections according to your Conſent, Mr. *Attorney*, and therefore pray go on to open the Evidence.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar, *Ambroſe Rookwood*, ſtands indicted for High-Treaſon, in Compaſſing and Imagining the Death of his Majeſty. Gentlemen, the Overt-Acts that are laid in the Indictment to prove this Treaſon, are; that He, together with divers Others, had frequent Meetings and Conſultations in order to Aſſaſſinating His Majeſty's Royal Perſon, and did provide Horſes and Arms for that purpoſe.

Gentlemen, the Evidence that you will hear, to prove theſe Facts that are thus laid, will be of this Nature; you will hear by the Witneſs, That there has been for ſome Years a Deſign carried on to Murder the King's Perſon; that this was diſcourſed of, and ſeveral Debates and Conſultations were had about it the laſt Year, ſome Time before the King went to *Flanders*; there was ſeveral Meetings, where were Sir *William Parkyns*, Captain *Porter*, and *Charnock* that was Executed, and ſeveral others, and there they did conſider in what way to take off the King at that Time; and you will hear they did expect a Commiſſion to authorize it from the late King *James*; but then the Commiſſion did not come, they had not any ſuch at that Time; but they did think fit to put it in Execution without any ſuch Order and Authority, and therefore they endeavour'd to have got a Veſſel to have carry'd them off after they had Executed this bloody Conſpiracy; but it happen'd His Majeſty went to *Flanders* ſooner than they thought, and they could not provide themſelves of a Security for a Retreat, and ſo at that Time the Deſign was laid aſide.

But, Gentlemen, you will hear this Conſpiracy was renewed, and ſet on Foot this Winter; and in Order to the Accompliſhment of it you will hear, that about *Chriſtmas* laſt there were ſeveral Perſons ſent from *France* by the late King *James*, on purpoſe to put this horrible Deſign in Execution. Sir *George Barcley* was to be at the Head of it; he was a Lieutenant in one of the late King *James*'s Troops of Guards in *France*, he was ſent over with a Commiſſion, and Mr. *Rookwood*, the Priſoner at the Bar, was a Brigadier in the Guards there; theſe came over, and

ſeveral other Troopers of the late King *James*'s Guards, by two or three at a Time, that they might not be obſerv'd; particularly you will hear, that when Sir *George Barcley* was come over, ſeveral Troopers were ſent by King *James* himſelf to come to him at St. *Germains*; and there he told them he had a Piece of Service for them to do in *England*, and that they ſhould obſerve Sir *George Barcley*'s Orders and Directions. More particularly there was one *Harris* and *Hare*, two Troopers in the Guards, were ſent for by the late King *James* into the late Queen's Bed-Chamber at St. *Germains*, where Colonel *Parker* was preſent; they were told by the late King, He was ſenſible they had ſerved him faithfully, and he would advance them, and he had now a Piece of Service for them to do, which would enable him to do it. He told them they muſt go over into *England*, and be ſure to obey Sir *George Barcley*'s Directions; and they were order'd to endeavour to find out Sir *George Barcley* when they came into *England*; and were told by him, that they would meet Sir *George Barcley* twice a Week in *Covent-Garden*-Square, in the Evening, and the Token by which they ſhould know him was, he would wear a white Handkerchief out of his Pocket; this they were told by the late King, when he ſent them upon this Errand. Colonel *Parker* was by at the ſame Time, and being there, he was ordered to go to Mr. *Carol*, Secretary to the late Queen, who had order to furniſh them with Money to bear the Charges of their Journey into *England*; and if they were detained by contrary Winds, they had Letters of Recommendation to *Monſieur Latour* the *French* King's Preſident at *Calais*, to furniſh them with Money to bear their Charges over into *England*; and accordingly they went; but being detained at *Calais* for want of Wind, they were furniſhed by the *French* Preſident; and by the Beginning of *February* they came over.

But I omitted one Thing, Gentlemen: Before they came over, the late King when they were with him took a Liſt out of his Pocket of Names, and told theſe two, *Harris* and *Hare*, what Names they ſhould go by in *England*; *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiny*; and accordingly they came over in a Boat, and landed in *Kent*; and when they came to Town, they endeavoured to find out Sir *George Barcley*: The firſt Time I think they did not find him; but the ſecond Time they did find him; and he ſaluted them, and told them he was glad to ſee them come over, and he would furniſh them with Money; and he ſent Major *Holmes* to them; and accordingly he did come, and give them Subſiſtence-Money.

Now, Gentlemen, you will hear that Sir *George Barcley* being come over with theſe Troopers, and many others, to the Number of Sixteen, that at ſeveral Times were ſent upon this Conſpiracy; I ſay, after they were come, Sir *George Barcley* had frequent Meetings and Conſultations with ſeveral other Perſons that were to be engaged in the ſame Deſign; and they met at ſeveral Places, ſometimes at Captain *Porter*'s, ſometimes at the *Nagg*'s-*Head* in *Covent-Garden*, at another Time at the *Sun* Tavern in the *Strand*; and you will find by the Evidence, that the Priſoner at the Bar, Mr. *Rookwood*, was preſent at moſt of thoſe Meetings; and there they did conſult of the beſt Ways and Methods for putting this Conſpiracy in Execution; ſometimes they thought of doing it by an Ambuſh laid on the other Side of the Water, by Perſons on Foot, in a little Wood there near *Richmond*, where the King was to paſs by, whilſt others on Horſeback were to take Notice of their Firing, and then to attack the Guards. This was propoſed; but there was another Propoſal to do it on this Side the Water; and therefore to ſettle the Matter, one of the Conſpirators, *King*, was ſent to view the Ground on the other Side of the Water; and he did glory that he had found a very proper Place, and thought it a very convenient Method; but yet they were not all ſatisfied; and at the *Nagg*'s-*Head* Tavern in *Covent-Garden* they did debate the Matter again, and it was reſolved to have the Ground viewed again; and *Porter*, and *Knightley*, and *King* that was executed, went to view the Ground on both Sides the Water, to ſee which was the moſt convenient Place; this was about the 12th of *February* they did take an Account of the moſt convenient Places on either Side; and when they had done it, they came back in the Evening to give an Account what they had done, to ſeveral others of the Conſpirators who met for that Purpoſe; and I think the Priſoner at the Bar, Mr. *Rookwood*, was preſent there at this Meeting; and you will hear, the Place agreed upon was the Lane that leads from *Turnham-Green* to *Brentford*; that they thought the moſt convenient Place, becauſe there were ſeveral Inns in and about *Turnham-Green* and *Brentford*, where they might place their Men by two or three in an Inn, that they might not be liable to Obſervation: This was the Place that was approved of.

Then next, the Manner of doing it was to be conſidered and adjuſted, and that was thus: That the whole Number ſhould be divided into three Parties; one Party to be commanded by Sir *George Barcley* to attack the Coach, and kill the King and all that were in it, while at the ſame Time the two other Parties, to be commanded by Captain *Porter*, and Mr. *Rookwood* the Priſoner at the Bar, were to ſet upon the Guards; and the Time agreed upon to put it in Execution was the Fifteenth of *February* on *Saturday*, that being the uſual Day the King went to *Richmond* a-hunting; and you'll find, that on *Saturday* Morning they met in ſeveral Parties, not all together, but under the ſeveral Heads of the Parties, in order to be ready, if the King had gone out that Morning, to have Aſſaſſinated him.

Gentlemen, I ſay, you will hear of ſeveral Meetings that Day; there was one Meeting at Mr. *Charnock*'s, where were preſent Mr. *Porter*, Sir *William Parkyns*, and ſeveral others; and another Meeting you will hear of, where the Priſoner at the Bar was preſent, at the Lodgings of one *Counter*, another of King *James*'s Friends, that came over for this Purpoſe; and there was Sir *George Barcley*, and there was the Priſoner at the Bar; and thoſe that were to be under Sir *George*'s Command met that *Saturday* Morning, in order to make ready, in caſe the King had gone abroad, to have attack'd him: You will find by the Evidence, that the Priſoner was there; and *Harris*, that was one of the Troopers ſent over from *France*, was ſent for, and came in and found them in a great Hurry; for *Harris* was not acquainted at St. *Germains* with the immediate Deſign of Aſſaſſinating the King; but finding them in a great Hurry, he aſked them what was the Matter? And they told him they were to make ready immediately upon the Deſign. He wonder'd at it, and aſked what it was; and then they told him they were to go to attack the Prince of *Orange* to aſſaſſinate him; and *Rookwood* the Priſoner at the Bar told him, if he would go to *Counter*, he ſhould have particular Orders and Inſtructions from him what to do. Accordingly *Harris* went to *Counter*; he told him where his Horſe, and *Hare*'s Horſe, and *Hungate*'s Horſe were; and their Horſes happened to be placed in *Somerſet-Houſe*, by Mr. *Lewis*, in a Stable there recommended by him, to the Care of my Lord *Feverſham*'s Servants, who were to take care of them, and of two or three more that were placed there; in all, ſix of theſe Conſpirators Horſes by the Recommendation of Mr. *Lewis* were lodged in that Stable in *Somerſet-Houſe*, and look'd after by my Lord *Feverſham*'s Men; and thither *Harris*, *Hare*, and *Hungate* were directed by *Counter* to go for their Horſes.

But it happen'd by very good Providence, that his Majeſty did not go abroad that Day; and *Durance*, one of the Orderly Men that lodged at *Kenſington* to give Intelligence, came from thence and acquainted them that the King did not go out that Morning, ſo there was nothing more done; but *Harris* was told that he ſhould have his Horſe at that Time, and take it away; and in the mean time, till they were to go upon their Deſign, they were to ride out upon their Horſes, as they had Opportunity, to make them fit for Service; or elſe it would be thought the Rider's Fault, if, at the Time of the Attack, they did not come up in good Time and Order to join with the reſt, and it would be thought Want of Courage in the Rider; and accordingly Major *Holmes*, another of thoſe Conſpirators, went with *Harris* and *Hare* to *Somerſet-Houſe* to take away their Horſes, and they carried them to a Stable in *Soho*; but for ſeveral Nights they had been kept at *Somerſet-Houſe*.

You will find, Gentlemen, that Mr. *Rookwood*, the Priſoner at the Bar, was concerned in all theſe Conſultations and Meetings, in making Preparations for the Aſſaſſination; they intended, as I ſaid, to do it on the 15th of *February*; but that not taking Effect at that Day, between that and the *Saturday* following, Mr. *Harris* was frequently in the Company of Mr. *Rookwood*, and Mr. *Lowick*, and others, where they did diſcourſe of this Aſſaſſination, and they did think it a very barbarous Thing; but however, they reſolved they would do it, for they had Orders to obey Sir *George Barcley*: And this was expreſly declared by *Lowick* and the Priſoner, that they had Directions to obey Sir *George*, and what he would have them to do they would do: They muſt and would obey Orders; that was their Reſolution, even upon diſcourſing of the Heinouſneſs of ſo bloody and barbarous a Deſign.

You will likewiſe hear, Gentlemen, by the Evidence, that the next *Saturday*, being the Two-and-twentieth of *February*, they reſolved to put it in Execution again; and accordingly there was a Meeting on the *Friday* before at the *Sun* Tavern, where were preſent Sir *G. Barcley*, Mr. *Porter*, and others; and there they did reſolve upon it, tho' they had at firſt ſome Apprehenſion the Thing was diſcovered; but they were ſoon ſatisfied there was no ſuch Thing, becauſe, they ſaid among themſelves, that if it had been ſo, they ſhould have been taken up, and not have been permitted to meet there: Therefore they reſolved the next day to put it in Execution; and accordingly they met at ſeveral Places, and got ready in the Morning, in caſe the King had gone abroad. The Priſoner met that Morning at *Porter*'s Lodging, with ſeveral other Troopers, to make ready for the Enterprize; and there the Priſoner at the Bar did, at that Time, give a Liſt of the Naines that he was to command; for he was to have one Party of thoſe that were to attack the Guards, of whom *Harris* was one, and *Hare* was another, and *Richardſon* was another, and *Blackburne* was another, and his own Name was Chief; and he ordered *Harris* to go and ſee to get them ready, for they muſt go out that Morning: Accordingly *Harris* did go and got them ready, and came back and gave an Account of it. His Majeſty did not go abroad that Day, as it happened very fortunately, by reaſon of the happy Diſcovery; ſo that News being brought back again, though they had made all things ready, thoſe Preparations were put off, and they did nothing that Day; and quickly after the Diſcovery was fully made, and made publick by the Apprehenſion of the Conſpirators.

Gentlemen, you will have this Matter fully proved to you by ſeveral Witneſſes, that I think there can be no Room to doubt the Truth of it, that there was ſuch a Conſpiracy, and that the Priſoner was as highly concerned in it as thoſe who ſuffered the juſt Puniſhment of the Law. We will call our Witneſſes to prove this; and I believe they will be able to give you an Account of the whole Affair better and more fully than I can do, or can pretend to open it.

Mr. Sol. Gen. Call Mr. *Harris* and Mr. *Porter*.

Sir *B. Shower*. We oppoſe the Swearing Mr. *Porter*: I muſt beg the Favour of the Court to hear us in it; if my Inſtructions be true, we inſiſt upon it, that he is not capable of being a Witneſs; he ſtands convicted of Felony: Here we have the Record, and we deſire it may be read.

Capt. *Porter*. I know nothing of the Matter, that there is any ſuch Thing ſtanding out againſt me.

Sir *B. Shower*. Then ſure we are miſtaken in the Man. Pray let us hear it read.

Cl. of Ar. (*Reads the Record.*) This is an Indictment of Murther againſt *George Porter*, for the Killing of Sir *James Hacket*, Knight.

Mr. Att. Gen. Do you know any thing of this, Mr. *Porter*?

Capt. *Porter*. I came off with Manſlaughter, and pleaded the King's Pardon in Court.-----*Mr. Att. Gen.* Pray read what was done upon it.

Cl. of the Crown. Here's the Jury's Verdict: *Quod prædictus* Georgius Porter *eſt culpabilis de felonica Interfectione prædicti* Jacobi Hacket, *& non culp.* as to the Murder. Here is a *Curia adviſare vult*, and I ſuppoſe there was a Pardon afterwards.

Mr. Juſtice *Powell*. Was he not burnt in the Hand?

Capt. *Porter*. No; I pleaded the King's Pardon.

L. C. J. And there are ſeveral Acts of Pardon ſince.

Mr. *Cowper*. See the Time when the Indictment was.

Cl. of Ar.

Cl. of Ar. It is the Eighth of *December*, in the Thirty-Sixth Year of King *Charles* the Second.

Sir *B. Shower.* We agree that he did plead the King's Pardon; and then the Caſe is no more than this, a Man is convicted of Manſlaughter, and the King pardons him, he ſtill remains unqualified to be a Witneſs; we ſay, this has been the Caſe that has been much debated in *Weſtminſter-Hall*, and upon Debate it has been reſolved.

Mr. Juſt. *Powell.* It has been ſo, but always againſt you.

Sir *B. Shower.* It was in the Caſe of my Lord *Caſtlemaine* at this Bar; one of my Lords the Judges went to the Court of *Common-Pleas* to aſk their Opinion, and theſe Caſes were put: In Caſe a Man be out-law'd of Felony and pardon'd; in Caſe a Man be convicted of Felony and had the Benefit of his Clergy; and in Caſe a Man was convicted and not attainted, but pardoned upon the ſecond Caſe; they were of Opinion, that the Receiving the Puniſhment of Burning in the Hand had purged the very Guilt, and did ſet him upright by the Statute of the 15th of Queen *Elizabeth*, they thought it did operate to that Purpoſe; but in the Caſe of a Pardon of a Man attainted or convicted, it was agreed he was not qualified to be a Witneſs; and *Dangerfield*, againſt whom the Objection was made, being burnt in the Hand, was received to be a Witneſs; and it was only made uſe of againſt him to take off his Credit. The Record of that Caſe is in this Court, and I looked upon the Print of the Trial this Day. We ſay, that there is a Caſe in 1 *Brownlow* 47. a Man attainted of Felony cannot be of an Inqueſt, though pardon'd; and we think, he that cannot be a Juryman, ſure cannot be a Witneſs; there is the ſame Exception to his being a Witneſs as there is in the Caſe of a Juryman; for the one ought to appear as free, and ſtand as clear and unſuſpected, in Reſpect of his Probity and Verity as the other, as the one is ſworn to try and determine upon Oath, ſo the other is ſworn, and his Oath is to ſway and determine the Jury, and in Conſequence it is all one; and upon theſe Reaſons we hope he is not a good Witneſs.

L. C. J. Where is that Caſe in *Brownlow?*

Sir *B. Shower.* It is 1 *Brownlow* 47. and then there is 11 *H.* IV. 41. 2. *Bulſt.* 154. there my Lord *Cook* ſays, if a Man be convicted of Felony, and pardoned, he cannot be a Juryman; for though the Puniſhment is pardoned, the Guilt remains, ſo that he is not *probus & legalis Homo*; and every particular Perſon has an Intereſt in it, that they have free and clear Perſons to be Jurymen and Witneſſes.

Mr *Phipps.* My Lord, that is the Diſtinction we go upon, which was taken in *Dangerfield*'s Caſe, upon the Trial of my Lord *Caſtlemaine*, where the whole Court were of Opinion, that a Pardon from the King only, would not make him a good Witneſs; but if he were burnt in the Hand, that by the Statute of *decimo octavo Elizabethæ*, amounted to a Statute Pardon, and ſet him right to all Intents and Purpoſes: And there they did take Notice of that Book that Sir *Bartholemew Shower* cited of 11 of *Hen.* IV. that a Man attainted could not be a Jury-man, though pardoned by the King: It was objected he might be a Witneſs; but Mr. Juſtice *Jones* ſaid, it was the ſame Reaſon, if he be not fit for a Jury-man, he is not fit for a Witneſs; they ought to be both *probi & legales Homines*, thus the Caſe ſtood there. And that other Book of *Bulſtrode* is the ſame; it was in the Caſe of a Prohibition for a *Modus Decimandi*, where the Suggeſtion is to be prov'd by two Witneſſes, it was objected he had not prov'd it by two Witneſſes, becauſe they were both attainted of Felony, and though they were Pardoned, yet that did not make them good Witneſſes in the Opinion of the Court.

L. C. J. This is quite another Caſe, it does not come up to your Point; here is no Attainder, and here is Pardon upon Pardon, by Act of Parliament.

Mr. *Phipps.* As to that, we think the Parliament Pardon is out of the Caſe; for if the Pardon from the King be a good Pardon, there is no Guilt for the Act of Pardon to work upon.

Sir *B. Shower.* My Lord, this we think to be a good Diſtinction as to that Matter, a Man that is actually pardon'd the Puniſhment by the King's Pardon, and afterwards an Act of Pardon comes and pardons all Offences, that we ſay does nothing, for he is not a Subject of Pardon, for he was diſcharged of his Puniſhment before.

Mr. Att Gen. Sure theſe Gentlemen are not in earneſt when they make this Objection.

Sir *B. Shower.* When the King has once pardon'd him, he is not an Offender within the Meaning of the Act of Parliament, and therefore the Act works nothing as to him, and ſo he ſtands as much diſabled from being a Witneſs, as he was before.

Mr. Juſt. *Powell.* In the Caſe of *Cutington* in *Hobbard*, there it is ſaid the Pardon takes away *tam Reatum quam Pœnam*, &c. An Action being brought for calling a Man Thief, who had been indicted for Felony, and convicted, and pardon'd, the Court adjudged, that he ought not to be called ſo; for he was no Thief, for the Pardon had waſhed him entirely clean, and he was diſcharged both of the Guilt and the Puniſhment, and all the Conſequences of it.

L. C. J. Thoſe Caſes that have been put are no Authorities at all in this Matter; for where there is a Conviction of Manſlaughter, and the Party is pardon'd, we think that Pardon of the King works in a Way of Diſcharge as much as the Burning in the Hand. I take it, it is the ſame Thing: They admit, that will diſcharge him to all Intents and Purpoſes, and ſo we think does this as effectually; for having his Clergy, and being burnt in the Hand, works by Way of Statute Pardon: For the Caſe of a Jury-man, I take it not to be the ſame with this Caſe; but even in that Caſe, I do not think that the Party convicted, after the King hath pardoned him, is diſabled from being of a Jury; but ſuppoſing that to be ſo, yet there are many Caſes wherein a Man may be a Witneſs, that cannot be a Jury-man. It is true, the Credit of ſuch a Witneſs is left to the Jury, but it is no Objection againſt his being a legal Witneſs; and it is a very ſtrange Argument to me, that becauſe he was pardoned by the King, if that ſhould be deficient, that therefore the Act of Pardon ſhould have no Effect. Truly, that is to ſay, that the King's Pardon works ſo, as to have nothing left for the Parliament Pardon to work upon, and certainly it ſets him ſo right, that to all Intents and Purpoſes he is as good a Witneſs as ever he was; and if any Thing remained to be done, the Act of Parliament has done it, and ſupplied the Defect; but I think the King's Pardon is ſufficient.

Mr. Att. Gen. My Lord, I ſuppoſe they do not inſiſt upon it, as thinking there is any great Weight in it, but only for Objection ſake; but we hope that notwithſtanding this Objection Mr. *Porter* ſhall be ſworn.

Mr. Sol. Gen. My Lord, they take this Exception at an improper Time, for they ſpeak to his Credibility.

L. C. J. No, they except to his being a Witneſs.

Mr. Sol. Gen If ſo, your Lordſhip remembers a Caſe that was before your Lordſhip not long ſince, but in *Eaſter* Term laſt, when one was try'd at this Bar for Treaſon, and *Aaron Smith* was produced as a Witneſs, and the Priſoner took Exception againſt him as no good Witneſs, becauſe he had ſtood in the Pillory; and your Lordſhip and the Court did ſay, that the Act of Pardon did reſtore him to all Intents and Purpoſes *ad liberam Legem.*

Mr. *Conyers.* In the Caſe of the Earl of *Caſtlemaine*, both the Courts of *King's-Bench* and *Common-Pleas* held *Dangerfield* a legal Witneſs, though burnt in the Hand for Felony, and ſo was the Opinion of *Rolls:* In *Stiles* Reports 388, one that hath been burnt in the Hand for Felony, may notwithſtanding be a Witneſs.

Sir *B. Shower.* My Lord, in anſwer to that Caſe that was put, that after the King's Pardon for one convicted of Felony, another Man has not the Liberty to call him Thief, that was an Objection in my Lord *Caſtlemaine*'s Caſe, that may ſtand as good, and our Notion that we contend for, be good too; he cannot be impeach'd, or have Guilt imputed to him, when once the King has forgiven him, and yet that may not reſtore him to his entire Credit, as was my Lord Chief Juſtice *Scroggs'* Diſtinction in the Caſe of *Dangerfield*; and as to the Caſe of *Aaron Smith*, that was very different: The Reaſon in that Caſe was, becauſe the Crime for which Mr. *Smith* was indicted, did not import any ſuch ſcandalous Offence for which his Credit could be impeached.

L. C. J. No, no, we did not meddle with that, we went upon the Pardon.

Sir *B. Shower.* But in that Caſe, they did not inſiſt upon it that he had a Pardon antecedent to the Act of Pardon, ſo that he was *Subjectum capax*, for the Act to work upon, he was an Offender that needed a Pardon; whereas Mr. *Porter* being pardon'd before, could not be an Offender needing a Pardon, and conſequently not within the firſt Words of the Act of Indemnity, becauſe he was pardon'd by the King before; but he was not by that Pardon, ſay we, reſtor'd to his Credit to make him a good Witneſs, and the Act of Parliament did not affect him, he being not *Subjectum Materiæ*, as not being an Offender.

Mr. *Phipps.* As to Mr. *Sollicitor*'s Caſe of *Aaron Smith*, we agree the Act of Parliament did reſtore him, becauſe he never was pardon'd before by the King, ſo there remained an Offence for the Parliament Pardon to work upon.

L. C. J. Do you agree that, then you may agree the other; for the Act of Parliament pardons none but thoſe that the King can pardon generally.

Mr. *Phipps.* It is true, my Lord; but we ſay that an Act of Parliament Pardon removes thoſe Diſabilities which the King's Pardon does not; for every one is in Law a Party to an Act of Parliament, and therefore no Perſon ſhall be permitted to alledge in Diſability of another, any Crime which he himſelf hath pardon'd, for that is to aver againſt his own Act; but 'tis otherwiſe in the Caſe of the King's Pardon.

L. C. J. Why, the very Parliament Pardon comes from the King; the King has a full Power of Pardoning, and where he does pardon under the Great Seal, it has the full Effect of the Parliament Pardon. A Pardon, before Attainder, prevents all Corruption of Blood, ſo that tho' a Man forfeits his Goods by Conviction, yet after a Pardon he is capable of having new Goods, and ſhall hold them without any Forfeiture whatſoever; for the Pardon reſtores him to his former Capacity, and prevents any further Forfeiture. Indeed, if he had been attainted whereby his Blood was corrupted, no Pardon, whether it were by the King or by the Parliament, could purge his Blood without Reverſal of the Attainder, by Writ of Error, or Act of Parliament, or expreſs Words in the Act to reſtore Blood; but either Pardon makes him a new Creature, gives him new Capacity, and makes him to all Intents and Purpoſes, from the Time of the Pardon, to be *probus & legalis Homo*, and a good Witneſs. Indeed this Crime might be objected againſt his Credit; but it is not to be urged againſt the Sufficiency of his Evidence, that is, his being a Witneſs.

Mr. Att. Gen. My Lord, we deſire he may be ſworn. (*Which was done.*

Mr. Sol. Gen. Now, Mr. *Porter*, do you give my Lord and the Jury an Account what you know of this intended Aſſaſſination, how it came to your Knowledge, and what Share the Priſoner at the Bar had in it.

Capt. *Porter.* My Lord, the firſt Account that I had of this Aſſaſſination was from Mr. *Charnock*, who brought to me Sir *George Barcley* and Major *Holmes*, to my Lodging in *Norfolk-ſtreet*, where I was ſick of the Gout. Sir *George Barcley* did not then particularly acquaint me with the Buſineſs, but ſaid, he would leave it to Mr. *Charnock* to tell me what it was.

L. C. J. Who told you ſo?

Capt. *Porter.* Sir *George Barcley*; and after that we had ſeveral Meetings, at which the Priſoner at the Bar was preſent, particularly at the *Globe-Tavern* in *Hatton-Garden*, where it was conſulted of the beſt Ways and Means to Aſſaſſinate the King as he came from *Richmond:* Some were of Opinion that it was beſt to be done on the other Side of the Water; others were of Opinion that it ſhould be done on this Side, by a Party of Men on Horſeback: Upon this Difference of Opinion, there were Perſons appointed to go and view both Places; I was appointed for one to go with Captain *Knightley*, and Mr. *King* went along with me, and we did view the Ground on both Sides, and when we came back, we gave an Account to Sir *George Barcley*, and thoſe that ſent us; and upon our Report, Sir *George Barcley*'s Mind was chang'd, who was for the other Side of the Water before. And he agreed to do it in the Lane that leads from *Turnham-Green* to *Brentford*. Afterwards there was a Meeting at the *Globe-Tavern* in *Hatton-Garden*, and there it was agreed that the King ſhould be attack'd on *Saturday* the 15th of *February*, by Sir *George Barcley* and his Party; and Mr. *Rookwood*, the Priſoner at the Bar, was to command a Party of Men that came over from *France*, who were to aſſault the Guards

on

on one Side, and I and Mr. *Charnock* were to ſet upon the Guards on the other Side. Sir *George Barcley*, with four Men out of each Party, was to attack the King in his Coach, and to kill him and all that were there in it.

L. C. J. Who were at that Meeting?

Capt. *Port.* There were Sir *George Barcley*, Captain *Charnock*, Sir *William Parkyns*, Myſelf, Major *Holmes*, Captain *Rookwood*, and Captain *King*.

L. C. J. Where was this?

Capt. *Port.* At the *Globe-Tavern* in *Hatton-Garden*, upon *Saturday* Morning the 15th, we having two orderly Men that lay at *Kenſington* to give Intelligence, had Notice brought us firſt that the King would go out; *Durance*, who was one of them, uſed to go every Morning to Court to get us what Intelligence he could, and Sir *George Barcley* told me upon the *Friday*, that he ſhould give me an Account as ſoon as ever he could, the next Morning; and the next Morning at my Lodging in *Little Rider-ſtreet* in St. *James*'s, he came to me, and told me, the Advance Guards were gone out, and the King's Kitchen was gone, and all was preparing for the King's going abroad, and there went a great many Noblemen and Gentlemen a-Horſeback with him, and therefore he thought there would be no Opportunity of effecting the Thing: Said I, that's no Objection at all, nor any Reaſon for putting it off, becauſe when the Sport is over, all the Company goes away, and the King comes only in his Coach with the Guards; he ſaid, he would give Sir *George Barcley* an Account of it, and he came back with Sir *George Barcley* and Mr. *Rookwood* to my Lodging, and upon repeating that Objection, and my giving the ſame Anſwer, it was agreed, if the King had gone out that Day to have put the Deſign in Execution.

Mr. Att. Gen. Was the Priſoner at the Bar there at that Time when that was agreed upon? —— Capt. *Port.* Yes, he was.

L. C. J. Where do you ſay was that Meeting?

Capt. *Port.* At my Lodging in *Little Rider-ſtreet.*

L. C. J. Had you that Diſcourſe with Sir *George Barcley* in the Preſence of the Priſoner?

Capt. *Port.* Yes; Sir *George* ſaid, he doubted we could not do it, becauſe there would go ſo many with the King; but I objected againſt that, that after the Sport was over, all the Company went away, and the King came back in his Coach; then it was agreed to go on; there was Sir *George Barcley*, *Durance*, and the Priſoner at the Bar, and myſelf in the Room.

L. C. J. This you ſay was *Saturday* the 15th, in the Morning?

Capt. *Port.* Yes, my Lord; but I cannot ſay I ſaw the Priſoner at the Bar at any Meeting after that.

Mr. Att. Gen. Pray, tell my Lord and the Jury, what Method you were to take in putting this Deſign in Execution.

Capt. *Port.* There were to be ſo many Horſemen armed and prepared for the Purpoſe. Sir *George Barcley* told me, we ſhould be about 40 or 45 Horſemen, and they were to be divided into two Parties, and Sir *George Barcley* was to have four Men out of each Party, and his Buſineſs was to attack the King, and all that were with him in the Coach. Captain *Rookwood* was to command thoſe that were come out of *France* to ſerve under Sir *George Barcley*, and Captain *Charnock* and I were to command the other Party, and both Parties were to ſet upon the Guards at the ſame Time that Sir *George Barcley* attacked the King's Coach.

Mr. Att Gen. If the Priſoner will aſk him any Queſtions, let him.

Sir *B. Shower.* Pray, Captain *Porter*, when was that firſt Meeting at the *Globe-Tavern?*

Capt. *Port.* It was one Day in the Week before the 15th.

Sir *B. Shower.* Was Mr. *Rookwood*, the Priſoner at the Bar, there that Day?---Capt. *Port.* Yes, he was.

Sir *B. Shower.* How long before the 15th?

Capt. *Port.* One Day that Week, but I cannot tell what Day.

Sir *B. Shower.* He ſays it was agreed ſo, and ſo I deſire to know what Words Mr. *Rookwood* uttered at that Time?

Capt. *Port.* It was diſcourſed by every one round, which was the beſt Way and Method. I heard Mr. *Rookwood* ſay, indeed, he believed it a very deſperate Thing, and he was not very willing to engage in it; but when Sir *George Barcley* told him he ſhould command his Party, he replied in *French*——

Mr. Sol. Gen. What's the Meaning of that?

Capt. *Port.* There's an End of it.

Mr. Att. Gen. You ſay the Priſoner was at your Lodging *Saturday* the 15th, in the Morning, What Diſcourſe had you there?

Capt. *Port.* He was there upon *Saturday* in the Morning, the 15th of *February*, and *Durance* brought an Account that the King's firſt Guards were gone, and the King's Kitchen was gone before, and it was expected that the King would go about Eleven a-Clock; but it was ſaid, that there were a great many preparing to go with him, and therefore it would not be convenient to do it that Day: Said I, that is no Objection at all, for the Nobility and Gentry go out of the Field as ſoon as the Sport is over, and the King uſed to go with a few People to Mr. —— Houſe at *Richmond*, and therefore it might be as well done at that Time as any Time: *Durance* made that Objection at firſt himſelf; and when I made him that Anſwer, he went to Sir *George Barcley*, and he came back with Sir *George Barcley*, and the Priſoner was there by at the ſame Time, and Sir *George Barcley* made the ſame Objection; it was at my Lodging in *Little Rider-ſtreet*, and when I told them my Reaſon againſt the Objection, as I had done before, they all agreed to do it that Day

Mr. *Phipps.* At that ſecond Meeting, did Mr. *Rookwood* make any Propoſal there?

Capt. *Port* I only ſay, he came with Sir *George Barcley*, and what I heard; I tell you Sir *George Barcley* made that Objection, and I gave it that Anſwer.

Mr. *Phipps.* But what did he ſay?

Capt. *Port.* I cannot ſay that I heard Mr. *Rookwood* ſay any thing in particular; but they all agreed to do the Thing that Day.

Sir *B. Shower.* You remember nothing that he ſaid?

Capt. *Port.* Sir *George Barcley* ſaid, We will go and prepare; and he went away with him.

Sir *B. Shower.* Pray, when did Sir *George Barcley* come into *England?*

Capt. *Port.* Truly, Sir, I don't know that; the firſt Time that I ſaw him after he came, Mr. *Charnock* brought him to my Lodging in *Norfolk-ſtreet*; but before that, Mr. *Charnock* told me he was come into *England.*

L. C. J. Hark you, Mr. *Porter*, when you came back from viewing the Ground before the firſt *Saturday*, and you ſaid you made your Report, and then it was agreed that it ſhould be done at ſuch a Place; Do you ſay the Priſoner was there?

Mr. Att. Gen. No; my Lord, he does not ſay ſo. Do you ſay Mr. *Rookwood* was there at that Time?

Capt. *Port.* No; my Lord, I don't ſay ſo.

Sir *B. Shower.* I am ſure he did not ſay ſo before; and beſides, your Lordſhip will obſerve there is no ſuch Overt-Act as that laid in the Indictment againſt the Priſoner, that Mr. *Porter* made his Report upon the View; that only concerns Mr. *Knightley.*

L. C. J. No, that is not an Overt-Act, I agree it; but I only aſk the Queſtion, Whether the Priſoner was there?

L. C. J. Treby. If it were an Overt-Act laid in the Indictment, it would not affect the Priſoner, becauſe the Viewing of the Ground, and making the Report, is Captain *Porter*'s Act, and it muſt be the Conſulting and Debating afterwards that muſt affect the Priſoner, if he be concern'd.

Mr. *Conyers.* The Meetings and Conſultations that are laid in the Indictment are the Overt-Acts.

Mr. Sol. Gen. Well, if they have done with Capt. *Porter*, we deſire Mr. *George Harris* may be ſworn.

Sir *B. Shower.* My Lord, we beg Leave to oppoſe Mr. *Harris*'s being ſworn; here was a Proclamation that did take Notice of this barbarous Conſpiracy to aſſaſſinate the King, and the Proclamation did ſignify, That the King had received Information of ſeveral Perſons concerned in that Conſpiracy; and for the Encouragement of taking thoſe ſo accuſed, he did promiſe a Thouſand Pounds Reward for the taking of any of the Conſpirators; and in the Concluſion of the Proclamation there is a Clauſe, 'That 'if any of the Conſpirators ſhould diſcover or apprehend any of the other 'Perſons that were therein named, ſo as that they ſhould be brought to 'condign Puniſhment, ſuch Conſpirator ſo diſcovering ſhould receive a 'Thouſand Pounds Reward for any of the other Perſons apprehended, 'and his own Pardon.' My Lord, we have a Witneſs here ready to prove that this was Mr. *Harris*'s Caſe; he was himſelf in the Proclamation, he did actually diſcover Mr. *Rookwood*, the Priſoner at the Bar, and was inſtrumental in the taking of him; and conſequently upon this Clauſe of the Proclamation, if he be brought to Juſtice, then is Mr. *Harris* intitled to this Reward and his Pardon; and conſequently he has ſuch an Intereſt and Advantage to himſelf as will prevent his being a Witneſs. It is true, indeed, where it is at the King's Suit, in a capital Caſe, it is pretty hard to ſay that a Man has an Intereſt; but we think, as this Caſe is circumſtantiated upon this Proclamation, that the ſame Objection lies againſt him as would do if this were a civil Cauſe; if we ſhew how he is to have an Advantage by the Event of this Cauſe, then he is not to be admitted a Witneſs.

L. C. J. Did he apprehend any Body upon the Proclamation?

Sir *B. Shower.* Yes; he apprehended Mr. *Rookwood* himſelf, or was the Cauſe of it, and thereby is intitled to the Reward and his Pardon.

Mr. *Phipps.* That upon which we ground our Objection is the different Penning of the Proclamation; for if any one that is not a Conſpirator do but diſcover and apprehend any of the Perſons named in the Proclamation, he is intitled to the Thouſand Pounds; but the Conſpirators themſelves muſt go further; for a bare Diſcovery and Apprehending any of their Accomplices will not entitle them to the Reward mentioned in the Proclamation, but they muſt diſcover and apprehend their Accomplices ſo as they be brought to Juſtice, before they can be entitled to the Reward: And to be brought to Juſtice for any Crime, is in common Underſtanding to be brought to ſuch Puniſhment as the Law inflicts for the Offence. Now, Mr. *Harris*'s Caſe is this: He diſcovered Mr. *Rookwood*, and went with the Guards to the Compter and ſeiz'd him: And if Mr. *Rookwood* ben't convicted, Mr. *Harris* is not to have any Thing for his Pains; but if he be convicted, Mr. *Harris* is intitled to the Thouſand Pounds and his Pardon. And therefore, ſurely, Mr. *Harris* cannot be admitted an Evidence againſt Mr. *Rookwood*, ſince he is to receive ſo great a Benefit by his Conviction. Upon an Indictment for an uſurious Contract, the Perſon whoſe Deed it is cannot be a Witneſs, becauſe 'tis to avoid his own Act: So in an Indictment for Perjury, on the Stat. 5 *Eliz.* the Party injured by the Perjury cannot be a Witneſs, becauſe he is to have half the Forfeitures.

Mr. Att. Gen. I ſuppoſe they will make out their Objection before they expect an Anſwer from us.

Sir *B. Shower.* I hope your Lordſhip will not put us to prove a Copy of the Proclamation from the Inrolment, but that we may have the ſame Favour as in the Caſe of the Statute Book, that the Print of it may be allow'd for Evidence.

Mr. Att. Gen. My Lord, we will not ſtand with them for that, we know they are miſtaken throughout, we conſent the Proclamation ſhould be read.

Cl. of Arr. reads.

By the King a Proclamation.

William R.

'WHEREAS His Majeſty has received Information upon Oath, 'that the Perſons herein after named have, with divers other 'wicked and traitorous Perſons, entered into a horrid and deteſtable Con'ſpiracy to aſſaſſinate and murder His Majeſty's ſacred Perſon, for which 'Cauſe ſeveral Warrants for High Treaſon have been iſſued out againſt 'them, but they have withdrawn themſelves from their uſual Places of 'Abode, and are fled from Juſtice: His Majeſty has therefore thought fit, 'by the Advice of his Privy Council, to iſſue his Royal Proclamation, 'and His Majeſty does hereby command and require all His loving Sub'jects to diſcover, take, and apprehend *James* Duke of *Berwick*, Sir *George* '*Barcley*, Major *Lowick*, *George Porter*, Capt. *Stow*, Capt. *Walbank*, 'Capt. *James Courtney*, Lieutenant *Sherborne*, *Brice Blair*, —— *Dinant*, '—— *Chambers*, —— *Boiſe*, *George Higgins*, and his Two Brothers, Sons 'to Sir *Thomas Higgins*, —— *Davis Cardell*, —— *Goodman*, —— *Cram'burne*, —— *Keyes*, *Pendergroſs* alias *Pendergraſs*, —— *Bryerly*, —— 'Trevor, Sir *George Maxwell*, —— *Durance*, a Fleming, *Chriſtopher* 'Knightley, Lieutenant *King*, —— *Holmes*, Sir *William Parkyns*, —— '*Rookwood*, wherever they may be found, and to carry them before the next 'Juſtice of Peace or Chief Magiſtrate, who is hereby required to com'mit them to the next Gaol, there to remain until they be thence delivered

'by due Course of Law. And His Majesty doth hereby require the said 'Justice, or other Magistrate, immediately to give Notice thereof to Him 'or His Privy Council. And for the Prevention of the going of the 'said Persons, or of any other, into *Ireland*, or other Parts beyond the 'Seas, His Majesty does require and command all His Officers of the 'Customs, and other His Officers and Subjects of and in the respective 'Courts and Maritime Towns and Places within His Kingdom of *Eng-* 'land, Dominion of *Wales*, and Town of *Berwick* upon *Tweed*, that 'they and every of them, in their respective Stations and Places, be careful 'and diligent in the Examination of all Persons who shall pass or en- 'deavour to pass beyond the Seas, and that they do not permit any Person 'whatsoever to go into *Ireland*, or other Places beyond the Seas, without a 'Pass under His Majesty's Royal Sign Manual until further Order. And 'if they shall discover the said Persons above-named, or any of them, then 'to cause them to be apprehended and secured, and to give Notice as 'aforesaid. And His Majesty does hereby Publish and Declare to all Per- 'sons who shall conceal the Persons above-named, or any of them, or be 'aiding and assisting in the concealing of them, or furthering their Es- 'cape, That they shall be proceeded against, for such their Offence, 'with the utmost Severity, according to Law. And for the Encourage- 'ment of all Persons to be Diligent and Careful in endeavouring to Dis- 'cover and Apprehend the said Persons, We do hereby further Declare, 'That whosoever shall Discover and Apprehend the Persons above-named, 'or any of them, and shall bring them before some Justice of Peace, or 'chief Magistrate, as aforesaid, shall have and receive as a Reward the 'Sum of One Thousand Pound; which said Sum of One Thousand 'Pound, the Lords Commissioners of His Majesty's Treasury are hereby 'Required and Directed to pay accordingly. And if any of the Persons 'above-named shall Discover and Apprehend any of their Accomplices, so 'as they may be brought to Justice, His Majesty does hereby Declare, 'That every Person making such Discovery shall have His Majesty's 'Gracious Pardon for his Offence, and shall receive the Reward of One 'Thousand Pound, to be pay'd in such manner as aforesaid.

Given at our Court at Kensington, *the 23d Day of* February, 1695-6, *in the Eighth Year of our Reign.*

GOD SAVE THE KING.

Mr. *Phipps*. My Lord, The different Penning of the Clauses is not only in that Proclamation, but it is the Language of every Proclamation that has gone out for the Apprehending any of the Conspirators.

Mr. Att. Gen. My Lord, all that we say in Answer to this Objection, is, That Mr. *Harris* is not nam'd in that Proclamation.

L. C. J. What say you to that, Sir *Bartholomew Shower?* He is not named in the Proclamation: And so if he hath discovered and apprehended the Prisoner, he has earn'd his Money, whether he be Convicted or not, because *Rookwood*'s Name is in the Proclamation, tho' his is not.

Mr. *Phipps*. Then, my Lord, with humble Submission, here is another Proclamation wherein he is nam'd; we desire that may be read.

Mr. Sol. Gen. And when it is read, it will be as little to your Purpose as the other.

Mr. Att. Gen. Let them read what they please, we need say nothing at all to it.

L. C. J. Certainly upon this Proclamation, there's no Objection; for he is intitled to his One Thousand Pound already, tho' *Rookwood* be never convicted.

Mr. *Phipps*. But is he not by this Proclamation, which mentions his Accomplices, intitled to his Pardon? If so, he swears to secure himself.

L. C. J. By the Apprehending and Discovering, he's intitled to his Pardon.

Mr. *Phipps*. But not without he be brought to Justice; that is to say, till he be convicted; therefore he cannot be an Evidence to convict him.

L. C. J. That is, as to any that are there named, if any of them discover and apprehend one another, it must be so as that they be brought to Justice: But if any Person that is not named there does apprehend any that is, he is intitled to the One Thousand Pound, barely by the Apprehension.

Mr. *Phipps*. Then there is another Proclamation where they are both named, as Mr. *Rookwood* tells me.

Sir *B. Shower*. My Lord, We will set this Matter right; we will show the other Proclamation, in which, if I am rightly inform'd, for I have not read it, Mr. *Harris* is nam'd.

Mr. Att. Gen. If you have not read it, I would advise you not to trouble the Court with it; for you will find the latter Part is restrain'd to three or four particular Persons, of which he is none.

Rookwood. I am named in the Proclamation.

Mr. Att. Gen. Aye, but read the latter Part of it, and you will find you are not nam'd in the Clause that they referr'd to: You need not read the former Part of the Proclamation, we agree the Prisoner is named there but only look towards the Bottom, which is the Clause that they refer to.

Cl. of Ar. (reads.) *And we do hereby further declare*, &c.

Mr. Att. Gen. They have not considered the Proclamation, and therefore make an Objection of they don't know what.

Sir *B. Shower*. We are in your Lordship's Judgment.

L. C. J. For what? See if you can make or state a Case for our Judgment.

Sir *B. Shower*. Mr. *Rookwood* is mention'd in the first Proclamation, and *Harris* is not: but there are the Word Accomplices: He is likewise mentioned in the last Proclamation, but not in the last Clause of it. I confess, if he had, it had been plain it would have taken off his Testimony; but now we must submit it to you, whether he is not an interested Person, and consequently no good Witness.

L. C. J. Truly I do not see any Colour for the Objection. Is he not as well intituled to his One Thousand Pound, tho' Mr. *Rookwood* had never been try'd, by the bare Apprehending of Mr. *Rookwood*, as if he was convicted?

Sir *B. Shower*. No, my Lord; because the Words are, so as he may be brought to Justice.

L. C. J. That is not so, as to any Person that apprehends one mentioned in the Proclamation, if the Person that apprehends be not mention'd in it, and named himself; if any one that is not mention'd apprehend one that is mention'd, he is intituled, by the Apprehension, to the One Thousand Pound. If any one that is mention'd apprehend another, then he is to bring him to Justice; now Mr. *Harris* is not named in this Proclamation, and so as to the One Thousand Pound, he stands in the same Condition as any other Person that discovered or apprehended one of the Persons there nam'd.

Sir *B. Shower*. But it seems he was one of the Conspirators, because he is himself described in another Proclamation.

Mr. Att. Gen. If it were so, it would not be material, nor any Manner of Objection; but as they have made their Objection upon these Proclamations, we think there is nothing for us to give an Answer to.

Mr. *Cowper*. Nay, my Lord, if it were so, will Sir *Bartholomew Shower* say his Client is not brought to Justice unless he be convicted? I am sure the Words *Convicted* or *Attainted*, are not in the Proclamation.

L. C. J. There is nothing in it: you must swear Mr. *Harris*. *(Which was done accordingly.)*

Mr. Sol. Gen. Will you give an Account to my Lord and the Jury, what you know of this Conspiracy against the King's Life, from the first Time you were acquainted with it, and what Hand the Prisoner at the Bar had in it.

Mr. Att. Gen. Pray give an Account of the whole Thing, your Coming over, and who sent you, and upon what Errand, and the whole that you know of this Conspiracy.

Capt. *Harris*. Upon the 14th of *January* last, the *French* Stile, New Stile, I was at St. *Germains*, where I was sent for by King *James*, and was ordered to wait his Dinner till it was over, and accordingly I did wait till his Dinner was over; and then I came in, and Col. *Parker* was with him, and one Mr. *Hare*, who is also mentioned in the Proclamation, was there also: The King told me he was sensible I had served him well, and now he had an Opportunity of doing something for me; he told me he would send me into *England*, where I should be subsisted, and I was to follow the Orders of Sir *George Barcley*; and accordingly he order'd me ten Lewidores to be paid by Mr. *Caroll*, who is Secretary to the late Queen; and Col. *Parker* went along with me, and Mr. *Hare*, to *Caroll*, and told him he came from the King, and we had the Lewidores, and we went to *Calais*, in Order to our coming over hither: But we were told if we were wind-bound, that the Money we received would not bear our Charges; there was Orders given for our further Subsistance at *Calais*, to the President there. Accordingly we came to *Calais*, and the Wind did not serve us for eight or nine Days; and while I stay'd there, the Money that I spent at *Calais* was paid by the President of *Calais*, Monsieur *Latour*. Afterwards I landed in *England*, near *Romney* Marsh, as I was told, and I came to the House of one *Hunt*, and he provided me and my Comrade with a couple of Horses; and coming from thence, I came in the first Place to one *Tucker*'s an Apothecary in *Sandway*, and next from thence we came to *Rochester*, to *Charles Croft*'s, and from thence in a Coach to *Gravesend*, and from thence by Water to *London*: That Night we lay in *Grace-Church-street* at an Inn, it being Night, the Night-Tide, and something late. The next Day I came to a Lodging at an Acquaintance's of my Comrade's, Mr. *Hare*, at the *Unicorn* in *Brownlow-street*, one Mr. *Wateman*'s. The next Night I went to look for Sir *George Barcley*, whom the King told me I should certainly find by such a Sign of a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thursdays*, in *Covent-Garden*, where his Walk was to be in the Evening, because he was not to appear in the Day-Time openly. It happen'd that upon *Monday* Night after I came to Town, I went there, and did not find Sir *George Barcley* according to the King's Direction, which I admired at; but there was one Mr. *Berkenhead*, who told my Comrade, a Day or two after, That Sir *George Barcley* would needs speak with me, and accordingly I met with him; and he asked me how the King, Queen, Prince, and Princess did, and I told him they were very well; I told him I was appointed to attend him, and obey his Orders. He told me he had no Money at present, but in two or three Days he would send some; and so he did, by Major *Holmes*. I had five Shillings a Day for Subsistance, and I had no Horse; and when I had a Horse, it was six Shillings a Day; after which rate I had Subsistance for a Month at five Shillings a Day, Guineas going then at Thirty Shillings. Major *Holmes* paid me the Money by Sir *George Barcley*'s Order, as he told me, and he afterwards gave me a Guinea, and that was the first *Saturday* when the Assassination was design'd; for that we told him we wanted Money, and it was not reasonable we should take our Horses out of the Stable before we paid for them: And I met Sir *George Barcley* several Times at *Covent-Garden*, and he told me it was a suspicious Place, and desired me not to come any more there; but when he had any particular Orders to give me, he would give me Notice of it where I should meet him; and accordingly I did meet him several Times.

Mr. Att. Gen. Now, Sir, will you tell what you know as to the Prisoner at the Bar?

Capt. *Harris*. As to Mr. *Rookwood*, the *Saturday* that the Assassination was design'd to be, the first Time that I knew of it, I met Mr. *Rookwood*. at one Mr. *Burch*'s Lodging, where he was up, and I saw him in a great Hurry and some Consternation, and in came M. *Bernarde*; I ask'd him the Meaning of it, and what they were going about; and Mr. *Rookwood* told me, if I would go down to Captain *Counter* I shou'd know; accordingly I went, and to the best of my Remembrance, he gave me a little Note to Captain *Counter*, but that I am not positive in. I went to Capt. *Counter*, and as soon as ever I came, he told us, We must be immediately ready to go to *Turnham-Green*.

Mr. Att. Gen. Where was that?

Capt. *Harris*. At the *Woolpack*, that was the Sign——as near as I remember. Mr. *Hare* and I were ordered together to come there, and there was Mr. *Hungate*, who had been there some Time, and when I came in, Sir *George Barcley* did declare Laughing, *These are my Janissaries*: And he talk'd something of bringing the Garter, and of attacking the Coach; but he went out of the Room, and afterwards he came in and declared, *We were all Men of Honour, and that the Business we were going about, was to attack the Prince of* Orange; but *Durant* came in after that, and said, *The Prince of* Orange *did not go out that Day*. When he talk'd of attacking the Prince of *Orange*, I was very much startled, not knowing any Thing of it before; and I came the next Morning to Mr. *Rookwood*, and ask'd him if we were to be the Murderers of the Prince of *Orange*: Says Mr. *Rookwood* to me, *I am afraid we are drawn into some such Business; but if I had known it before I came over, I should have begg'd the King's Pardon at St.* Germains, *and not have come over hither*: and said I, *This is*

very fine, we have ſerv'd to a very good Purpoſe, to be ſent over upon ſuch an Errand and Account. After this Mr. *Rookwood*, and Mr. *Lowick*, and I, had a Meeting at *Red-Lyon-Fields*, where we did diſcourſe about the Matter. I did often declare againſt it, That it was ſo barbarous a Thing, that no Man of Honour almoſt would be guilty of it; but Major *Lowick* anſwered, That we were to obey Orders; for ſure Sir *George Barcley* wou'd not undertake a Thing of that Nature without Orders.

Mr. Att. Gen. Pray what ſaid Mr. *Rookwood?*

Capt. *Harris.* He own'd it was a barbarous Thing; but he was ſent over to obey Sir *George Barcley*'s Orders, which he had ſeveral Times declared he was reſolved to do; upon that we parted: So afterwards I came to Mr. *Rookwood*'s Lodging; it was the *Saturday* Morning I came to him, and ſo went to Sir *George Barcley*'s; while he was there, Mr. *Rookwood* gave me a Note, naming ſo many Names, particularly Mr. *Hungate*, Mr. *Hunford*, Mr. *Hare*, and his own Name at Top, not the Name that he is arraigned by here; but a ſham Name that he had, as the reſt of us all had ſham Names, which at that Time we went by.

L. C. J. What was your Name?—Capt. *Harris*, my Name is *Jenkins.*

L. C. J. Who gave you that Name?

Capt. *Harris.* King *James* at St. *Germains*, and he gave Mr. *Hare* the Name of *Guiney*, and Mr. *Rookwood*'s Name was *Roberts.* King *James* told us in his Bed-chamber, We were to go by thoſe Names.

Mr. Att. Gen. Pray, Sir, what did *Rookwood* ſay to you, when he gave you that Liſt?

Capt. *Harris.* He told me, he was to go to *Turnham-Green*, and I was to go along with him, and ſays he to me ſmiling, *You ſhall be my Aid de Camp*; and get the Reſt of the Gentlemen ready; and accordingly I went to look for ſeveral of the Perſons——particularly for Mr. *Blackburne:* When I came back again, I found him lying on his Bed, and that Sir *George Barcley* had told him the Prince of *Orange* did not go out that Day; and from thence we went to Dinner, where Major *Lowick* din'd with us, and Mr. *Bernarde* and Major *Lowick* ſeeing me in a Heat, aſk'd me, Why I was in ſuch a Sweat? I told him I were getting thoſe Men ready for Mr. *Rookwood*, who had made me his *Aid de Camp:* Says Major *Lowick* to me, You may very well do it, for you have Six Shillings a-Day allow'd you, and I have nothing; I bring two Men at my own Charge. Said I, Major *Lowick*, I wonder you don't apply yourſelf to Sir *George Barcley*, and then, I believe, you may be ſubſiſted too. He anſwer'd me, He did not think it worth the while to trouble him, ſince he had never ſpoke to him of it before: and *Rookwood*, and *Bernarde*, and *Lowick*, and myſelf, ſeveral Times met in *Red-Lyon-Fields*, and talk'd of attacking the Prince of *Orange.*

Mr. Att. Gen. Who did?

Capt. *Harris. Rookwood*, *Bernarde*, *Lowick*, and myſelf.

Mr. Att. Gen. Pray, Sir, let me aſk you one Queſtion. Where was your Horſe at firſt?

Capt. *Harris.* At firſt it was at my Lord *Feverſham*'s Stables, as they told me, in *Somerſet-Houſe.*

Mr. Att. Gen. Where were the other Perſons Horſes?

Capt. *Harris.* There was Mr. *Hungate*'s and Mr. *Hare*'s Horſes in the ſame Place, at the ſame Time, as they told me.

Mr. Att. Gen. How came you by your Horſe there?

Capt. *Harris.* Major *Holmes* did deliver my Horſe, and committed it to my Care, and I carry'd it thence to another Place.

Mr. Att. Gen. Did you obſerve there was any more Horſes there?

Capt. *Harris.* I believe there was Five or Six, as near as I can gueſs.

Mr. Att. Gen. Do you know where *Rookwood* was to have his Horſe?

Capt. *Harris.* He had a Horſe; but whence he had it I don't know.

Mr. Att. Gen. Had you any Arms delivered you?

Capt. *Harris.* Yes, I had by Capt. *Counter.*

Mr. *Conyers.* Were you at no other Place together that *Saturday* Night, the 22*d* of *February*, becauſe you ſay you din'd together?

Capt. *Harris.* Yes, we were at the *Bear* Tavern.

Mr. *Conyers.* What Diſcourſe paſs'd between you there?

Capt. *Harris.* They were talking about the Aſſaſſination; but what any particular Perſon ſaid, I cannot tell.

Mr. *Conyers.* Pray who were there?

Capt. *Harris.* There was Mr. *Knightley*, Captain *Rookwood*, and Mr. *King*; and *Knightley* went out, and came in again, and declared, we muſt have a great deal of Care of ourſelves, or we ſhould be taken up: and he whiſper'd at firſt, and afterwards I aſk'd him what it was; and he told me, and ſaid, *We muſt have a Care of ourſelves.* Says Mr. *King*, ſtaring this Way with his Eyes, *Surely God Almighty is on our Side*; and ſo we parted.

L. C. J. When was this?

Capt. *Harris.* This was the Night of *Saturday* the 22d, when it was diſcover'd; for ſome of them were taken up the next Day.

Mr. Att. Gen. Was *Rookwood* there at that Time at the *Bear* Tavern?

Capt. *Harris.* I cannot poſitively ſay whether he was or not.

Mr. Att. Gen. What Diſcourſe had you there?

Capt. *Harris.* We talk'd of Aſſaſſinating the King; but what it was in particular, I cannot tell.

L. C. J. Was *Rookwood* there?

Capt. *Harris.* Yes, I believe he was; but I cannot poſitively ſay.

L. C. J. You ſay it was the laſt *Saturday* that the King was to go abroad, that you apprehended you were diſcovered?

Capt. *Harris.* Yes, we apprehended we were diſcovered before that; for Mr. *Lowick* told me, that three or four Days before, in that Week, that his Name, and one *Harriſon*'s, were given into the Council, and another, and another, Two or Three of them, as he told me; I think Three or Four; and upon that Account Major *Lowick* went from his Lodging, and did not lie at his Lodging the Night before; and I came to Major *Lowick*, and he told me the ſame Thing at the *King's-Arms* Tavern.

Mr. Att. Gen. Can you remember what Diſcourſe you had that *Saturday* Night?

Mr. *Cowper.* You ſay that on *Saturday* the 22d, Mr. *Rookwood* gave you the Liſt.

Capt. *Harris.* I do not ſay it was the 22d, for I cannot ſwear to the Day of the Month; but it was the ſecond *Saturday* that we were to have gone about this Buſineſs.

Mr. *Cowper.* You ſay he gave you a Liſt of Names: Pray, when he gave you that Liſt, what Diſcourſe happened in the Room juſt before, or after the giving of the Liſt?

Capt. *Harris.* Sir, I think I told the Court that before.

Mr. *Cowper.* Sir, I deſire you would repeat it.

Capt. *Harris.* My Lord, I humbly deſire to know whether I am to anſwer that Gentleman that Queſtion?—*L. C. J.* Yes, you are to anſwer, being upon your Oath, and to tell the whole Truth.

Mr. *Cowper.* I aſked him the Queſtion ſo fairly, what Diſcourſe introduced the giving of the Liſt, and what followed upon it, that I perceive this Gentleman does not know which Side I am of.

Capt. *Harris.* Mr. *Rookwood* ſaid we were to go to *Turnham-Green*; and he told me, that I was to be one of his Party, that we were to attack the Prince of *Orange.*

L. C. J. You ſay you were to be one of his Party; pray was it there that he told you, you ſhould be his *Aid de Camp?*

Capt. *Harris.* Yes, he did tell me I was to be his *Aid de Camp.*

Mr. *Phipps.* Whoſe Hand-writing was that Liſt?

Capt. *Harris.* I cannot tell, I had it from that Gentleman.

Mr. *Phipps.* But whoſe Writing was it?

Capt. *Harris.* Indeed I know not his Hand-writing, and therefore cannot tell whoſe it was: He is for his Life, but I believe he cannot deny any Thing that I have ſaid, I ſuppoſe not: I ſhould be very ſorry to accuſe Mr. *Rookwood* of any Thing that was not true.

Mr. *Phipps.* Pray whoſe Names were in that Liſt?

Capt. *Harris.* I have mention'd Mr. *Hare*, Mr. *Hanford*, Mr. *Blackburne*, myſelf, and you, Mr. *Rookwood*, had your own Name at Top.

Rookwood. What is that *Blackburne?*

Capt. *Harris.* He is a *Lancaſhire* Man.

Rookwood. It's a very ſtrange Thing I ſhould give you a Liſt with a Man's Name that I don't know; I declare it, I know no ſuch Perſon.

Capt. *Harris.* Mr. *Rookwood*, I believe you are very ſenſible I do not accuſe you of any Thing that is not true.

Mr. *Phipps.* When did you ſee that Liſt laſt?

Capt. *Harris.* He gave it into my Hands, and had it from me again, or I threw it away afterwards.

Rookwood. But you that were to be an Evidence ought to have kept it to juſtify your Evidence.

Capt. *Harris.* Truly I did not intend to have been an Evidence at that Time.

Mr. Att. Gen. If they will aſk him any Queſtions, let them.

Sir *B. Shower.* No, indeed, I will aſk him no Queſtions.

Mr. Att. Gen. Then, my Lord, we have another Piece of Evidence which we would offer to your Lordſhip, which is not direct Evidence againſt the Priſoner, but only to prove a Circumſtance or two of what has already been ſworn: We do acknowledge, my Lord, it does not affect Mr. *Rookwood*, but only to ſtrengthen and confirm what they have ſworn.

Sir *B. Shower.* With Submiſſion, we hope it will not be Evidence fit to be given as to the Priſoner at all; for becauſe a Man may ſwear true in the particular Circumſtance of a Thing, that therefore he ſwears true what he ſwears againſt the Priſoner, I think is no Conſequence in the World.

L. C. J. It is a Thing diſtinct and foreign to the Matter, as to Mr. *Rookwood.*

Mr. Att. Gen. My Lord, we do not ſay it directly affects Mr. *Rookwood*; but when your Lordſhip has heard it, we ſhall ſubmit it to you, how far it confirms even the Evidence given againſt him.

Mr. *Conyers.* My Lord, we ſay the Priſoner was to have his Horſe from *Somerſet-Houſe*; and that there were Horſes plac'd there for that Purpoſe we are going to prove.

Mr. Att. Gen. My Lord, it is one entire Conſpiracy, in which every one had his Part; one was to have his Horſes and his Party in one Place, and another in another: Now that there were at ſuch Time ſuch Horſes at *Somerſet-Houſe*, and thoſe Horſes were delivered out from *Somerſet-Houſe*, is certainly a Confirmation of the Truth of what the Witneſſes have ſaid.

L. C. J. It is ſo. If that be it you offer, it is very material.

Mr. *Conyers.* We ſhall prove, That upon the Diſappointment on the firſt *Saturday*, the 15th of *February*, they were to be ready againſt the 22d; and you will hear how the Horſes were diſpos'd of in the mean Time. Call *Chamberlain*, *Maſkel*, and *Allen.*

Mr. Att. Gen. Call any of them, I believe it is enough.

(*Mr.* Chamberlain *appeared, and was ſworn.*)

Mr. Att. Gen. Pray will you give my Lord and the Jury an Account what you know of any Horſes that were brought to *Somerſet-Houſe* about *February* laſt, and how long they ſtay'd there?

Chamberlain. There was ſix Horſes.

Mr. Att. Gen. Who brought them in?

Chamberlain. They were ſent in by ſome Perſons in Mr. *Lewis*'s Name.

Mr. Att. Gen. Had you any Direction to take Care of them?

Cham. Mr. *Lewis* ſent in a Note to take Care of them for a Night or two.

Mr. Att. Gen. Who carried them away?

Chamberlain. I cannot tell: Some People came to ſee 'em that I never ſaw before, and they took care of them; I know not who they were, and I never ſaw them ſince.

Mr. Att. Gen. What Time was it that they came for them?

Chamberlain. It was about the middle of the Day.

Mr. Att. Gen. What Month was it in?

Chamberlain. I think it was much about the latter End of *February*, to the beſt of my Remembrance.

Mr. Att. Gen. How long was it before the Plot was diſcover'd?

Chamberlain. It was about a Week, or a ſmall Matter, before the Plot was diſcover'd, to the beſt of my Knowledge.

Mr. Att. Gen. How long ſtaid the Horſes there at *Somerſet-Houſe?*

Chamberlain. Three of them ſtaid a Night or two; but the other three of them about a Matter of a Week or ten Days.

Mr. Att. Gen.

Mr. Att. Gen. Who own'd thoſe Horſes?

Chamberlain. They were ſent in in Mr. *Lewis*'s Name; but who own'd them I cannot tell indeed.

Mr. *Conyers.* Then ſwear *John Allen.* (*Who was ſworn.*)

Pray tell my Lords and the Jury what you know concerning any Horſes about the Time of the Breaking out of the Plot.

Mr. Att Gen. We mean in *Somerſet-Houſe* Stable.

Allen. There was ſeven Horſes came in.

Mr. *Conyers.* Who brought them?

Allen. There was ſix in the firſt Place; one came in afterwards in the Evening.

Mr. *Conyers.* By whoſe Order were they brought there?

Allen. By Mr. *Lewis*'s Order.

Mr. Att. Gen. How long did they ſtay there?

Allen. Some of them ſtaid there ſeveral Days; three of them went away the next Day, as I think.

Mr. *Conyers.* Do you remember about what Time thoſe Horſes were brought thither?

Allen. They were brought there, I believe, about ſeven or eight Days before the Plot broke out.

Mr. Att. Gen. My Lord, We only call theſe Witneſſes to confirm the Teſtimony of the others, that there were ſuch Horſes there at that Time, and for the preſent we reſt it here.

L. C. J. Then, Gentlemen, what ſay you to it for the Priſoner?

Sir *B. Shower.* If your Lordſhip pleaſe, we are of Counſel for the Priſoner; and that which we are to inſiſt upon is this, which we ſubmit to your Lordſhip's Judgment: In the firſt Place, whether here be two Witneſſes againſt the Priſoner to prove this Treaſon, according to the Statute of *Edw.* VI. which requires two Witneſſes in High-Treaſon, and lawful ones; but that in the firſt Place we ſay, there are not two Witneſſes at all, at leaſt not to any Overt-Act that is laid in this Indictment. As to what Captain *Porter* ſays of what paſſed between him and *Durance*, the Dialogue between them where *Rookwood* was preſent, we are in your Lordſhip's Direction; and we doubt not but the Jury will take it into their Conſideration, how far that affects the Priſoner; that he ſhall not be concerned in any Tranſaction between Mr. *Porter* and any other Perſons; none of their Declarations, none of their treaſonable Practices, can be imputed to or affect him in any Way whatſoever. Now all that Captain *Porter* ſays of Mr. *Rookwood* is, that he was once at the *Globe* Tavern, and there was a Diſcourſe about this Matter; and then he tells your Lordſhip of a Dialogue between him and *Durance*, and an Account of what paſſed between them; but he does not ſay any thing of Mr. *Rookwood* being any Ways concern'd in the Matter, but only that he dropped this Expreſſion, It was a deſperate Adventure, a dangerous Enterpriſe, and he ſeemed againſt it; but in the End he concluded with ſomething in *French*, which what they are, and what they mean, we muſt ſubmit to your Lordſhip and the Jury; he interprets it, when Sir *George Barcley* ſaid he muſt have a Share in it, then *Rookwood* replied, There's an End of it. But there is not one Word of Agreement ſworn to, that Mr. *Rookwood* ſpoke to ſhew his Conſent. There is but one Time more that Mr. *Porter* ſwears to, about the Priſoner at the Bar, and that is, at his Lodgings in *Little Rider-ſtreet*; for as to the other Conſults, Mr. *Rookwood* was not preſent there: It ſeems there was a Diſcourſe about the Affair, but that *Rookwood* ſaid nothing, but went away; there was not ſo much as the leaſt Intimation of an Agreement to any ſuch Deſign, or Approbation of what was agitated in the Company; and we inſiſt upon it as to this in Point of Law, that it amounts to no more than Miſpriſion of Treaſon at moſt. My Lord, I will not now contend about Notions, nor will I argue whether Conſulting and Agreeing be Evidence of an Overt-Act; I ſubmit to your Lordſhip's Directions, notwithſtanding the Variety and Difference of Opinions that have been.

L. C. J. Sir *Bartholomew Shower*, I know not what Variety of Opinions you mean; there have been ſome Diſcourſes in Pamphlets, I agree; but it was always taken and held for Law, that Conſulting and Agreeing was an Overt-Act.

Sir *B. Shower.* Here is no Evidence of any Agreement.

L. C. J. Pray let us hear what you ſay to that.

Sir *B. Shower.* It is not the being preſent where Traitors do conſult and conſpire the Death of the King, unleſs they actually agree; nor is it Evidence ſufficient to guide or prevail upon a Jury's Conſcience to affirm upon their Oaths, that ſuch a one is guilty of High-Treaſon, becauſe ſuch a one was there, and ſaid nothing at all; for the not diſcovering afterwards, nor accuſing, is no Evidence at all againſt Mr. *Rookwood*. As to Mr. *Harris*, he gives you an Account of a great deal that does not affect Mr. *Rookwood*, neither all that paſſed at St. *Germains*, nor in their Journey into *England*; for all that may be true, and yet the Priſoner no way concerned in it. As to what he affirms of the Priſoner, we ſhall ſubmit it to your Conſideration: What it amounts to, and all that his Depoſition comes up to, is, That Mr. *Rookwood* complain'd that he was to obey implicitly Sir *George Barcley*'s Orders; and *Harris* gives an Account but of one particular Time that Mr. *Rookwood* undertook, or did agree to be concern'd in this Matter; it was but once, and that was, when he gave him the Note of thoſe that were to go to *Turnham-Green*, and that he was to be his *Aid de Camp:* And as to that, we ſhall give you an Account by Witneſſes whom we ſhall call, that theſe two Witneſſes ought not to be believed as to what they have ſworn, tho' they do not come up to make two Witneſſes according to Law upon this Indictment. What they have ſaid as to this Man, is not credible, tho' they may ſpeak true as to others; and no Doubt there was a barbarous Conſpiracy; it appears there was ſuch, beyond all Exception and Contradiction; and the Perſons that have been condemned as Conſpirators have acknowledg'd it: But, my Lord, that which is now before your Lordſhip and the Jury is, to enquire whether the Priſoner is concern'd in this Affair at all, and how far; and we hope the Jury will be of Opinion he is not concern'd. The Heinouſneſs of the Crime, and the Aggravations of it, being to be abhorr'd by all Mankind, we think ought not to ſway with the Jury, nor influence their Judgments to believe a Witneſs ever the ſooner in accuſing any other Perſon; it ought rather to have a contrary Allay; for the greater the Crime is, and the farther off from having any tolerable Opinion in the World, they ought to expect the greater Proof; and no one is to be preſum'd guilty of ſuch an Act, without very ſufficient Evidence of it; and the greater the Crime, the Proof ought to be the more poſitive and undeniable. It is not their being plainly poſitive that is ſufficient, but whether it is ſuch that is good in Law; and about that we are ſure your Lordſhip will give true Directions in point of Law: And whether the Witneſſes be credible or no, muſt be ſubmitted and left to the Jury, after we have call'd ſome Witneſſes, who will give you an Account of their Reputation.

Mr. *Phipps.* My Lord, we humbly inſiſt there are not two Witneſſes; ſuch as the Law requires, to prove the Charge upon this Indictment againſt the Priſoner: The two Overt-Acts that touch Mr. *Rookwood* are, firſt, Conſulting and Agreeing how to kill the King; the other is, the finding Arms and Horſes for that Purpoſe. But as to this latter, the finding Arms and Horſes, there is not one Evidence that comes up to it: And as to the former, the Conſultations, whether there be ſufficient Evidence that comes up to that, is very much a Queſtion with us: But we ſay, with Submiſſion, there are not two Witneſſes in that Caſe; for Mr. *Porter* ſays only what he was told by Sir *George Barcley*, that Sir *George* propoſed this Matter; but withal he tells you, that when Sir *George Barcley* propoſed it, and Mr. *Rookwood* was inform'd what the Deſign was, he was ſo far from Conſpiring, Conſulting, or Agreeing to do it, that he ſaid it was a barbarous Act, and he recoil'd at it. Then at laſt ſays Sir *George Barcley*, *You muſt command a Party.*

L. C. J. Well, and what ſaid *Rookwood* then?

Mr. *Phipps. Porter* ſays, he then ſaid, There's an End of it. Now, my Lord, what Evidence is this of a Conſultation and Agreement? And this is all that *Porter* ſays. As to what Mr. *Harris* ſays, we are to conſider whether the Liſt given to him be an Overt-Act; and there the Point in Queſtion is, Whether that Liſt can be given in Evidence againſt Mr. *Rookwood*, upon this late Act of Parliament, as an Overt-Act, it not being laid in the Indictment? There is indeed an Overt-Act of a Liſt laid in the Indictment, as given to *Cranburne*, but none as given to Mr. *Rookwood.*

L. C. J. Pray take the Evidence right: Firſt, What will you make an Overt-Act? What do you think when there is a Debate among divers Perſons about killing the King?

Sir *B. Shower.* With Submiſſion, that will be no Overt-Act, if there be a Debate of ſuch a Matter, tho' he be preſent.

L. C. J. Aye; but when there is a Conſult, and upon Debate a Reſolution is formed, and tho' he does at firſt diſlike it; yet when he is told he muſt command a Party, he ſays he is content, or there's an End of it---What do you make of that?

Sir *B. Shower.* He ſaid he did not like it; it was a barbarous, deſperate Deſign.

L. C. J. It's true; but when Sir *George Barcley* ſaid he ſhould command a Party, he acquieſced, and ſaid there was an End of it. There was a Diſcourſe about Cutting off the King, and that was agreed upon in the Company at that Time; and tho' at firſt he did not like it, yet he might afterwards agree to it.

Sir *B. Shower.* My Lord, that is it which we deny; we ſay there is no Proof of his Agreement to it.

L. C. J. Captain *Porter* ſays, he did declare that he ſaid he look'd upon it as a deſperate Deſign, and was averſe from being engaged in it, but afterwards did agree to it: Whether is not that ſuch an Overt-Act as is laid in the Indictment?

Sir *B. Shower.* My Lord, We muſt beg Leave for the Priſoner in a Caſe of this Nature, that it may be recollected what the Evidence did ſay. Mr. *Porter* did not take upon him to affirm that Mr. *Rookwood* conſented to it, but only ſaid, *There was an End of it.* Now we muſt leave that to the Jury, what they can make of ſuch a doubtful Expreſſion.

L. C. J. Call Mr. *Porter* in again.

Mr. *Conyers.* My Lord, the firſt Meeting Mr. *Porter* ſpeaks of, where the Priſoner Mr. *Rookwood* was, is at the *Globe* Tavern, where this Diſcourſe was; the next Meeting that he ſpeaks of was on the *Friday* Night before the firſt *Saturday* when the Buſineſs was to be done; and afterwards he met at *Porter*'s Lodgings, on *Saturday* Morning, in *Rider-ſtreet.*

(*Then Capt.* Porter *came in again.*)

L. C. J. Hark ye, Mr. *Porter*, the firſt Time that this Matter was propoſed, when Mr. *Rookwood* was preſent, you ſay was at the *Globe* Tavern?

Capt. *Porter.* Yes, my Lord, it was.

L. C. J. And you ſay he diſliked it, and did not care to be concerned in it?

Capt. *Porter.* Yes, my Lord, he did ſo.

L. C. J. Well, what ſaid Sir *George Barcley?*

Capt. *Porter.* Sir *George Barcley* ſaid, he ought to obey his Orders, for he had ſuch a Commiſſion for ſuch a Thing, and he drew out a Scheme how it was to be done; and when Sir *George Barcley* told Mr. *Rookwood* he ſhould command his Party, he replied in *French*,

There's an End of it.

L. C. J. This was at the *Globe* Tavern, was it not?

Capt. *Porter.* Yes, my Lord, it was.

Mr. Att. Gen. Pray then, Capt. *Porter*, let me aſk you another Queſtion: Was he afterwards with you at any other Meeting, and when and where?

Capt. *Porter.* He was with me upon *Saturday* the 15th, at my Lodging in *Little Rider-ſtreet*, where was Sir *George Barcley* and others.

Mr. Att. Gen. What Diſcourſe happen'd then, I pray?

Capt. *Porter.* They did there diſcourſe the whole Matter, and Sir *George Barcley* was not for going at that Time, becauſe there was ſo many People that went with the King, that there would not be a good Opportunity to effect the Deſign: But I told him they would go off after the Hunting was over, and ſo it was agreed upon to go on with the Undertaking.

Mr. Att. Gen. Pray, at that Time did Mr. *Rookwood* pretend to diſlike the Affair, or refuſe to be any Way at all concern'd in it?

Capt. *Porter.* No, my Lord, I can't remember that he ſpoke one Word.

L. C. J. Was Mr. *Rookwood* there?

Capt. *Porter.* Yes, there was Mr. *Rookwood*, Sir *George Barcley*, and Mr. *Durance.*

Mr. Att. Gen. And had you Diſcourſe at that Time about this Buſineſs?

Capt. *Porter.* Yes, my Lord; there was that Objection made of ſo many People going with the King, and I made that Anſwer that I tell you.

L. C. J. Why then, ſuppoſe at the *Globe Tavern* ſuch an Expreſſion had not dropt from the Priſoner, but a Man is preſent at two Conſults that are held about the Death of the King, but ſays nothing either at the firſt or ſecond, What wou'd you make of that Caſe?

Sir *B. Shower.* My Lord, I confeſs this is a Caſe of a very barbarous Nature, of which I hope my Client will acquit himſelf: But I think we have the Authority of Parliament on our Side, that this does not amount to a Proof of Treaſon It ſeems they lay a Streſs upon this, that Mr. *Rookwood* came to Captain *Porter*'s Lodgings on the *Saturday* Morning the 15th: But then take the Caſe as it is; for aught that does appear upon the Proof, he knows not upon what Account the Meeting is, beforehand. I think that is the Caſe of my Lord *Ruſſel*, upon which the Reverſal of his Attainder went, that the Evidence came ſhort, and that it was but Miſpriſion; for the Evidence was, That he was preſent at the ſuppoſed Declaration's reading, but ſaid nothing at all to it.

L. C. J. But I ſpeak of two Meetings; there was but one.

Sir *B. Shower.* My Lord, I do not know whether there were two Meetings or one then: But this is the Ground we go upon, there ought to be two Witneſſes: And if there be two Meetings upon ſuch a Deſign, the ſecond may be is accidental, and it does not appear to be a deſign'd Meeting; and there was no Appointment of Mr. *Rookwood* to be there, nor any Negotiation by way of Meſſage or otherwiſe, to that Purpoſe. Is this, my Lord, an Overt-Act? Suppoſe a Man be preſent at a Conſult about treaſonable Practices, and he uſes Words that are indifferent: It is true, in the Caſe of a Wager it amounts to an Aſſent, but it hardly will come to that when People meet by Accident, or for they don't know what.

L. C. J. How is this by Accident?

Sir *B. Shower.* It does not appear that it was by Deſign or Appointment.

L. C. J. They were Acquaintance.

Sir *B. Shower.* He had no Acquaintance with him but in Sir *George Barcley*'s Company.

L. C. J. But beſides, there was an expreſs Conſent at the *Globe Tavern*, when *Rookwood* ſaid, *There is an End of it.*

Sir *B. Shower.* That is as much as to ſay, I will not do it, I will not go with you——

Mr. Sol. Gen. Sir *George Barcley* was the Perſon whom they were to obey; and *Harris* tells you he told them what they were to do, and ſix Horſes were firſt plac'd, and three of them afterwards remov'd.

Sir *B. Shower.* That won't affect him what Sir *George Barcley* ſaid, any more than *Lewis*'s appointing of the Horſes.

L. C. J. Then here is another Thing, Why did he give a Liſt to Mr. *Harris?* The Liſt that was given had Mr. *Rookwood*'s Name at Top, as he was to command the Party, and there was *Harris*'s Name and *Hare*'s Name as of his Party; that is, their feign'd Names: Mr. *Rookwood*'s feigned Name was *Roberts* that was at Top, and they were to go to *Turnham-Green*, and *Rookwood* told *Harris* he ſhould be his *Aid de Camp.*

Sir *B. Shower.* My Lord, for that I think we have a Point of Law, that we apprehend will turn off all that Evidence, and ſure we may take that Exception now: The Words of the Act are, That no Evidence ſhall be given of any Overt-Act that is not expreſsly laid in the Indictment. Now cannot I ſhew upon this Indictment, that there is an Overt-Act in ſuch a poſitive direct Manner as they now urge about this Liſt? Will not that ſatisfy your Lordſhip's Judgment to ſet aſide all this Evidence? To make the Indictment good for Treaſon, there ought to be a Compaſſing of the Death of the King laid, and an Overt-Act laid declaring that Compaſſing; but no Evidence is to be given of any Overt-Act that is not laid in the Indictment.

L. C. J. You are not to take Exceptions to the Indictment now, but only to the Evidence.

Sir *B. Shower.* I have this one Exception more; there is never a *Quodque*, nor a *Juratores ulterius præſentant.*

L. C. J. There does not need; but that is a Fault, if any, in the Indictment, and is not to be ſtirr'd now.

Sir *B. Shower.* If there be not a Preſentment by the Jury, then there is no Overt-Act alledged: And if there be no Overt-Act alledged, or no ſuch Overt-Act, then we are within the Words of the Act, That no Evidence ſhall be given of any ſuch Overt-Act but what is alledg'd; and it is, if not expreſsly alledg'd, as if it were not alledg'd at all: Now here it is very looſe, *&c. iidem Chriſtopherus Knightley*, and ſo it goes on with the reſt, did ſo and ſo. There is a Preſentment at firſt, that they did compaſs and imagine the Death of the King; and then the Indictment comes farther, and ſays, that Forty Men ſhould do this Buſineſs, and of thoſe Forty theſe four ſhould be ſome; and then the *iidem* bought Horſes and Arms, and ſo it muſt go to the laſt Antecedent, and then there is no expreſs alledging of any Overt-Act; and then it is as if no Overt-Act at all was alledg'd.

L. C. J. This Exception is not to the Evidence, but to the Indictment: It begins *Juratores preſentant quod*; Does not that relate to all?

Sir *B. Shower.* No, my Lord; and I can tell you a Reaſon why not: If it be not ſo well alledg'd as it ſhould be, it is in an Indictment as if it were never alledg'd at all; and ſo within the Words of the Act of Parliament this is not an Overt-Act alledg'd, and therefore they cannot give Evidence upon it.

Mr. Sol. Gen. Truly, my Lord, I can't imagine what they are doing, they are moving in Arreſt of Judgment before a Verdict given: They ſay the Overt-Act is not expreſsly laid; Is that an Exception to the Evidence, or to the Indictment?

Sir *B. Shower.* If my Lord will pleaſe to give us the Liberty, we would ſhew there can be no Verdict given upon this Indictment.

L. C. J. Certainly this is an irregular Proceeding; this is not a Time of Exception to the Judgment.

Mr. *Phipps.* Then, my Lord, we are in your Judgment, as to the Proof that has been given: If a Man be preſent at a Meeting of ſeveral Perſons, and there is a treaſonable Debate about killing the King, and this Man is only preſent, but neither aſſents, nor makes the Propoſal how it ſhall be done, whether the bare being ſilent, and ſaying nothing, is ſuch an Overt-Act as ſhall convict a Man of Treaſon?

L. C. J. I tell you, Conſenting to a traitorous Deſign is an Overt-Act of High-Treaſon, if that Conſent be made to appear by good Proof: Now the Queſtion is, What is a good Proof and Evidence of this Conſent? A Man is two or three Times at a treaſonable Conſult for killing the King, and though perhaps at the firſt he did not, yet at the ſecond he did know that the Meeting was for ſuch a Deſign, (ſuppoſe for the Purpoſe there was but two Meetings) and at the ſecond it is determined to go on with the Deſign; Is not that an Overt-Act, though it cannot be proved that the Priſoner ſaid any Thing?

Mr. *Phipps.* If the firſt Meeting is not a Conſent or an Overt-Act, neither will a ſecond or a third be, if there was no more done than at the firſt, but they are like ſo many Cyphers without a Figure.

L. C. J. The firſt Meeting poſſibly might be accidental, he might not know what it was for, though that will go a great Way if he does not diſſent or diſcover; but when he meets again with the ſame Company, knowing what they had in Deſign; Does not that prove a Conſent? That was the Caſe of Sir *Everard Digby* in the Powder Plot.

Mr. *Phipps.* Put where it may be uncertain, my Lord, whether it were with a good Deſign, or a bad Deſign, that he met with that Company, it ought to be taken moſt favourably for the Priſoner: This Man might be preſent in Order to a Diſcovery.

L. C. J. But beſides, that is not this Caſe; you are mooting upon Points that are not in the Caſe. When Mr. *Harris* came to Mr. *Rookwood*, and finding them in ſome Diſorder, and being inquiſitive what was the Occaſion, he was ſent to *Counter*; and when he diſcovered what they were to go about, he afterwards meeting Mr. *Rookwood*, ſays to him, Are we ſent over to murder the Prince of *Orange?* ſays *Rookwood*, if I had known of this Deſign before I came from *France*, I would have begged the King's, that is, King *James*'s Pardon, and deſir'd to have been excuſed. Hereby he expreſſes his Knowledge of the Deſign, and what he was to do; and though he diſliked, yet would obey Orders.

Mr. *Phipps.* There is no Doubt, my Lord, but he knew of it; but whether your Lordſhip will conſtrue his Silence as a Conſent, in Treaſon, is the Queſtion.

L. C. J. A Man is at frequent Conſults about Killing the King, and does not reveal it, it is a great Evidence of his Conſent.

Mr. *Phipps.* But it is not prov'd that he did actually conſent to it.

Mr. Sol. Gen. My Lord, we muſt ſubmit it to your Lordſhip, whether this is not totally improper and irregular at this Time? They are arguing how far the Evidence is to be believ'd, before the Time proper for ſuch an Argument comes.

Mr. Att Gen. If they will call their Witneſſes, let them; or if they ſay they have none, then they may make their Obſervations upon the Evidence; but elſe we deſire we may be kept to the uſual Method of Proceedings.

Mr. *Phipps.* With Submiſſion, we thought it fit to know the Opinion of the Court firſt, if there be two Witneſſes againſt the Priſoner; for if there be not two Witneſſes, as the Law requires, we need not trouble the Court with our Evidence.

Mr. Sol. Gen. Then, my Lord, we muſt deſire that the Record may be read of Captain *Porter*'s Conviction of Manſlaughter; a Man that has been guilty of doing ſuch an Act, felonioufly, maliciouſly, and voluntarily, as that is, ſure is not a competent Witneſs.

Cl. of Ar. It has been read already.

Mr. Att. Gen. I thought we had been over that Objection before.

Sir *B. Shower.* We think it is proper for us to move it now again; for though it is no Objection to his being a legal Witneſs, yet we hope it will influence his Reputation as to his Credit; for he that has been guilty of killing a Man in ſuch a Manner as the Indictment lays it, will find but little Credit, we hope, with a Jury of Countrymen. But ſince it has been read, and your Lordſhip and the Jury have taken Notice of it, we will call ſome other Witneſſes as to Mr. *Porter*'s Reputation and Behaviour, we think they will prove Things as bad as an Attainder. I ſhall not open them to your Lordſhip, but beg Leave to call our Witneſſes, who will acquaint you what they have to ſay.

Mr. Att. Gen. Certainly, my Lord, you will not think fit to let them do ſo. I deſire they would not uſher in any Thing of Evidence without acquainting the Court what they call them for: For that were the Way to let them in to call Witneſſes to Things that are not proper.

L. C. J. Nay, without doubt it is not regular to produce any Evidence, without opening it.

Mr. Att. Gen. For if it be for any Crime that a Man may be preſented for, and there is no Conviction; I think that ought not to be given in Evidence to take away a Witneſs's Credit: If it be only to his general Reputation and Behaviour, ſo far they may go, and we can't oppoſe it. Therefore I deſire Sir *Bartholomew Shower* will open to the Court of what Nature his Evidence is.

Sir *B. Shower.* Well, I will tell you then what I call them to.

L. C. J. You muſt tell us what you call them to.

Sir *B. Shower.* Why then, my Lord, if Robbing upon the Highway, if Clipping, if Converſing with Clippers, if Fornication, if Buggery, if any of theſe Irregularities, will take off the Credit of a Man, I have Inſtructions in my Brief, of Evidence of Crimes of this Nature, and to this Purpoſe againſt Mr. *Porter*; and we hope that by Law, a Priſoner ſtanding for his Life is at Liberty to give an Account of the Actions and Behaviour of the Witneſſes againſt him. I know the Objection that Mr. *Attorney* makes, a Witneſs does not come prepar'd to vindicate and give an Account of every Action of his Life, and it is not commonly allowed to give Evidence of particular Actions; but if thoſe Actions be repeated, and a Man lives in the Practice of them, and this Practice is continued for ſeveral Years, and this be made out by Evidence; we hope no Jury that have any Conſcience, will upon their Oaths give any Credit to the Evidence of a Perſon againſt whom ſuch a Teſtimony is given.

Mr. *Phipps.* We are ſpeaking only, my Lord, to the Credit of Mr. *Porter*; and if we can ſhew by Evidence that he is ſo ill a Man as to be guilty of thoſe Crimes that we have open'd, according to the Inſtructions in our Brief, we hope the Jury will not think him fit to be a good Evidence againſt us in this Matter.

L. C. J. What ſay you to this, Mr. *Attorney?*

Mr. Att. Gen. My Lord, they themſelves know, that this Sort of Evidence never was admitted in any Caſe, nor can be, for it muſt tend to the Overthrow of all Juſtice and legal Proceedings; for inſtead of trying the Priſoner at the Bar, they would try Mr. *Porter*. It has been always deny'd where it comes to a particular Crime that a Man may be proſecuted for; and this it ſeems is not one Crime or two, but ſo many and ſo long continued, as they ſay, and ſo often practis'd, that here are the whole Actions of a Man's Life to be ript up, which they can never ſhew any Precedent when it was permitted, becauſe a Man has no Opportunity to defend himſelf. Any Man in the World may by this Means be wounded in his Reputation, and Crimes laid to his Charge that he never thought of, and he can have no Opportunity of giving an Anſwer to it, becauſe he never imagined there would be any ſuch Objection: It is killing a Man in his good Name by a Side-wound, againſt which he has no Protection or Defence. My Lord, this muſt tend to the preventing all Manner of Juſtice; it is againſt all common Senſe or Reaſon, and it never was offered at by any Lawyer before, as I believe, at leaſtwiſe never ſo openly; and therefore I wonder that theſe Gentlemen ſhould do it, who acknowledge, at leaſt one of them did, that as often as it has been now offer'd it has been over-rul'd; and I know not for what End it is offer'd, but to make a Noiſe in the Court: They know that it is irregular as much as any thing that could be offer'd.

Mr. Sol. Gen. Indeed, my Lord, if the Priſoner at the Bar had offer'd this Matter, it had been excuſable; but that Gentlemen of the Long Robe, and who are ſo well acquainted with the Practice of the Courts of Law, ſhould pretend to do ſuch a Thing, is unaccountable. There was ſomewhat like this that was offer'd at *Mancheſter*, but that was by the Priſoner, to prove that one *Lunt* who was a Witneſs had two Wives, and they brought a Copy of an Indictment upon which there was no Proceſs; after that they endeavour'd to prove him guilty of ſeveral Robberies; but all that Sort of Evidence was refus'd. I only give them this Inſtance to ſhew, that where the Priſoner has attempted it, it has been always rejected; and I am ſure they cannot ſhew me that ever it was allowed, even to the Priſoner himſelf, to give any Thing of this Kind in Evidence; and this I muſt ſay, they can never ſhew me any one particular Inſtance, when Counſel ever endeavoured to do it, before this Time.

Sir *B. Shower.* My Lord, I mentioned the particular Crimes, the Faults which I had in my Inſtructions to object againſt the Credit of the Teſtimony of Capt. *Porter*, in Anſwer to Mr. *Attorney*'s Deſire, that I would open the Particulars of the Evidence, that I would call my Witneſſes to the Truth of it; I was loth to repeat the Words, I think the Things themſelves ſo abominable; but we conceive, with Submiſſion, we may be admitted in this Caſe to offer what we have offered. Suppoſe a Man be a common, lewd, diſorderly Fellow, one that frequently ſwears to Falſhood for his Life: We know it is a common Rule in Point of Evidence, that againſt a Witneſs you ſhall only give an Account of his Character at large, of his general Converſation; but that general Converſation ariſes from particular Actions, and if the Witneſſes give you an Account of ſuch diſorderly Actions repeated, we hope that will go to his Diſcredit, which is that we now are labouring for, and ſubmit it to your Lordſhip's Opinion whether we may not do it.

L. C. J. Look ye, you may bring Witneſſes to give an Account of the general Tenour of his Converſation, but you don't think ſure that we will try now at this Time, whether he be guilty of Robbery or Buggery.

Sir *B. Shower.* My Lord, we will give you an Account that he uſed to have a private Lodging, and come in with his Horſe tir'd, and ſeveral other ſuch Things, as that he us'd to go out in Diſguiſes, and the like.

Mr. *Phipps.* My Lord, I cannot imagine why a Man that has been guilty of any ſuch Crimes, and is not taken, ſhould be of greater Credit than a Man that has been taken and puniſh'd.

L. C. J. What is that you ſay, Mr. *Phipps?*

Mr. *Phipps.* My Lord, I ſay 'tis the Crime that renders a Man infamous, and I do not know why a Man that has had the good Fortune not to be taken and puniſhed for great Crimes by him committed, ſhould be in a better Condition as to the Credit of his Teſtimony, than one that is taken and undergoes the Puniſhment of the Law.

Mr. Sol. Gen. Mr. *Charnock* urg'd that as far as it would go, but we are oblig'd, it ſeems, to hear Things that have been over-ruled over and over; but I deſire to know of them, whether they can ſhew he has been guilty of a greater Crime than he has confeſt himſelf guilty of in Court, I mean of the intended Aſſaſſination.

Mr. *Phipps.* No, we agree we can't; but pray let us prove him guilty of as many Crimes as we can.

Mr. Sol. Gen. But, my Lord, I hope you'll keep them to the general Queſtion of the common ordinary Tenour of his Converſation.

Sir *B. Shower.* Call Mr. *Oldfield*, Mr. *Nicholas*, Mr. *Milford*, *Black Will.* [*Mr.* Milford *appeared.*

Cryer. Lay your Hand on the Book. The Evidence that you ſhall give on behalf of the Priſoner at the Bar ſhall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

Sir *B. Shower.* Pray will you give my Lord and the Jury an Account whether you know Captain *Porter*, and how long you have known him?

Milford. I have known him about Four Years.

Sir *B. Shower.* What Reputation is he of?

Milford. I never knew any Hurt by him in my Life.

Sir *B. Shower.* Pray what is your Name?----*Mil. Frederick Milford.*

Sir *B. Show.* But the Name in my Brief is *John Milford*, that is my Man.

L. C. J. But you ſee this Man knows him.

Sir *B. Shower.* Call Mr. *Oldfield.*

[*Which was done, and he appeared accordingly.*]

Mr. *Phipps.* Do you know Captain *Porter?*----*Oldfield.* Yes, I do.

Mr. *Phipps.* How long have you known him?

Oldfield. I believe about Twenty Years.

Mr. *Phipps.* Pray will you give my Lord and the Jury an Account of his Life and Converſation.

Oldfield. I can ſay nothing, he was always civil in my Company, but he was lewd in his Diſcourſe.

Sir *B. Shower.* What do you mean by being lewd in his Diſcourſe?

Oldfield. Why, he would be talking very extravagantly.

Mr. *Phipps.* What do you mean in talking? Was it of what he had done himſelf, Sir?

Oldfield. No otherwiſe than that he had whor'd, and thoſe kind of Things.

Sir *B. Shower.* What other Things beſide Whoring?

Oldfield. I know no other Part of it.

Sir *B. Shower.* Where is *Edward Bouchey?* (*He did not appear.*

Mr. *Phipps.* Call *William O Bryan.* (*He did not appear.*

Sir *B. Shower.* Where is Mr. *Page*, and Mr. *Hardiman?*

(*None of them appeared.*)

Cryer. There is not a Man of them here, Sir.

Sir *B. Shower.* Mr. *Webber*, Do you know where they are, for the Court ſtays for them.

Mr. *Webber.* Indeed I do not, they were ſummon'd to be here.

Sir *B. Shower.* Where is Black *Will?*

Cryer. Black *Will.* (*He appear'd, and was a Moor.*)

L. C. J. Aſk him if he be a Chriſtian.

Cryer. I have aſk'd him, and he ſays he is a Chriſtian.

(*Then he was ſworn.*)

L. C. J. Well, What do you aſk him?

Rookwood. Will, Pray give an Account of your Maſter, and of his Life and Converſation.

Mr. *Phipps.* You are ſworn to tell the Truth, Sweet-heart.

Will. I ſerved him almoſt Eight Years, and he has been a very good Maſter to me, my Lord.

Sir *B. Shower.* What do you know him to be guilty of?

Will. Nothing at all.

Sir *B. Shower.* I believe they have put in theſe Men to confirm his Reputation.

L. C. J. Indeed, I think the King's Counſel ſhould have called theſe Witneſſes, if there had been Occaſion.

Sir *B. Shower.* We ſubmit it to your Direction, how far this Evidence will affect him; there is nothing ſaid, as we apprehend, that will amount to Treaſon: If the Priſoner has a Mind to ſay any Thing himſelf, we hope your Lordſhip will pleaſe to hear him.

L. C. J. Aye, if he will, let him.

Rookwood. My Lord, Mr. *Porter* does not ſay, that I conſented to command a Party.

L. C. J. Is that all you have to ſay? Then, Gentlemen, will you ſum up?

Mr. *Conyers.* My Lord, we are agreed; we ſubmit to the Court on both Sides.

L. C. J. Then, Gentlemen of the Jury, the Priſoner at the Bar Mr. *Rookwood* is indicted for High-Treaſon, in Compaſſing, Imagining, and Intending the Death and Deſtruction of the King, by a moſt barbarous and wicked Aſſaſſination; you have had an Account of this Deſign from Two Witneſſes that have been produced; the one is Captain *Porter*, and the other is Mr. *Harris*, who ſwear they were both concerned as Actors in it.

Captain *Porter* tells you, about the latter End of *January*, or the Beginning of *February* laſt, Sir *George Barcley* came over into *England* from *France*; and there was a formed Deſign to murder the King; and after ſeveral Meetings and Conferences among the Conſpirators, they came to a Reſolution that he ſhould be aſſaſſinated; but which way to effect it, admitted of a Diſpute among them; for the King, as you have heard, going frequently, about once a Week, a Hunting on the other ſide the Water near *Richmond*, the Deſign was firſt to aſſaſſinate him at *Richmond Park*, or thereabouts, as he returned from Hunting, and Preparation was made accordingly; but that not being ſo fully agreed upon, the Conveniency of the Place held ſtill ſome Debate; for ſome were of Opinion, that it was better to make the Attempt on this ſide the Water, than on the other; therefore, as Mr. *Porter* tells you, to determine that Difficulty, there were ſeveral Men ſent, whereof he was one, *Knightley* another, and *King* a Third, to view the Ground on both ſides the Water, and to make their Report; the Ground being view'd, and the Report made to ſome of their Accomplices, who to receive it met at the *Nagg*'s-*Head* in *Covent-Garden*, which was about the Tenth or Twelfth of *February* laſt; it was then agreed, that the King and his Guards ſhould be attack'd on this ſide the Water, about *Turnham-Green*.

Mr. *Porter* has told you, that at ſeveral Meetings for the carrying on this Deſign, the Priſoner Mr. *Rookwood* was preſent, more particularly at the *Globe-Tavern* in *Hatton-Garden*, where were alſo Sir *George Barcley*, Mr. *Charnock*, Sir *William Parkyns*, himſelf, and others, and there they did enter into a Conſult how they might aſſaſſinate the King; and it being propoſed, Mr. *Rookwood* did not like it, as Mr. *Porter* ſays, but ſaid it was a deſperate Attempt; and thereupon Sir *George Barcley* pulled out a Scheme that he had, and ſhew'd it at that Time to Mr. *Rookwood*, and ſaid, You are ſent over from *France*, and are to obey my Orders, and you are to command a Party; and then Mr. *Rookwood* made an Anſwer in French, *There's an End of it*, which, as he ſays, imports a Conſent.

Then at another Time, which was the *Saturday* Morning the 15th of *February*, they met at Captain *Porter*'s Lodging, and there was a Diſcourſe about going on to put the Deſign in Execution; and one *Durant*, one of the Men that was to watch the King and the Guards going out at *Kenſington*, came in, and the Queſtion was, whether they ſhould go that Day upon the Deſign? They had Diſcourſe about it, and Mr. *Rookwood* the Priſoner was there preſent, and there did not appear any Diſſent in him to the Proſecution of the Deſign, but it ſeems it was readily agreed among them, to purſue it according to the former Determination.

Then the next Witneſs that is produc'd is Mr. *Harris*, who gives you a large Account of the Beginning of his Knowledge, and of his being concern'd in this Matter; he tells you he was in *France*, and at the Court of St. *Germains*, where the late King then was, and that he ſpoke with him, and where was alſo Colonel *Parker*; and King *James* took Notice of him and of his faithful Service, and told him, he always deſigned him a Kindneſs, and then had Opportunity of doing it, and ſaid he would ſend him over into *England*, where he ſhould be ſubſiſted, and directed him to obey the Orders of Sir *George Barcley*; and there being one *Hare* by, who was to come over with him, King *James* gave them both

Names of Diſguiſe which they were to go by in *England*, and, as it ſeems, others that came over did alſo aſſume; for Mr. *Rookwood* went by the Name of *Roberts*, *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiney*; they were directed to apply themſelves to Sir *George Barcley*, and had Directions how they ſhould find him, which were to go into *Covent-Garden* in the Evening, upon a *Monday* or a *Thurſday*; and if they ſaw a Perſon that had a white Handkerchief hanging out of his Pocket, they were to take Notice of him to be Sir *George Barcley*, and they had Ten *Lewis d'Ores* a-piece for their Journeys to carry them off; and you have heard from whom they had them; and they were told, that if at *Calais* they were kept longer than they expected, whereby their Money was ſpent, Care was taken that they ſhould be ſupplied from the Governor of *Calais*, the Preſident there; and it ſeems Mr. *Harris* and Mr. *Hare* went together to *Calais*, and lay a conſiderable Time for want of a Wind, whereby their Money fell ſhort of defraying their Expences; but they were afterwards ſupplied by the Governor of *Calais*, according as was promiſed at St. *Germains*.

Gentlemen, he tells you, that after they came into *England*, the firſt Time they went to ſeek Sir *George Barcley*, was upon the *Monday* Night, but they did not find him at that Time; but afterwards they met with him, and Mr. *Harris* had Subſiſtence-Money from him, according to King *James*'s Promiſe, which was at the Rate of 5*s*. a-Day, when he had no Horſe, and afterwards when he had a Horſe, at 6*s*. a-Day; this is the Account he gives you how he came over, and of his Journey and Meeting with Sir *George Barcley*.

And now he comes to ſpeak particularly concerning the Priſoner at the Bar, Mr. *Rookwood*: He tells you, that on *Saturday* Morning the 15th of *February*, the firſt Day when this Aſſaſſination was deſigned to be committed, he went to the Lodging of one *Burk*, where Mr. *Rookwood* was, with others, and he found them all in a great Diſorder; and thereupon he aſk'd them, What was the Matter, and what they were going to do? And *Rookwood* bid him go to one *Counter*, and he ſhould know of him what was the Matter: Accordingly he went to his Lodging, and *Counter* told him and thoſe who were with him, That they muſt get ready to go to *Turnham-Green*; and at the ſame Time and Place he met with Sir *George Barcley*, and after ſome Diſcourſe of attacking the Coach, Sir *George Barcley* at the firſt ſaid, They were his Janizaries; and afterwards going out, he came in again and ſaid, they were Men of Honour, and that they were to go abroad to attack the Prince of *Orange*.

The next Day, or a little Time after, Mr. *Harris* met with Mr. *Rookwood*, and enters into Diſcourſe with him to this Effect: What! are we ſent over to murder the Prince of *Orange*? It is a ſtrange Sort of Employment: (for it ſeems they were not informed in *France* what they were to do here, but they were to put themſelves under the Conduct of Sir *George Barcley*, and obey his Orders.) Mr. *Rookwood* ſaid, He was afraid the Thing was ſo, and that they were drawn in; but ſaid, If he had known of the Deſign before-hand, he would not have come over, but have begg'd the King's Pardon. Which ſhews not only his Knowledge of the Deſign, but his being engaged in the Proſecution of it.

And then, Gentlemen, you are told further, That upon the Going out upon *Saturday* the 22d, which was the ſecond Time it was to have been put in Execution, there was a Liſt of Men that Mr. *Rookwood* gave to Mr. *Harris* of ſeveral Names that he has mentioned to you; he ſays, Mr. *Rookwood*'s Name was at the Top, as one that was to command the Party, and the Name he went by was *Roberts*; and there was *Harris*'s counterfeit Name, which was *Jenkins*; and *Hare*'s counterfeit Name, which was *Guiney*; and they were to make ready to go to *Turnham-Green*. He told him, There was a Liſt, and that he and *Harris* was to be of his Party, that he was to attack the Prince of *Orange*, and that Mr. *Harris* ſhould be his *Aid du Camp*.

Gentlemen, I forgot to tell you, That between the firſt *Saturday* and the Second, Mr. *Harris*, Mr. *Rookwood*, and Mr. *Lowick*, walking in *Red-Lyon-Fields*, and there in Diſcourſe among themſelves, Mr. *Harris* and Mr. *Rookwood* did expreſs themſelves to be much concerned that they were to be employed upon ſuch a Deſign as this was, which they owned to be very barbarous; but Mr. *Rookwood* and *Lowick* ſaid, They were under Command, and muſt obey Orders, tho' Mr. *Rookwood* did not like the Deſign they were engaged in.

Gentlemen, they have told you of Horſes that were placed at *Somerſet-Houſe* in a Stable there, under the Care of Mr. *Lewis*, my Lord *Feverſham*'s Gentleman of the Horſe, about ſix or ſeven Horſes, and thoſe ſix Horſes that were there at that Time were afterwards taken away; but that is only a Circumſtance.

So that, Gentlemen, this is now the Sum and Subſtance of this Evidence that has been given you, as far as it relates to the Priſoner: His Counſel in his Defence have inſiſted upon ſeveral Things; in the firſt Place, tho' it was laſt mentioned in Time, yet it ought to have the firſt Conſideration; the Counſel for the Priſoner have endeavoured to take off the Credit of Mr. *Porter*, and have opened indeed very great Crimes that he ſhould be guilty of, which muſt render him a Perſon not to be believed, but they have not proved any Thing; no Witneſs that they have called againſt Mr. *Porter* ſays the leaſt againſt him to invalidate his Teſtimony, or to induce you to diſbelieve what he has ſaid.

Then they ſay in Point of Law, There is no Overt-Act proved of any Deſign againſt the King's Life that affects Mr. *Rookwood*; now that Matter you are to conſider of, Whether or no it does appear by the Teſtimony of two Witneſſes, that Mr. *Rookwood* was concerned in this Deſign of Aſſaſſinating the King: Capt. *Porter* is poſitive that he was at the Conſult at the *Globe-Tavern*, where it was propoſed, debated, and reſolved upon; but Mr. *Rookwood* ſays, he did diſlike it; ſo ſays Captain *Porter*, he did not approve of it at the firſt upon his being acquainted with it; but being ſent over to obey the Orders of Sir *George Barcley*, and Sir *George Barcley* producing a Scheme ready drawn, wherein he was to command the Party, telling him, That he muſt obey Orders. You hear what he ſaid, and the Anſwer he return'd in *French*, There's an End of it; Whether that does not amount to a Conſent and Agreement to be engaged in this Deſign, is left to your Conſideration; for if it do, it is plainly an Overt-Act.

Then, Gentlemen, you hear further, that *Harris* was told by Mr. *Rookwood*, that he ſhould be of his Party, and be his *Aid du Camp*, and go to *Turnham-Green* to attack the Prince of *Orange*, and he had a Liſt of Men given him by *Rookwood*, and was directed to get the reſt ready.

Rookwood. That was not in the Indictment.

L. C. J. But you were at that Meeting, which is laid in the Indictment.

Rookwood. My Lord, that Liſt is not in the Indictment; the Liſt in the Indictment refers to Mr. *Cranburne*.

L. C. J. No, but that is an Evidence of your being in the Deſign; I hope that Liſt of Men will be ſome Evidence of the Conſent and Agreement that Mr. *Rookwood* was to command a Party.

Sir *B. Shower*. With Submiſſion, my Lord, the Words of the Act ſeem otherwiſe, and that no Overt-Act ſhould be given in Evidence, that is not expreſsly alledged.

L. C. J. But cannot there be one Act, that may be Proof of another Act which is alledged?

Sir *B. Shower*. Then there is no Advantage of this Law; for, my Lord, the End of the Act was, That they ſhould know the particular Crimes that they were to anſwer to.

L. C. J. That could never be the End of the Law, that all particular Facts that are but Evidence of the Facts alledged ſhould be ſet forth in the Indictment; it was ſufficient before the Act, to alledge any Overt-Act; and any other Overt-Act, though not alledged, and had no Relation to the Overt-Act that was alledged, yet if it were to the ſame Sort of Treaſon, might be given in Evidence.

Sir *B. Shower*. The Law ſays, Ye ſhall not give Evidence of any Overt-Act that is not expreſsly mentioned.

L. C. J. It is not urged as an Overt-Act, but as Evidence of an Overt-Act that is alledged; for Inſtance, the Overt-Act alledged is, That they did meet and conſult, ſhall not they give in Evidence what was ſaid and done at thoſe Meetings, tho' not alledged? Sir *George Barcley* produced a Scheme at the *Globe-Tavern*, ſhall not the producing of that Scheme be given in Evidence? If it may, Why not the giving the Liſt to *Harris*?

Mr. *Phipps*. My Lord, it is plain it was Mr. *Attorney*'s Opinion, it could not be given in Evidence, unleſs it was alledged in the Indictment; becauſe he has particularly alledged the Liſt in *Cranburne*'s Caſe, in this very Indictment.

Mr. Sol. Gen. I know not what thoſe Gentlemen mean by this Sort of Practice; certainly there never were ſo many Irregularities committed in any Trial as in this, and now particularly to break in upon the Court in the midſt of the Charge.

L. C. J. Nay, nay, if there be any Miſtake, let us hear them, that it may be rectified.

L. C. J. Treby. I think we ſhould receive them, to try if they can make it out. But the Objection I do not very well underſtand yet; for, as I take the Matter to ſtand, it is alledged in the Indictment, That they had prepared Men and Arms, and Horſes, for the Execution of this Deſign. Now is it not reaſonable, or can there by any thing more proper, than to give in Evidence, and prove that the Priſoner had, and delivered to ſome of the Complices, a Liſt of thoſe Men that were to do it? Why it proves the very Thing alledged; but let us ſee whether it be ſo.

Sir *B. Shower*. My Lord, there is no ſuch Thing alledged.

L. C. J. That is ſtrange! Pray ſee if it be not in the Indictment.

Clerk of Arraignment. (*Reads.*) 'Conveniebant, propoſuerunt, tractaverunt, conſultaverunt, conſenſerunt, & agreaverunt, ad ipſum Dominum Regem nunc ex Inſidiis & Dolo percutiendum, Anglice, *to aſſaſſinate*, interficiendum, & murdrandum; & ad execrabilem, horrendam, & deteſtabilem Aſſaſſinationem, Anglice, *Aſſaſſination*, & Interfectionem illam citius exequendum & perpetrandum, poſtea, ſcilicet eiſdem Die & Anno, ac diverſis aliis Diebus & Vicibus, apud Parochiam prædictam in Comitatu prædicto, proditorie tractaverunt, propoſuerunt, & conſultaverunt de Viis, Modis & Mediis, ac Tempore & Loco, ubi, quando, qualiter & quomodo dictum Dominum Regem ſic ex Inſidiis facilius interficerent; & conſenſerunt, agreaverunt & aſſenſerunt, quod quadraginta Homines equeſtres aut eo circiter, quorum iidem *Chriſtopherus Knightley*, *Robertus Lowick*, *Ambroſius Rookwood* & *Carolus Cranburne* forent quatuor, & quilibet horum proditorie ſuper ſe ſuſcepit eſſe unum, cum Bombardis, Sclopis & Sclopetis, Pulvere bombardico & Globulis plumbeis oneratis, & cum Gladiis, Enſibus & aliis Armis armati inſidiati forent, & eſſent in Subſeſſu, Anglice, *in Ambuſh*, ad eundem Dominum Regem in Rheda ſua, Anglice, *his Coach*, exiſtentem, quando foris iret invadendum; quodque quidam & compe ens Numerus de Hominibus illis ſic armatis in Satellites, Anglice, *the Guards*, ipſius Domini Regis eum tunc attendentes & ſecum exiſtentes aggreſſi forent, et eos expugnarent & devincerent, dum alii eorundem Hominum ſic armatorum ipſum Dominum Regem percuterent, interficerent, occiderent & murd arent.'

Mr. *Conyers*. And, my Lord, there is Evidence of ſome of theſe Forty Men, whoſe Names were given in a Liſt by *Rookwood* to *Harris*?

Mr. *Phipps*. But now, in *Cranburne*'s Part, the Liſt is expreſsly alledged as an Overt-Act.

L. C. J. Never talk of *Cranburne*, we have not him before us now; but what do you ſay to this of the Liſt given by *Rookwood* to *Harris*?

Sir *B. Shower*. My Lord, we ſay this is not Evidence of an Overt-Act, according to this Act of Parliament; which ſays, No Evidence ſhall be given of any Overt-Act, that is not expreſsly alledged in the Indictment; now the Indictment ſays, they did agree that Forty Horſemen armed, of which the Four named were to be Four, and every one undertook to be one, who ſhould lie in wait to ſet upon the King in his Coach, and a competent Number ſhould ſet upon the Guards; and then it ſays, in order to fulfil this, they did prepare Horſes and Arms, and one of them by the Conſent of all the reſt did carry forward and backward a Liſt, that is, *Cranburne*; and that particular Liſt is a particular Overt-Act alledged in the Indictment; which makes it plain, they thought it neceſſary to be particularly alledged by this Act of Parliament, or they could not give any Evidence of it; now the Liſt that Evidence is given of, is ſuppoſed to be delivered by the Priſoner to *Harris*. Now firſt we ſay, it is not Evidence that Forty ſhould do it, for they may do it without a Liſt; and next, it is not Evidence of the Liſt that they have mentioned, for that is alledged to be

be carried about by *Cranburne*; and as the Priſoner himſelf has obſerved, this Liſt given to *Harris* is not in the Indictment, and therefore no Evidence can be given of it.

Mr. *Conyers.* It is an Evidence of that Overt-Act which is expreſly alledged in the Indictment, that they met together to conſult how to effect this Treaſon.

Mr. *Cowper.* My Lord, we are in a very ſtrange Caſe here, if we be not very proper in this Part of our Evidence; the Overt-Act laid is, That the Priſoner met together with others to conſult how to aſſaſſinate the King, and there the Priſoner among the reſt did agree it ſhould be done ſo and ſo. 'Tis admitted the Priſoner was there; but, ſay they, if you only prove that he ſate by while there was a general Diſcourſe of ſuch a Matter, but do not prove that he ſaid or did any thing expreſſing his Aſſent, that will not amount to a Proof of the Overt-Act laid; and yet, if we go about to prove further, any Act done that manifeſts his Aſſent, then they ſay you go too far, and prove an Overt-Act that is not mentioned in the Indictment. Thus they grant, the Agreement is a ſufficient Overt-Act, but object, that being preſent barely is not a ſufficient Proof of his Agreement; then when we go to make Proof of any Thing that is a ſufficient Proof of his Agreement, they tell us it is not proper upon this Act of Parliament, becauſe not laid in the Indictment, though his Agreement be laid in the Indictment: And ſo they would amuſe us, rather than make any ſolid Objection to our Evidence. This Doctrine is certainly very odd, my Lord, and we doubt not will have little Weight with the Court or the Jury.

Mr. Att. Gen. According to this Doctrine, all the Evidence muſt be put in the Indictment.

L. C. J. They aſk you, what this giving this Liſt does prove.

Mr. Att. Gen. His Agreeing at that Meeting to the Conſpiracy, and the Execution of it, by giving that Liſt of the Names of them that were to be of his Party, and his own Name as Commander of that Party, this he gives to one that was to be of the Party, and particularly was to be his *Aid du Camp*, in order to get them ready for the Execution; is not this an Evidence of the Agreement, which is the Overt-Act? No Man in the World can be convicted of Treaſon, if this Doctrine be true.

Mr. Sol. Gen. My Lord, they have not expreſs'd ſomething in the Indictment that has been read, which will make it plain that this is the moſt proper Evidence of the Overt-Act laid in the Indictment. The Indictment ſays, they agreed there ſhould be forty Men or thereabouts armed, of which a certain Number ſhould make an Aſſault upon the King's Coach, while another Part ſhould ſet upon the Guards: Now the Proof we make is, that Mr. *Rookwood* the Priſoner was to command a Party that was to ſet upon the Guards; and in order to it, he gives a Liſt of his Men to *Harris*, who was to be his *Aid du Camp*, and bids him get thoſe Men ready; and this was upon the Day that this Matter was to be acted: So that it proves very plainly that Overt-Act that we ſuggeſt in the Indictment, that a certain Number of thoſe Men were to aſſault the King's Perſon, and another the Guards. And therefore they needed not to have interrupted your Lordſhip; for this Liſt that *Harris* ſpeaks of is a very good Proof of the Overt-Act that is laid in the Indictment.

L. C. J. Then, Gentlemen, as to this Matter which they have objected, that this Liſt given on the Day of the intended Aſſaſſination, ought not to be allowed as Evidence to prove the Treaſon, becauſe it is not ſpecially laid in the Indictment, but is by the late Act of Parliament excluded from being proved to convict the Priſoner: Now tho' the Act doth exclude the giving in Evidence of any Overt-Act that is not laid in the Indictment, yet it doth not exclude ſuch Evidence as is proper and fit to prove that Overt-Act that is laid in the Indictment. Therefore the Queſtion is, Whether this giving of the Liſt does not prove ſome Overt-Act that is alledged in the Indictment? There is in the Indictment an Agreement laid to kill the King; and if that be proved, that's an Overt-Act of this Treaſon. Now when the Conſent and Agreement of Mr. *Rookwood* to that Deſign is proved, ſurely the Proof of his giving a Liſt of Men, is a further Proof that he did agree to it, and then it is very proper to be given in Evidence; for if by the new Statute no one Act can be given in Evidence to prove another, then muſt not only the Overt-Act, but alſo the Evidence of that Act be expreſſed in the Indictment.

Gentlemen, You have heard the Witneſſes what they ſay concerning this Matter. In the firſt Place, If you do believe that there was ſuch Conſults and Meetings, where this intended Aſſaſſination of the King was debated and reſolved upon, and that Mr. *Rookwood* was preſent and did agree to it, that is an Overt-Act: And again, If you are ſatisfied that there was an Agreement to prepare and provide a Number of Men to ſet upon the King and his Guards, in the Manner you have heard, and he was concern'd in making this Proviſion, and was to have a Poſt, and command a Party in that Attack, that is a further Proof of that Conſent and Agreement that is laid in the Indictment.

Gentlemen, I muſt leave it to you, upon the Evidence that you have heard. If you are ſatisfied, upon the Teſtimony of theſe two Witneſſes that have been produced, that Mr. *Rookwood* is Guilty of this Treaſon of which he is indicted, in Compaſſing and Imagining the Death of the King, then you will find him Guilty: If you are not ſatisfied that he is Guilty, you will acquit him.

Cl. of Ar. Cryer, ſwear an Officer to keep the Jury.

(*Which was done.*)

L. C. J. Now, if you have any thing to move on behalf of your other Clients, pray do it.

Sir *B. Shower.* Yes, we have an Exception, but never a one of falſe Spelling.

L. C. J. If ſo be it be any ſuch Matter as you can move in Arreſt of Judgment, it had beſt be reſerved till after the Verdict.

Sir *B. Shower.* Our Exceptions will ſerve, if Occaſion be, for Mr. *Rookwood* in Arreſt of Judgment, and they will ſerve for the others alſo to prevent the Trouble of the Trial, if we have your Lordſhip's Opinion that they are good Exceptions.

(*Then the Jury withdrew to conſider of their Verdict, and after a Quarter of an Hour's ſtaying out return'd, and gave in their Verdict.*)

Cl. of Ar. Gentlemen of the Jury, Anſwer to your Names. *Samuel Powell.*——Mr. *Powell.* Here.

Cryer. Vous avez. (*And ſo of the reſt.*)

Cl. of Ar. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Ar. Ambroſe Rookwood, hold up thy Hand (*Which he did*). Look upon the Priſoner: How ſay you? Is he Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treaſon committed?

Foreman. None, to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You ſay that *Ambroſe Rookwood* is Guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods or Chattels, Lands or Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge, and ſo you ſay all?

Jury. Yes.

Mr. *Powell.* We deſire we may be diſcharged.

L. C. J. We cannot do that, till we ſee whether there be enough upon the other Pannel: We will give you as much Eaſe as we can: We ſhall not, I ſuppoſe, try the other till the Afternoon, therefore you may take your Eaſe for the preſent; but you muſt be about the Court when the other Trials come on.

(*While the Jury was withdrawn, the Court offered to the Counſel for the Priſoners, that they might move what Exceptions they had before the Jury was ſworn as to any of the other; which accordingly they did; but that relating to the Caſe of Mr.* Charles Cranburne, *in whoſe Preſence, being then at the Bar, the Objections were made, that Part is left to his Trial.*)

CLVII. *The Trial of* Charles Cranburne, *for* High-Treaſon, April 21, 1696. 8 Will. III.

At the Seſſion of Oyer and Terminer for the County of Middleſex, *ſitting in the Court of* King's-Bench, *at* Weſtminſter.

AFTER the Trial of *Ambroſe Rookwood* was over, while the Jury were withdrawn to conſider of their Verdict, the Court proceeded in this Manner:

*L. C. J.** Mr. *Attorney*, Whom will you have try'd next?

* *Sir* John Holt.

Mr. Att. Gen.† *Cranburne*, if your Lordſhip pleaſes.

† *Sir* Tho. Trevor.

Cl. of Ar. Then, Keeper of *Newgate*, ſet *Charles Cranburne* to the Bar.

L. C. J. You, Gentlemen, that are of Counſel for the Priſoner, if you have any Thing to move for your Client, you may move it; but firſt let the Priſoner be here.

(*Then* Charles Cranburne *was brought to the Bar in Irons.*)

L. C. J. Look you, Keeper, you ſhould take off the Priſoners Irons when they are at the Bar, for they ſhould ſtand at their Eaſe when they are tryed.

Keeper. My Lord, we have no Inſtruments here to do it juſt now.

Cl. of Ar. You may ſend to the *Gate-Houſe*, and borrow Inſtruments.

Mr. J. *Powell.* It ſhould be done, indeed; they ought to plead at Eaſe.

L. C. J. Well, go on, Sir *Bartholomew Shower*.

Mr. Att. Gen. My Lord, before Sir *Bartholomew Shower* enter upon his Exceptions, unleſs thoſe Exceptions of his are ſome of the Particulars mentioned in this Act, he muſt not do it now, after Plea pleaded, before the Trial; but he muſt do it in Arreſt of Judgment.

L. C. J. Treby. It is true, regularly; but let him uſe his own Judgment.

L. C. J. It is very true; the Courſe has not been to allow them to move to quaſh an Indictment for Treaſon, or Felony; but it may be done.

Mr. Att. Gen. Sure, it muſt be only for ſuch Things as they cannot take Advantage of in Arreſt of Judgment after the Verdict.

L. C. J. It has not been the Courſe, but it may be done.

Mr. Att. Gen. Not where there is an Iſſue join'd, and a Jury return'd to try that Iſſue; I believe that never was done, nor attempted.

L. C. J. Treby. If there were any Prejudice to the King by it, it were not fit for us to alter the Courſe; but let us hear what his Exceptions are.

Sir *B. Shower.* I have ſeveral Exceptions; five at leaſt; one of them is within the very Words of the Act, that is, improper *Latin*; I am ſure ſome of it is ſo.

L. C. J. Well, let's hear what that is.

Sir *B. Shower.* It ſays, *Anno Regni dicti Domini Regis nunc Septimo*, and *Lewis* is the laſt King mentioned before; and ſo here is no Year of the King of *England* mention'd. It is a certain Rule, that Relatives muſt refer to the laſt Antecedent; and that Rule holds always, unleſs there be Words that accompany the Relative, which undeniably ſhew to what it refers.

L. C. J. Ay; but do we call the *French* King *Dominus Rex?*

L. C. J. Treby. He would have been ſo, if he had ſucceeded in his Invaſion, and this Aſſaſſination.

Sir *B. Shower.* In every Indictment, if there be Occaſion to mention a former King, it is always *nuper Rex*, and ſuch a one, naming the Name of the

the King, where the preſent King's Name does intervene, to prevent Confuſion; and ſo in civil Actions it is the ſame; and ſo it ſhould have been here.

L. C. J. Ay; but I tell you, it is *Dominus Rex nunc*, which is our King.

Mr. *Phipps.* It is not ſaid *Angliæ.*

L. C. J. But wherever it is *Dominus Rex*, we underſtand it of the King of *England*, and nobody elſe. Read the Indictment.

Cl. of Ar. *Necnon eundem Dominum Regem ad Mortem & finalem Deſtructionem ponere & adducere, ac ſubditos ſuos fideles, & Liberos Homines Hujus Regni Angliæ in ſervitutem intolerabilem & miſerrimam Ludovico Regi Gallico ſubjugare, & manucipare, Decimo Die* Februarii, *Anno Regni dicti Domini nunc Regis ſeptimo, & diverſis aliis Diebus*, &c.

L. C. J. Can any Man imagine this to be the *French* King?

Sir *B. Shower.* My Lord, your Lordſhip is not to imagine one Way or other.

Mr. *Cowper.* In the ſtricteſt Senſe and Grammar in the World, it muſt mean King *William*, and no other. We do not need any Imagination, when in the ſtricteſt Conſtruction it is plain who it refers to.

Sir *B. Shower.* I am ſure no Grammar can make it good; nothing but a Suppoſition can help it.

Mr. *Cowper.* When it is ſaid *Dictus Dominus Rex*, if Sir *Bartholomew Shower* can find out another *Dominus Rex* in the Indictment, then he may make ſomething of his Objection; but the *Dominus* is only apply'd to our own King throughout.

L. C. J. Treby. Beſides, as to the Rule that Sir *Bartholomew Shower* mentions, it is that *ad proximum Antecedens fiat Relatio niſi impediat Sententia.* That's the Reſtriction of the Rule, it muſt relate to the next Antecedent, unleſs the Senſe would be prejudiced; but here if this Conſtruction ſhould be, it would make this Clauſe to be no better than Nonſenſe, *viz.* That the Subjects and Freemen of this Realm were to be brought into intolerable Slavery to *Lewis* the *French* King, ſuch a Day in the Seventh Year of the Reign of our Lord the *French* King.

Sir *B. Shower.* We ſay it is little better than Nonſenſe; I am ſure it is looſe, and uncertain, and not Grammar, but carries a new Form with it.

L. C. J. No, it is as well as it can be.

Sir *B. Shower.* Then, my Lord, there is another Exception; it is ſaid, *Diverſis Diebus & Vicibus tam antea quam poſtea*; and then afterwards it ſays, *poſtea ſcilicet eodem Decimo Die* Februarii; that is repugnant; it is as much as to ſay, That upon the Tenth of *February*, and two Days afterwards (to wit) the ſaid Tenth Day of *February*; that is, after two Days after the Tenth of *February*, *viz.* upon the ſame Tenth Day.

Mr. Att. Gen. That *Poſtea* is another Sentence, and relates to other Matters.

Sir *B. Shower.* It can't in Propriety of Speech be ſaid to be afterwards the ſame Day.

* Sir *John Hawley.*

Mr. Sol. Gen.* If Sir *Bartholomew Shower* remembers the Evidence that we have given this Day, he will find it was in Fact ſo; they met on the *Saturday* Morning, and afterwards met again the Night of the ſame Day.

L. C. J. There is nothing in that Objection, ſure; it is a common Form, when they tell of different Matters.

Sir *B. Shower.* Well then, if you will hear the reſt which are not of the ſame Nature, we ſhall come to what we think a fatal Exception; we ſay this Indictment of High-Treaſon being againſt a Subject born, ought to have had the Words in it, *Contra ſupremum naturalem Ligeum Dominum ſuum*; according to *Calvin*'s Caſe in the 7th Report, *Fol. Septimo.*

L. C. J. It is *Contra Ligeantiæ ſuæ Debitum*, is it not?

Sir *B. Shower.* That won't help it, my Lord, for all that is applicable to an Alien born: And ſo is the Caſe in my Lord *Dyer*, 144. where it is ſaid, That if an Indictment of Treaſon be againſt an Alien, you muſt not put in the Word *naturalem*; if you do, it will be faulty, becauſe he owes but a local Allegiance to the King of *England*, and not a natural one. Now we ſay, there are none of theſe Priſoners but are Subjects born, and the conſtant Form in Queen *Elizabeth*'s Time, and Queen *Mary*'s, was to put in the Words *Naturalem Dominum*, and they cannot ſhew me any of thoſe Precedents without it. There was Occaſion in *Tucker*'s Caſe to look into this Matter, and ſearch all the Precedents. I have look'd into my Lord *Coke*'s Entries, and all the Precedents; I have ſeen my Lord of *Eſſex*'s Indictment, and all the others in Queen *Elizabeth*'s Time, and thoſe of the Traitors in the Powder-Plot, and thoſe of the *Regicides*, and *Tucker*'s own Indictment itſelf; all along it is *Naturalem Dominum ſuum*; and the Reaſon for it is, he that is Alien born, you never put in *Naturalem Dominum ſuum*, becauſe he owes a double Allegiance; one Natural, to his own King under whoſe Dominion he was born, and the other Local, to the King in whoſe Dominions he reſides, for he is bound to obſerve the Laws of the Place where he lives: And if he violate them, he does break the Allegiance that he owes to the Government where he lives, upon Account of the Protection he enjoys under it. But if he be born a Subject of the King of *England*, he has but one natural Liege-Lord; and he being an *Engliſhman* born, the King ſtands in that Relation to him, as he does to all his native Subjects, but not to Foreigners; and therefore it was thought requiſite to be, and has always been inſerted into Indictments of Treaſon againſt Subjects born. And, my Lord, we think the very Reſolution of the Court, afterwards affirm'd in the Houſe of Lords that revers'd *Tucker*'s Attainder, went upon this Opinion, That the Law required *naturalem Ligeum Dominum* to be put in. There the Exception was, that *Contra Debitum Ligeantiæ ſuæ* was omitted: To which it was objected, that there was *Dominum Supremum Naturalem*, which was equivalent: No, it was anſwered, both were requiſite, becauſe every Act charg'd in the Indictment ought to be laid againſt the Duty of his Allegiance. Now in Indictments of Treaſon, there are certain Words that are eſſential, becauſe of their Relation between the King and his People. There are certain Forms of Words, which if the conſtant Practice has been to make Uſe of them, the Omiſſion is an Error. Thoſe uſual Forms ought to be obſerv'd, and the Want of them will be a fatal Exception; ſo we think it would be in this Caſe, as much as if the Word *Proditorie* had been left out; or as if in a Caſe of Felony and Burglary, the Words *Felonice* and *Burglariter* had been left out.

Mr. *Phipps.* My Lord, we take the Practice and Precedents to be the Rule of Law in the Caſe; and I have look'd over a great many Precedents, beſides thoſe that Sir *Bartholomew Shower* has cited; and I never ſaw any one Precedent of an Indictment of Treaſon againſt a Subject born, without the Word *naturalem*; and all the Caſes cited by Sir *Bartholomew Shower* are full in the Point. *Counter*'s Caſe in my Lord *Hobbart*, 271. where 'tis ſaid, that if there be an Indictment againſt a Subject born, it muſt be *Contra naturalem Dominum*; if againſt an Alien, *naturalem* muſt be left out. To ſay *Contra Ligeantiæ ſuæ Debitum* will not do, it is not enough, for that may be ſaid againſt an Alien, becauſe he owes a local Allegiance, though not a Natural one. And I take it, upon this Difference, this Indictment is not good.

Mr. Att. Gen. My Lord, I do not know how far you will think it proper to enter into this Matter before the Trial.

L. C. J. Mr. *Attorney*, I think you had as good ſpeak to it now as at another Time; tho' I muſt confeſs it is not ſo proper in Point of Practice.

Mr. Att. Gen. Well, my Lord, then we will ſpeak to it now. The Objection is, That the Words *naturalem Dominum* is not in the Indictment; which they ſay is contrary to the uſual Form: As to the Precedents, there are a great many where it has been, and I am ſure a great many where it has not been; and I am ſure for this Six, Seven, or Eight Years laſt paſt, it has always been omitted: And, with Submiſſion to your Lordſhip, it is not at all neceſſary, if there be Words in the Indictment which ſhew, that what he did was againſt the Duty of his Allegiance to his Lawful and Undoubted Lord (which are the Words in this Indictment). It is true, if he be not a Subject born, *naturalem* cannot be in, becauſe that is contradictory to the Obedience which he owes, for it is not a Natural Obedience that he owes, but a Local; but if a Man be a Subject born, and commits Treaſon againſt the Allegiance that he owes, that is againſt his natural Allegiance; for whatſoever he does againſt his Allegiance, he does againſt his natural Allegiance, and ſo there's no need to put in the Word *naturalem*; becauſe he owes no other Allegiance but that; it is ſufficient if that be put in which ſhews its being againſt his Allegiance. If they could ſhew that a Subject born has two Allegiancies, one that is natural, and the other that is not natural; then if you would proſecute him, you muſt ſhew, whether it was againſt his natural, or againſt his other Allegiance. But when he has none but a natural Allegiance, certainly againſt his Allegiance, without putting in natural, will be well enough. It is true, where there is no natural Allegiance, it muſt be wrong if you put it in, becauſe you put in that Allegiance which he does not owe; but where he is a Subject born, to put in natural Liege-Lord, there is no Ground at all for it; there are Words enow that ſhew it was againſt his Allegiance to his Lawful and Undoubted Lord.

L. C. J. Look you, Sir *Bartholomew Shower*, how does it appear, that theſe Men are Subjects born? The Matter you go upon does not appear upon the Indictment, and you are not to go off from that.

Sir *B. Shower.* Every Man is preſum'd to be ſo, unleſs the contrary appears.

L. C. J. You quote *Calvin*'s Caſe, and the other Caſes that are there put; thoſe are all Caſes of Aliens; there is Dr. *Lopez*'s Caſe: He being an Alien comes into *England*, and commits High-Treaſon: Why, ſay they, how ſhall we indict this Man? We cannot ſay it is *Contra Naturalem Dominum ſuum*; for he owes no natural Allegiance to the Queen of *England*; How ſhall we do to frame a good Indictment againſt this Man? They conſidered of this; and they ſaid it will be a good Indictment, to charge him with High-Treaſon, or any one elſe, leaving out the Word *Naturalem*: For if it appear he has committed an Offence againſt the Laws of the Kingdom, and againſt the Duty of his Allegiance, which is High-Treaſon, that's enough. Now as to *Tucker*'s Caſe, it was reverſed for want of the Concluſion, *contra Debitum Ligeantiæ ſuæ.* Thoſe Words are material; for let the Offence be never ſo much againſt the Perſon of the King, as to aſſaſſinate him, or levy War againſt him, yet ſtill if it be not againſt the Duty of his Allegiance, as it cannot be if he owes him none, it is not High-Treaſon. And therefore if it be againſt his Allegiance, whether that Allegiance be natural or local, it is all one, it's enough to make it High-Treaſon.

Mr. Sol. Gen. In that Caſe in *Dyer*, they ſhew where it was a Fault to put the Word in, but they can ſhew no Caſe where it has been adjudged to be a Fault to leave the Word out.

L. C. J. No Doubt it would be a Fault to have that in, *Contra Naturalem Dominum ſuum*, where there is only a local Allegiance due.

Mr. *Phipps.* How does it appear whether it is the one or the other that is due?—*L. C. J.* It is no Matter whether the one or the other do appear, it is High-Treaſon be it the one or the other, if it be againſt the Duty of his Allegiance.

Mr. *Phipps.* Suppoſe an Indictment againſt an Alien were, *Contra Naturalem Dominum.*

L. C. J. That would be ill, becauſe then you had laid it more ſpecially, and otherwiſe than really it is, and reſtrained it where you ought not to do it.

Mr. *Phipps.* How then, my Lord, ſhall it appear that he only ow'd a local Obedience?

L. C. J. It may be given in Evidence, That he is an Alien born.

Mr. Sol. Gen. He may plead it in Abatement to the Indictment.

L. C. J. He ought to be acquitted, for you have indicted him of a Crime againſt his natural Allegiance, when he owes no ſuch. But Allegiance generally comprehends all Sorts of Allegiance, Natural and Local.

Sir *B. Shower.* How then, my Lord, come all the Lawyers of all Ages to put in thoſe Words in Indictments of High-Treaſon againſt Subjects born?

L. C. J. No, I have ſeen Abundance of Precedents, that have only *Contra Ligeantiæ ſuæ Debitum* generally, and ſo the moſt part are; for Allegiance is the *Genus*, and if that be ſuggeſted, all the *Species* are contain'd under that.

Mr. Att. Gen. Well, have they any more?

Sir *B. Shower.* Yes, we have more.

L. C. J. Well, you ſhall have them all in time.

Sir *B. Shower.* My Lord, here is another Objection, and that's this: Here is one Fact that they have laid, and that's the 2d Overt-Act in this Indictment,

dictment, that they consented and agreed that Forty Men, (whereof these Four were to be Four) but do not lay it to be done traitorously. They say *Consenserunt, Agreaverunt & Assenserunt*, but not *proditorie*; and I never saw an Indictment that laid an express Overt-Act, without repeating the Word again. If your Lordship pleases, the Words in the Indictment are thus; as to the first Overt-Act, it is laid in this Manner; *Et ad execrabilem Assassinationem illam exequend.* at such a Time and such a Place *proditorie tractaverunt, proposuerunt & Consultaverunt de viis et modis mediis, &c.* and then comes this which we except against; *& Consenserunt, Agreaverunt & Assenserunt quod Quadraginta Homines, &c.* Now this is a plain distinct Act, and there is no *proditorie* to it; and if ever they can shew me any Indictment, in which an Overt-Act was laid, of which they gave any Evidence, and it had not the Word *proditorie* in it, I am very much mistaken. I am sure, I never saw any such. And it is not enough to say, that the Nature of the Thing is such, as that it cannot but be a Treasonable Act; but they must alledge it to be so, by the express Use of that Word which the Law has appointed to express this Crime by. In the Case of an Indictment for Felony, if it be not said Felony, it is not good. They are not to describe that by Circumlocution, which is a particular Crime fixt by Law, they must use the *Verba Artis*, the Terms of Art, and no other: If your Lordship pleases it may be read.

Mr. Sol. Gen. Let it be read if you please; but take it in *English*, and it is no more than this, they did traitorously compass the Death of the King, and for that purpose they did traitorously meet, and consult about the Ways and Means, and did consent and agree that forty Men, *&c.*

Cl. of Arr. Reads, *Et ad Execrabilem Horrendam & Detestabilem Assassinationem, Anglice* Assassination, *& Interfectionem illam Citius exequendum & anno ac Diversi aliis Diebus & vicibus apud parochiam prædictam in Comitatu prædicto proditorie tractaverunt, proposuerunt & Consultaverunt de viis modis & mediis ac Tempore & Loco ubi quando qualiter & quomodo Dictum Dominum Regem sic ex Insidiis facilius Interficerent.*

Sir *B. Shower.* There is an End of that, now go on.

Mr. Att. Gen. No, Sir *Bartholomew*, you mistake, there is no End of it, that's done at the same time with that which follows.

Sir *B. Shower.* No, it is not the same Overt-Act; but let him go on.

Cl. of Arr. *Et Consenserunt Agreaverunt & Assenserunt quod quadraginta Homines Equestres.*

Sir *B. Shower.* Well you need read no further for our Objection. We say there wants the Word *Proditorie:* For there are two Overt-Acts, the one is, that they traitorously did consult of the Ways and Means how to kill the King, and that Overt-Act we agree to be well laid: But then it says they consented and agreed that there should be Forty Men, whereof these Four should be Four, but does not say they traitorously agreed; are not these distinct Acts?

Mr. *Phipps.* Surely, My Lord, they are distinct Acts; for this Part of the Indictment upon which Sir *Bartholomew* grounds his Objection, is that Overt-Act of which the List in Mr. *Rookwood's* Case was urged by the King's Counsel, and agreed by the Court to be an Evidence.

Then the Jury against Mr. *Rookwood* came in, and delivered in their Verdict, as it is in his Trial, then afterwards the Court went on thus.

Mr. Att. Gen. My Lord, the Objection is, that *Proditorie* is not inserted into that particular Clause of the Indictment, which shews their particular Agreement that there should be forty Men, whereof the Four named in the Indictment were to be Four. Now your Lordship observes how the Indictment runs, it is for Compassing and Imagining the Death and Destruction of the King; and it sets forth for this Purpose, that to effect this Compassing and Imagining, they *Proditorie tractaverunt & Consultaverunt de viis mediis & Modis* how they should kill the King. Now that which immediately follows after is, the particular Method and Means that were agreed upon, that is, that there should be forty Men. Now this is the strangest Suggestion that ever was, when we have set forth, that traitorously they did so agree of the Ways and Means, and then set forth the particular Means, that here must be *proditorie* again to that. This is such a Construction as I cannot but admire how it could come into any one's Head. It is Part of the Sentence; for the other Part, as we have laid it, is not compleat before: It may be it might be sufficient without setting forth the particular Ways and Means; but when it is set forth it is Part of the Sentence, and refers to the first Beginning.

L. C. J. Aye, sure it does.

Mr. Att. Gen. I cannot tell what they would have, unless they would have us repeat the Word *proditorie* in every Line.

Mr. Sol. Gen. Or before every Verb.

Sir *B. Shower.* No; but I think it ought to be repeated at every Overt-Act.

Mr. *Conyers.* If your Lordship pleases, after that they have set forth that this was the particular Method and Way agreed upon at their Consultation, that forty Horsemen or thereabouts should go about it, of which the Persons indicted were to be Four, it goes on, *Et Quilibet eorum proditorie super se Suscepit esse unum*, there it is put in, and it appears to be as particular as possible can be.

Mr. *Cowper.* Sir *Bartholomew Shower* says, that when we have alledg'd that they did traitorously treat, propose and consult of the Means and Ways of killing the King, there we have done the Sentence, and made that one Overt-Act. Now how is the Sentence done? The next Word is a Conjunction Copulative, *& Consenserunt, &c.* And what is the Use of a Conjunction Copulative, but to convey the Force of the Words in a former Sentence to the Sentence following, and to prevent the Repetition of every Word in the subsequent Sentence that was in the Precedent? But it is plain, they are both one and the same Overt-Act, and these subsequent Words are only an Explanation, more particularly of the Overt-Act set forth in the precedent Words.

Sir *B. Shower.* In Answer to that that has been said, if they shew me any Precedent, where an Indictment has been for High-Treason, setting forth several Overt-Acts, and not the Word *proditorie* set to every Overt-Act, then they answer my Objection. If the Word *Quod* had come in, that would have made them distinct to be sure; and I think they are as distinct Acts now; suppose they had concluded at the End of the Word *Interficerent*, that had been a good Overt-Act; I am sure they will agree to that: And if it be so, then the other is a good Overt-Act too. For it is a distinct Thing from that which was a perfect Sentence before; and it either requires a *Likewise*, or the Word *Proditorie* must be repeated. They have not so much as said *similiter Consenserunt*, or *simili modo*; there is an (&) indeed, but that does not so couple the Sentences together, as not to make them distinct Acts. There are several *Ets* thorough the whole Indictment, but that does not, as Mr. *Cowper* would have it, couple all together to make one Overt-Act.

Mr. *Phipps.* My Lord, if what Mr. *Cowper* says be allow'd, (*viz.*) that the (&) makes it one intire Sentence, then there is no Overt-Act at all; for after the Treason alledg'd, the Clauses are coupled to one another by an *Et*, and consequently, by Mr. *Cowper's* Way of arguing, the whole Indictment is but one intire Sentence.

L. C. J. I do not understand your Meaning as to that; they tell you *Proditorie* is alledged to the Consulting, Contriving and Agreeing, then they tell you what was the subject Matter of that Contrivance and Agreement, to assassinate the King, and in order to that they agreed there should be 40 Men; is not that good enough, without *Proditorie* to every Line?

Sir *B. Shower.* No, it is not said in *Ordine ad*, there is no such Thing; but only they did consult of the Ways and Means, and did agree that 40 Horsemen should do it, and afterwards did agree to provide Horses and Instruments of War. Now that being with a *Quodque*, they say makes a new Overt-Act; but I cannot understand why *Quodque* is not as much a *Copulative* as *Et*, and the one should not have the same effect as the other.

L. C. J. First, it tells you there was a Consult and Agreement to assassinate the King, and for the Accomplishment of the said Assassination; afterwards *eisdem die & Anno Proditorie Tractaverunt & Consultaverunt de viis & modis*, how they should kill the King.

Sir *B. Shower.* That is one Overt-Act, say we, and there you should stop.

L. C. J. Et Consenserunt & Agreaverunt quod quadraginta Homines, &c. it is all at the same time, and must be intended the same Consult and Contrivance; that they consulted of the Ways and Means, and then agreed so many Men should be provided.

Mr. *Phipps.* No, My Lord, we say that is another Overt-Act.

L. C. J. Treby. It seems to me to be a specifying and particularising the Ways and Means, that they had consulted of, and concluded on.

Sir *B. Shower.* If it had been a specifying, it had been much better to put in either then and there, or that this was the Result of the Consultation.

L. C. J. Treby. It does seem to me so, that it was the Result of the Consultation, and it is well enough.

L. C. J. You had better have sav'd these kind of Exceptions till the Trial was over.

Sir *B. Shower.* But, my Lord, if there be one Overt-Act ill laid, I submit it whether they can give any Evidence of that Overt-Act.

L. C. J. Treby. No doubt of that, they cannot; but we think it is as well laid as it could be laid.

L. C. J. Truly I am not well satisfied, that it is necessary after you have laid the *Proditorie*, as to the particular Treason, to lay it again to the Overt-Act. For the Overt-Act is but Evidence of the Treason: The Treason itself lies in the Compassing, which is an Act of the Mind.

L. C. J. Treby. You cannot Indict a Man of Treason for Assassinating or Killing the King, but you must in every such Case frame the Indictment upon the Article for Compassing and Imagining the Death of the King; which must be laid to be done traitorously. Then, when afterwards you say the Person accused did wound him, or imprison him, or consult and agree to assassinate him, or did actually assassinate him, these are but so many Overt-Acts of compassing the Death; and you having first said that he did *Proditorie* compass and imagine the King's Death, you have thereby shewn that you charge him with a greater Offence than Felony (which my Lord *Coke* says is the Use of the Word *Proditorie*); and that being thus done, I do not apprehend it to be necessary that you should add *Proditorie* to all the rest of the following Particulars; for they are only external Discoveries of the inward Treason; and more properly deemed to be Evidence of the Treason, than to be the Treason itself.

L. C. J. The Treason is consummate in the Intention; besides the Words of the Statute make that the Treason, not the Overt-Act, that is but Evidence, and so it was held, (not upon this Exception, but upon the Reason that my Lord speaks of) in the Case of the Regicides of King *Charles* the First, That the Indictment should not be for killing the King, but for compassing and imagining his Death, and the Killing was alledg'd as an Overt-Act.

Sir *B. Shower.* It must be so if it were for levying of War.

L. C. J. Most true; for levying the War is the Treason; but in this Case we think it is no Exception.

Mr. Att Gen. Then let us have the Fifth.

Sir *B. Shower.* Then, my Lord, here is another Thing. It is a Question whether there be any Overt-Act presented by the Jury at all. The Indictment says, *Juratores pro Domino Rege præsentant*, that they as false Traytors did compass the Death of the King and the Slaughter of his Subjects, and they did meet, and consult, and agree how to do it, *Et iidem Christophorus Knightley* and the rest, to fulfil their said traitorous Intentions and Imaginations did, afterwards, the tenth of *February*, buy Arms and Horses. Now our Objection is, That it does not appear, that any one of these Overt-Acts are the Presentment of the Jury; with Submission they ought to have begun it again, either with a *Quodque*, or something that should have referred it to the first, *Juratores præsentant*, or else they must have begun quite again, with a *Juratores Ulterius præsentant*, and not have coupled them as this is with an *Et*. The most Forms begin with an *ulterius præsentant*, but here we find no Overt-Act is so introduced. They might present Part, and not present the other Part, for any Thing that does appear. Every Thing ought to be laid positively, as the Jury's *Dictum*; it may be only the Clerk's Saying, and not the Jury's, for any Thing that does appear. Your Lordship remembers the Case of the King and *Trobridge*, upon a Writ of Error to reverse a Judgment for erecting and continuing a Cottage against the Form of the Statute; now *Contra formam*

formam Statuti was in the Beginning of the Indictment, but not in the Concluſion; to the erecting but not the continuing. And though there was there *Juratores ulterius dicunt*, it was not *ſuper Sacramentum ſuum*, and they did not ſay, he did continue it againſt the Statute; and there being no formal Preſentment, that he maintain'd the Cottage notwithſtanding the Act, *Et* did not ſo couple it to the firſt Part, as to make it a good Preſentment. So we ſay in this Caſe, this is a Fault, and different from all the common Forms; there ought to be a direct Preſentment of each Overt Act, and not coupled by an *Et*. For *Et* will not do it; for it is a diſtinct Overt Act every one, and ſhould have been *Et quod Conſultaverunt, quodque Agreaverunt*, that a certain Number ſhould do ſo and ſo; and to be ſure, it ſhould have been ſo at the laſt Overt Act, which is only, *Et iidem Chriſtophorus Knightley*, &c. did buy Arms and Horſes. Now this laſt *Et*, being a looſe Conjunction *Copulative*, in common Senſe ought to refer to that which they had agreed upon, for that is laſt mention'd there, and the natural Senſe leads thither, and not to the Beginning of the Bill *Juratores præſentant quod*.

Mr. *Phipps*. I ſhall not trouble your Lordſhip further; they ought to have put in a *Quodque*, or an *Ulterius præſentant*.

Mr. Att. Gen. Where would you have the *Quodque*, or the *Ulterius præſentant?*

Mr. *Phipps*. Either to every Overt Act, or at leaſt to that laſt.

Mr. Att. Gen. The Indictment ſets forth, that they committed ſuch and ſuch a Treaſon: Their Objection is, that *Quodque* is not put into every Overt Act; and our Anſwer is, that the firſt *Quod* governs all that relates to that Treaſon. It may be, if there were two diſtinct Treaſons in the Indictment, when you come to ſet forth the Second Treaſon, you ſhould ſay *Juratores ulterius præſentant* the Second Treaſon; but the Overt Acts to prove the ſame Treaſon, are all Parts of that Treaſon, and make but one Species of Treaſon, which is the Imagining the Death of the King. There's the Treaſon; and to bring it to paſs, they did ſo and ſo: This, my Lord, muſt be Part of the Finding of the Jury as well as the Treaſon itſelf, of which theſe are the Overt Acts. But then if you will lay the levying of War in the ſame Indictment, then it may be you muſt ſay *Juratores ulterius præſentant quod*, &c. But it had been a ſtrange Abſurdity to ſay, *Juratores ulterius præſentant*, ſuch and ſuch Overt Acts: For the Overt Act is not a further Indictment, but only a ſetting forth that which is Evidence, upon which they found the Indictment for Treaſon.

Mr. Sol. Gen. What the Indictment ſays, is as direct Affirmation as can be all along of the Preſentment of the Jury, that the Priſoner and others did compaſs and imagine the Death of the King; and to bring it about, they did conſult together, and did agree to make uſe of ſuch and ſuch Means, and were to have a Party of 40 Men, and they bought Arms and Horſes. Now it does not repeat *quodque*, or *ulterius præſentant quod*, to every one of thoſe Sentences, that they did ſo and ſo, and that they did ſo and ſo. Now I would fain know the Difference between Saying, and they did ſuch a Thing, and Saying, and that they did ſuch a Thing. That's all the Difference that they think to overturn this Indictment for. The omitting of a *Juratores ulterius præſentant*, certainly is nothing; for the firſt Preſentment runs through the whole Indictment, and there does not need an *Ulterius*.

Sir *B. Shower*. Certainly there ſhould have been a *Quodque* at leaſt.

L. C. J. No indeed, I think it is better as it is, than as you would have it; becauſe the firſt *Quod* goes through the whole, That in order thereunto he did ſo and ſo; would you have it ſaid *& quod* in order thereunto he did ſo and ſo; but tho' that may be good Senſe, I think it is not ſo good as the other. This Indictment is for one Sort of Treaſon, and that is, for Compaſſing the Death of the King: and it is, I think, more proper to have but one *Quod*, than to have more; for it makes the whole Indictment more entire. As to the *Juratores ulterius præſentant*, that is never proper, where the *Species* of Treaſon is the ſame: For indeed if there had been two diſtinct Treaſons, the one for compaſſing the Death of the King, and the other for levying of War, in that Caſe you muſt bring it in by *ulterius præſentant:* Becauſe they are two ſeveral Offences, though compris'd in one Bill, and they are in Law as two Indictments. And ſo it is in the Caſe that you mentioned of Cottages: It is one Offence to erect a Cottage, and another Offence to continue a Cottage, and they are to have ſeveral Puniſhments; and becauſe they there jumbled them both together in one Indictment, that Indictment was held to be nought: For by Law, the Indictment for erecting a Cottage, ought to conclude *contra formam Statuti*; and then the Jury muſt begin again, *& ulterius præſentant quod* the Cottage was continu'd againſt the Form of the Statute; becauſe they are ſeveral Offences. But here the High-Treaſon is but one and the ſame Offence, and the other Things are but Overt Acts to manifeſt this Treaſon, the Compaſſing the Death of the King; and truly I think it is better as it is.

Mr. *Phipps*. I have ſeen ſeveral Precedents of Indictments, where the ſeveral Overt Acts were to the ſame High-Treaſon, but ſtill they had each an *ulterius præſentant*.

Mr. Att. Gen. I believe it is hard to find many Indictments in the ſame Words: I am ſure all are not.

Sir *Edward Ward*. *L. C. Baron*. Is it not as great an Affirmation to ſay, and they did ſuch a Thing, as to ſay, and that they did ſuch a Thing?

L. C. J. I cannot reconcile it to my Reaſon, but it ſhould be as good Senſe without *that* as with it.

L. C. J. Treby. In a long Deed it begins, *This Indenture Witneſſeth that* the Party granted ſo and ſo, and the Party covenants thus and thus; and ſo it goes on commonly, without renewing the Word *That* to the ſubſequent Clauſes: But yet the firſt Expreſſion (*This Indenture witneſſeth that*) governs the whole Deed, though it be many Skins of Parchment.

L. C. J. If you begin with an Indenture, you begin, That it witneſſeth ſo and ſo; without renewing, unleſs it be a very diſtinct Thing.

Sir *B. Shower*. My Lord, we think that Similitude makes for us. *A. B.* covenants ſo and ſo in a Conveyance, and then further, that ſo and ſo.

L. C. J. But there you reſtrain that in the Beginning of the Covenant to every particular in that Covenant.

Mr. Att. Gen. Will your Lordſhip pleaſe to call the Jury now?

L. C. J. Have you a Mind to go on with the Trial, or to go to Dinner?

Mr. Att. Gen. I believe your Lordſhip can try but one more to Night, and that may be as well after Dinner as before.

L. C. J. Well then, adjourn till 5 a-Clock, and in the mean time, you Keeper, knock off the Priſoners Fetters.

Keeper. They ſhall, my Lord.

Then the Court adjourned till 5 a-Clock in the Afternoon, it being then about 3.

Poſt Meridiem, the 21ſt of April, 96. *The Court returned, and was reſum'd about 6 in the Evening.*

Cl. of Ar. Keeper of *Newgate*, bring *Charles Cranburne* to the Bar. (*Which was done.*) *Charles Cranburne*, hold up thy Hand. (*Which he did.*) Thoſe good Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; and therefore if you will challenge them or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Cranburne. My Lord, I humbly deſire I may have Pen, Ink and Paper.

Court. Aye, Aye. (*He had them.*)

Cl. of Ar. Where is *George Ford?*

Cryer. Vous Avez.

Cranburne. I challenge him.

Cl. of Ar. *William Underhil.*

Cranburne. I challenge him.

Cl. of Ar. *William Withers.*

Cranburne. I challenge him.

Mr. *Phipps*. If your Lordſhip pleaſes, thoſe that were of the laſt Jury I hope ſhall not be call'd of this Jury; this Priſoner being tried upon the ſame Indictment the laſt was.

L. C. J. If they be not, it ſhall be in Eaſe to them, but it is not in Favour of you.

Mr. *Phipps*. We humbly conceive, having given their Verdict upon the ſame Indictment, they are not ſuch indifferent Perſons as the Law intends they ſhould be, and think it is good Reaſon they ſhould not ſerve upon this Jury.

L. C. J. What though it be upon the ſame Indictment? The Evidence is not the ſame; for they are diſtinct Offences.

Mr. *Phipps*. I do not know whether it be a good Cauſe of Challenge, but ſubmit it to your Lordſhip.

L. C. J. Well, you may doubt of it if you pleaſe, and try the Exception.

Cl. of Ar. *Thomas Trench.*

Cranburne. I challenge him.

Cl. of Ar. *John Wolfe.*------*Cran*. I challenge him.

Cl. of Ar, *James Bodington.*-----*Cran*. I challenge him.

Cl. of Ar. *Jonathan Andrews.* (He did not appear.) *John Raymond.*

Cranburne. I challenge him.

Cl. of Ar. *George Hawes.*

Cranburne. I challenge him.

Cl. of Ar. *Francis Barry.*

Cranburne. I challenge him.

Cl. of Ar. *Arthur Bailey.*

Cranburne. I challenge him; he was upon the laſt Jury.

L. C. J. That is no Reaſon; Will you challenge him peremptorily?

Cranburne. I do challenge him.

Cl. of Ar. *John Caine.*

Cranburne. I do not except againſt him.

Cl. of Ar. Hold Mr. *Caine* the Book, Cryer.

Cryer. Look upon the Priſoner, Sir. You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give, according to your Evidence, ſo help you God.

Cl. of Ar. *Thomas Glover.*------*Cran*. I challenge him.

Cl. of Ar. *Dormer Sheppard.* (He did not appear.) *George Tredway.* (He did not appear.) *Matthew Bateman.* (He did not appear.) *Timothy Thornbury.*-----*Cran*. I challenge him.

Cl. of Ar. *James Partherich.*------*Cran*. I challenge him.

Cl. of Ar. *Thomas Freeman.* (He did not appear.) *Robert Bredon.*

Cran. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. *Joſeph Bliſſet.*-------*Cran*. I challenge him.

Cl. of Ar. *Timothy Lanno.* (He did not appear.) *John Harris.* He did not appear.) *John Billiers.*

Cran. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. *Richard Bourn.*

Cran. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. *George Carter.* (He did not appear.) *Francis Chapman.*

Cran. I challenge him.

Cl. of Ar. *Alexander Forth.*-----*Cran*. I challenge him.

Cl. of Ar. *Nicholas Roberts.*

Cran. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. *Thomas Playſtead.*-----*Cran*. I challenge him.

Cl. of Ar. *William Atlee.*------*Cran*. I challenge him.

Cl. of Ar. *John Marſh.* (He did not appear.) *Andrew Cook.*

Cran. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. *John Hall.*-----*Cran*. I challenge him.

Cl. of Ar. *William Partridge.*-----*Cran*. I challenge him.

Cl. of Ar. *Peter Levigne.*------*Cran*. I challenge him.

Cl. of Ar. *Thomas Moody.*-----*Cran*. I challenge him.

Cl. of Ar. *Richard Belinge.*------*Cran*. I challenge him.

Cl. of Ar. *Thomas Evans.*

Cran. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. *Thomas Ramage.*

Cran. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. *Edward Townſend.*------*Cran*. I challenge him.

Cl. of Ar. *William Gunſon.*------*Cran*. I challenge him.

Cl. of Ar. *Philip Wightman.*

Cran. I ſay nothing againſt him. (*He was ſworn.*)

Cl. of Ar. John Wybourne.

Sir *B. Shower.* I hope you take an Account of the Challenges, Mr. *Hardiſtey.*

L. C. J. Nay, you ſhould take care of the Challenges, who are his Counſel: if he had no Counſel, we wou'd take care of him.

Cryer. Here is Mr. *Wybourne*, What ſay you to him?

Cranburne. I have nothing to ſay. (*He was ſworn.*)

Sir *B. Shower.* I hope your Lordſhip will alſo be of Counſel for him.

L. C. J. We are to be equal and indifferent between the King and the Priſoner: But you that are now his Counſel by Law, ought to take care that he loſe no Advantage.

Cl. of Ar. William Strode.

Cranburne. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. Daniel Byfield. (He did not appear.) *Benjamin Noble.* (He did not appear.) *Thomas White.*

Cranburne. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Cryer, Countez. *John Caine.*

Cryer. One, &c.

Cl. of Ar. Thomas White.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

The Names of the Twelve Sworn were theſe,

John Caine, Eſq.	*Thomas Evans*, Gent.
Robert Breden, Eſq.	*Thomas Ramage*, Gent.
John Billiers, Eſq.	*Philip Wightman*, Gent.
Richard Bourn, Eſq.	*John Wybourne*, Gent.
Nich. Roberts, Gent.	*William Strode*, Gent. and
Andrew Cook, Gent.	*Thomas White*, Gent.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez. If any one can inform my Lords the King's Juſtices of *Oyer* and *Terminer*, the King's Serjeant, or the King's Attorney-General, before this Inqueſt be taken, of the High-Treaſon whereof the Priſoner at the Bar ſtands Indicted, let them come forth and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance.

L. C. J. Mr. *Attorney*, Do you think we ſhall be able to try the other to Night?

Mr. Att. Gen. That is according as this holds, my Lord.

L. C. J. I ſpeak it for the Eaſe of the Jury, that they might be diſpatched, and not attend another Day.

Mr. Att. Gen. I doubt we cannot try any more than this to Night.

L. C. J. Well, it is no great Matter, it will be but a Morning's Work; it may be too great a Streſs and a Hurry to do any more to Night; and therefore we will diſcharge the Jury for to Night, thoſe of them that are not ſworn; but we will be here To-morrow Morning by Seven a-Clock; and therefore pray, Gentlemen, attend early.

Cl. of Ar. C. Cranburne, Hold up thy Hand. (*Which he did.*) You that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Charles Cranburne*, late of the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, Yeoman; for that he, with *Chriſtopher Knightley*, late of the ſame Pariſh and County, Gentleman, *Robert Lowick*, late of the ſame Pariſh and County, Gentleman, and *Ambroſe Rookwood*, late of the ſame Pariſh and County, Gentleman, the Fear of God in their Hearts not having, nor weighing the Duty of their Allegiance, but being mov'd and ſeduced by the Inſtigation of the Devil, againſt the moſt Serene, moſt Illuſtrious, moſt Clement, and moſt Excellent Prince, our Sovereign Lord, *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. their Supreme, True, Rightful, Lawful, and Undoubted Lord, the Cordial Love, and the true and due Obedience, Fidelity and Allegiance which every Faithful Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King ſhou'd bear, and of Right ought to bear, withdrawing, and wholly to extinguiſh, intending and contriving, and with all their Strength, purpoſing, deſigning and conſpiring the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is of Right, duly, happily, and very well eſtabliſhed, altogether to ſubvert, change and alter; as alſo our ſaid Lord the King to Death and final Deſtruction to put and bring, and his Faithful Subjects, and the Freemen of this Kingdom of *England* into intolerable and moſt miſerable Slavery to *Lewis* the *French* King to ſubjugate and enthral, the 10th Day of *February* in the 7th Year of the Reign of our ſaid Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh of St. *Paul Covent-Garden* aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traitorouſly, did compaſs, imagine and contrive, purpoſe, deſign and intend our ſaid Lord the King that now is, to Slay, Kill, and Murder, and a miſerable Slaughter among the faithful Subjects of him our ſaid Lord the King, throughout this whole Kingdom of *England* to make and cauſe; and their ſaid moſt wicked, impious, and deviliſh Treaſons, and traitorous Compaſſings, Contrivances and Purpoſes aforeſaid, to fulfil, perfect, and bring to Effect, they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, and very many other falſe Traitors to the Jurors unknown; afterwards, to wit, the ſame Tenth Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aboveſaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, ſecretly, traitorouſly, and with Force and Arms, did meet, propoſe, treat, conſult, conſent, and agree, him our ſaid Lord the King that now is, by lying in wait and wile, to Aſſaſſinate, Kill and Murder: And that execrable, horrid, and deteſtable Aſſaſſination and Killing the ſooner to execute and perpetrate; afterwards, to wit, the ſame Day and Year, and diverſe other Days and Times, at the Pariſh aforeſaid, in the County aforeſaid, traitorouſly did treat, propoſe, and conſult of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what manner our ſaid Lord the King ſo by lying in wait the more eaſily they might Kill: And did conſent, agree, and aſſent, that Forty Horſemen, or thereabout (of whom they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, ſhould be four; and every one of them traitorouſly took upon himſelf to be one) with Guns, Muſkets, and Piſtols, charged with Gun-powder and Leaden Bullets, and with Swords, Rapiers, and other Weapons Armed, ſhould lie in wait, and be in Ambuſh our ſaid Lord the King, in his Coach being, when he ſhould go abroad, to ſet upon; and that a certain and competent Number of thoſe Men ſo armed, upon the Guards of our ſaid Lord the King, then attending him, and being with him, ſhould ſet upon, and them ſhould fight with and overcome; whilſt others of the ſame Men ſo armed, him our ſaid Lord the King ſhould Aſſaſſinate, Slay, Kill, and Murder. And they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, the Treaſons, and all their treaſonable Intentions, Purpoſes and Contrivances aforeſaid to execute, perform, fulfil, and bring to effect, afterwards, (to wit) the aforeſaid Tenth Day of *February*, in the Seventh Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Swords and Rapiers, and other Weapons, Ammunition, and Warlike Things, and Military Inſtruments, falſely, maliciouſly, ſecretly and traitorouſly did obtain, buy, gather together, and procure; and to be bought, obtained, gathered together, and procured did cauſe, with that Intent them in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murder of our ſaid Lord the King that now is, as aforeſaid, to be us'd, employ'd, and beſtow'd: And the ſame Premiſſes the more ſafely and certainly to execute, do, and perpetrate, the aforeſaid *Chriſtopher Knightley*, with one *Edward King* (late of High-Treaſon, in contriving and conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted), by the Conſent and Aſſent of divers of the Traitors and Conſpirators aforeſaid, the aforeſaid Tenth Day of *February*, in the Seventh Year aforeſaid, traitorouſly did go, and came unto the Place propoſed, where ſuch intended Aſſaſſination, Killing, and Murdering of our ſaid Lord the King, by lying in wait, ſhould be done, perpetrated and committed, to view, ſee, and obſerve the Conveniency and Fitneſs of the ſame Place for ſuch lying in wait, Aſſaſſination, and Killing, there to be done, perpetrated and committed; and that Place ſo being ſeen and obſerved, afterwards, to wit, the ſame Day and Year, his Obſervations thereof to ſeveral of the ſaid Traitors and Conſpirators did relate and impart, to wit, at the Pariſh aforeſaid, in the County aforeſaid; and the ſaid *Charles Cranburne* the ſame Day and Year there, in order to the ſame execrable, horrid, and deteſtable Aſſaſſination and Killing of our ſaid Lord the King, by the Traitors and Conſpirators aforeſaid, the more readily and boldly to execute, perpetrate, and commit, adviſedly, knowingly, and traitorouſly did bear and carry among divers of theſe Traitors and Conſpirators forward and backward from ſome to others of them, a Liſt of the Names of divers Men of them who were deſigned and appointed our ſaid Lord the King, ſo as aforeſaid, by lying in wait, to Kill and Murder, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty: if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince: If you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty: if you find him not guilty, nor that he did fly for it, you are to ſay ſo, and no more: And hear your Evidence.

Mr. *Mountague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; this is an Indictment of High-Treaſon that is found againſt four Perſons; but the particular Treaſon againſt the Priſoner at the Bar, is for Compaſſing and Imagining the Death of the King, and endeavouring to ſubvert the Government, and enſlave the Nation to *Lewis* the *French* King; And the Indictment ſets forth, that the Priſoner at the Bar did for this purpoſe meet and conſult with ſeveral falſe Traitors to the King and Government, of the Ways, Manner, and Means how, and the Time and Place when and where to Aſſaſſinate the King; and at length they agreed that forty Horſemen ſhould go together, and ſet upon the King in his Coach, as he returned from Hunting; ſome to attack the Coach, while others ſet upon the Guards. The Indictment does further charge him with getting Horſes and Arms, and particularly with carrying a Liſt of the Aſſaſſinators from one to another. Theſe are the particular Things charged in the Indictment, and to this Indictment he has pleaded not guilty; if we prove the Fact, Gentlemen, we don't doubt your Juſtice.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; the Priſoner at the Bar, *Charles Cranburne*, is Indicted for High-Treaſon, in compaſſing and imagining the Death of the King. Gentlemen, the Overt-Acts laid in the Indictment to prove the Priſoner guilty are, That he was at ſeveral Meetings and Conſultations about the Manner of putting this Deſign in Execution; at which Meetings it was agreed, that there ſhould be about forty Horſemen in Number prepar'd, and arm'd for that Purpoſe, and they did provide Horſes and Arms for that very Thing, and did agree to put it in Execution.

Gentlemen, the Evidence that you will hear produced againſt the Priſoner at the Bar will be of this Nature, You will hear from the Witneſſes, that about *Chriſtmas* laſt, or the Beginning of *January*, Sir *George Barcley* did come over from *France* from the late King *James*, to whom he was an Officer in his Guards, with a Commiſſion for attacking the Prince of *Orange*, or levying War upon his Perſon. He came over about that Time, and ſeveral Troopers of the late King *James*'s Guards, to aſſiſt him in that barbarous Conſpiracy. When Sir *George Barcley* came over, he did acquaint with this Deſign ſeveral Perſons in *England*, that he thought proper to be Accomplices with him in it; particularly Capt. *Porter*, Mr. *Charnock*, Sir *William Parkyns*, and ſeveral others whoſe Names you will hear of, and they had ſeveral Meetings about it the Beginning

ginning of *February*, at Capt. *Porter*'s Lodgings, at the *Nagg*'s-*head* in *Covent-Garden*, at the *Sun* Tavern in the *Strand*, at the *Globe* Tavern in *Hatton-Garden*, and several other Places where they consulted in what manner they might attempt and accompliſh this bloody Deſign.

Gentlemen, you will hear, that at theſe Meetings it was propos'd, that they ſhould do it by Ambuſcade as the King came from *Richmond* a Hunting, whither he uſed to go upon *Saturdays*: Others were for doing it on this Side the Water. And ſo their Opinions being divided, it was thought neceſſary to find out and ſettle which was the beſt Place; and in Order thereunto they employ'd Capt. *Porter*, Mr. *Knightley*, and Mr. *King* (who was executed) to view the Ground; and accordingly they went, and pitch'd upon the Lane between *Brentford* and *Turnham-Green* for this Purpoſe, as the moſt convenient Place: And having ſo done, they came back, and gave an Account to thoſe that had appointed to meet 'em, to hear the Succeſs of their Expedition, at the *Nagg*'s-*Head* in *Covent-Garden*; and in that Place, you will find by the Evidence, that thoſe Perſons who were the Heads of the Conſpiracy, undertook to find their ſeveral Proportions of Men, for whom they would undertake that would go with them, and be concern'd in this Deſign. Sir *George Barcley* was to furniſh about twenty. He had the Command of the Troopers that came from *France*, and thoſe other Officers that came thence were under him. Capt. *Porter* was to furniſh ſeven, *Charnock* was to furniſh eight, Sir *William Parkyns* was to furniſh five Horſes and three Men, and, I think, *Lowick* was to furniſh ſome more: In the whole Number they reckon'd there ſhould be about forty.

It will appear, Gentlemen, that the Priſoner at the Bar, Mr. *Cranburne*, was one of the Men that Capt. *Porter* undertook to get, and engage in this Deſign; and accordingly Capt. *Porter* did acquaint Mr. *Cranburne* with it; and he did undertake to be one, and to be ready to go with him, and be concerned in this Aſſaſſination. You will find he was acquainted with it about the 14th of *February*, the Day before the firſt Time that they intended to aſſault the King: Then he did undertake and agree to prepare himſelf againſt the next Day. The next Day, which was the 15th of *February*, they had ſeveral Meetings, and they were making Preparation in Order to go out. It happen'd, by great Providence, his Majeſty did not go abroad that Day, and thereupon they diſpers'd themſelves; but they had Meetings afterwards, at which Meetings the Priſoner was preſent with Capt. *Porter*, Mr. *Pendergraſs*, *La Rue*, and ſeveral others that were concerned in the Conſpiracy, particularly the 21ſt of *February*, the Day before the ſecond Time they were to have put this in Execution. Capt. *Porter* being at the *Sun*-Tavern, with ſeveral other Gentlemen, and they reſolving to have it executed the next Day, if the King went abroad; Capt. *Porter* ſent for *Cranburne*, and *Keyes* that was executed, and *Kendrick* and *Sherborn*, four of thoſe that he had undertaken for, (of whom, I ſay, *Cranburne*, the Priſoner at the Bar, was one) and then he acquainted 'em that they were reſolv'd to go on with it the next Day. And then they agreed to be in a Readineſs accordingly. The next Day the Priſoner, with ſome others, met at Mr. *Porter*'s, where they were preparing to go out and attack the King, and they had ſeveral Diſcourſes about the Ways and Means of doing it; and particularly Capt. *Porter* at that Time ſaid, that he had a very good Gun that held about ſix or eight Bullets, and that Mr. *Pendergraſs* was to have, who was to attack the Coach, and ſhoot into the Coach: Mr. *Cranburne* was there preſent at that Time, and Mr. *Cranburne* was imploy'd particularly by Capt. *Porter* to carry a Liſt that *Porter* writ of the Names of ſeveral Men that were to act in it under him, and this he was to carry to *Charnock*; *Porter* writ it and gave it him, and he carry'd it, with Directions to bring it back with the Liſt of the Names of Mr. *Charnock*'s Men. *Cranburne* did accordingly at that Time carry the Liſt of the Names to Capt. *Charnock*, and brought it back, with an additional Liſt from Capt. *Charnock*, of his Men.

At that Time, you will hear further, when *Cranburne* brought the Liſt, he brought an Account that he heard the King did certainly go abroad: For Mr. *Charnock* had Intelligence ſo from *Chambers*, who lay at *Kenſington* to get Intelligence: At which there was very great Rejoycing among all that were preſent at that Time, hoping they ſhould have an Opportunity to put this execrable Deſign in Execution; and ſo they prepar'd all of 'em to go out. There were ſeveral Inns in *Turnham-Green* and *Brentford*, and thereabouts, and they were to be placed two or three in an Inn, that they might be ready to get together when Time ſhould ſerve. It happen'd the King did not go abroad that Day neither, there being ſome Diſcovery of this Deſign, and ſo they did diſperſe themſelves, as apprehending it was diſcovered.

Gentlemen, it will appear by ſeveral Witneſſes, that the Priſoner at the Bar was engaged in this horrid treaſonable Deſign, and was to have acted a Part in it. We will call our Witneſſes that will make the Particulars out to you, and we do not queſtion but you'll do what is right. Firſt, call Capt. *Porter*. (*Who was ſworn.*)

Mr. Sol. Gen. Pray, if you pleaſe, Capt. *Porter*, give the Court and the Jury an Account what you know of this wicked intended Aſſaſſination, and what Share the Priſoner at the Bar had in it?

Capt. *Porter*. My Lord, before this wicked Aſſaſſination was on Foot, the Priſoner at the Bar, Mr. *Cranburne*, was imploy'd by me to buy Arms; I uſed to give him Money to go to the Brokers to buy Arms at ſecond-hand, and he brought a Sword-Cutler to me, of whom I bought about twenty Swords. And when Sir *George Barcley*, came into *England*, and this Buſineſs was reſolv'd upon, I acquainted him with the Deſign, and promis'd to mount him. He never was at any of the Meetings with Capt. *Charnock*, Sir *George Barcley*, or Sir *William Parkyns*; but he went to look for a Horſe, and was ready both *Saturdays* to go along with me. On *Saturday* the 22d I ſent him with a Meſſage to Sir *William Parkyns*, for the Note for the two Horſes, which he had promiſed me to furniſh me with, out of his five that he was to furniſh; he came back again, and told me that there was a Meſſenger came and ſaid that the King did go out, and he knew where to have the two Horſes; that Mr. *Charnock* was afraid we ſhould not have the full Number of Men, and deſired me to ſend him the Names of my Men; I did write a Liſt of the Names of my Men, and I went afterwards to the *Blue-Poſts* in *Spring-Garden*, whither he was to come to me; he did ſo, and he brought back the Liſt of my Men, with the Liſt of Mr. *Charnock*'s Men written underneath it, and at the ſame Time News was brought that the King did not go abroad that Day.

L. C. J. You ſay, that before the Aſſaſſination was ſet on foot, you imployed him to buy Arms and Horſes?

Capt. *Porter*. My Lord, I acquainted him with it the *Friday* before the firſt *Saturday*.

L. C. J. You ſaid before the Aſſaſſination you imployed him to buy Arms: When was that?

Capt. *Port.* I ſaid before the Aſſaſſination was on foot I imployed him to buy Arms. I told him I was to be a Captain in Colonel *Parker*'s Regiment, and promiſed to make him my Quarter-Maſter.

L. C. J. How long ago was this? Was it a Week before the Aſſaſſination was on foot?

Capt. *Port.* He has known of my being a Captain in Colonel *Parker*'s Regiment this two Years.

Mr. Att. Gen. I do doubt my Lord, he does not diſtinguiſh the Times when he bought the Arms, and when the Aſſaſſination was.

L. C. J. Yes, yes, he does now; I miſapprehended him at firſt, and thought he ſaid he had imployed him to buy Arms a Week before the Aſſaſſination was on foot; but he ſays it was a longer Time.

Mr. Att. Gen. I deſire, my Lord, he may be aſk'd what Time he bought Arms before this Aſſaſſination: When was the laſt Time he bought Arms?

Capt. *Port.* It was ſeveral Months before the Aſſaſſination.

Mr. Att. Gen. Was it within a Year before it?

Capt. *Port.* Yes; I believe it was within a Year. I gave him ſeveral Times Money for that purpoſe, in all above ten Pounds, and he told me, one with another, he had bought ten Caſe of Piſtols, and kept them in the Houſe till there were Occaſion.

Mr. Att. Gen. How long ago is it?

Capt. *Port.* I believe about a Year; within a Year.

Mr. Att. Gen. When did you firſt acquaint him with the Aſſaſſination?

Capt. *Port.* Preſently after Sir *George Barcley* acquainted me with it; I ſent to him, to deſire him to get the Piſtols clean and ready.

Mr. Att. Gen. Did you tell him of the Deſign?

Capt. *Port.* I told him there was a Deſign on foot, and I would tell him more when I ſaw him next; and I deſir'd him to get the Swords from the Sword-Cutlers, and the Piſtols clean and ready. And I met him afterwards, and told him of the Deſign, and that we intended to do it on *Saturday* the fifteenth; and he engaged to be ready and make one. On the *Friday* before the twenty-ſecond he went with me to the Cock-pit, and there we met with one Mr. *Gunn*, and I aſk'd him if he knew where any good Hackney-Horſes might be had? He ſaid he believed he did; and I ſent *Cranburne* with him, and he came back, and told me he had found two or three out in *Bloomſbury*.

L. C. J. Look ye, Capt. *Porter*, you muſt not ſpeak ſo faſt, it is impoſſible to underſtand ſo much Matter as you deliver without diſtinguiſhing of Times. You ſaid, that ſome long Time before the Aſſaſſination was on foot you ſent him to buy Arms; for what Purpoſe were thoſe Arms?

Mr. Att. Gen. My Lord, he has told you---

L. C. J. Pray, let me hear it from him again.

Capt. *Port.* I ſay my Lord, he knew of my being a Captain in Colonel *Parker*'s Regiment this two Years.

L. C. J. But what were thoſe Arms for that he bought?

Capt. *Port.* To be ready againſt King *James* landed, which was deſigned ſeveral Times.

L. C. J. Why, now you make the Matter clear to me.

Mr. Att. Gen. My Lord, that is not the Thing we go upon, that is but introductory to the Buſineſs that we are now Trying. Therefore we deſire to know of him: Captain *Porter*, when did you firſt acquaint *Cranburne* of the Aſſaſſination of the King?

Capt. *Port.* As ſoon as Sir *George Barcley* acquainted me with it, and deſired me get what Men I could to effect it. I ſent for *Cranburne* to my Lodgings in *Norfolk-ſtreet*, and he came to me one Morning; and I told him there was a Deſign on foot, and I would tell him more of it afterwards.

Mr. Sol. Gen. When was it that Sir *George Barcley* acquainted you with it?

Capt. *Port.* About the latter End of *January*.

Mr. Att. Gen. And what ſaid he to it when you acquainted him with it?

Capt. *Port.* He did agree to go with me, and I promiſed to furniſh him with Horſe and Arms; and on *Friday* before the fifteenth I ſent him with three Caſe of Piſtols to Sir *William Parkyns*, to furniſh the three Men he was to mount with his own Horſes.

L. C. J. Who was to have thoſe three Caſe of Piſtols?

Capt. *Port.* Sir *William Parkyns* was; and he carried them to Sir *William Parkyns*'s.

Mr. Att. Gen. How long was this, do you ſay, before the Aſſaſſination was to have been?

Capt. *Port.* It was *Friday* before the fifteenth.

Mr. Att. Gen. That was before the firſt Time that it was to have been done?

Capt. *Port.* Yes; and *Friday* before the laſt, I ſent him to look after the Horſes that *Gunn* ſaid he believed he could help me to, and he came to me to the Sun-Tavern in the *Strand*, and told me he and *Jeffery Gunn* had found three Horſes in *Bloomſbury*, and I came out of the Room where I was with Sir *George Barcley* and others, and there was *Kendrick*, and *Keyes*, and *Cranburne*, and I told them we were reſolved to put it in Execution the next Day.

Mr. Att. Gen. Well, pray what Diſcourſe had you with him the next Day?

Capt. *Port.* The next Day, the 22d, he came to my Lodging at *Maiden-Lane*, and I ſent him to Sir *William Parkyns* for a Note for the two Horſes, that I was to mount of his: He came back and told me, he knew where to have them, and that Capt. *Charnock* was afraid we ſhould not have our Complement of Men, and deſired me to ſend him an Account what Men I could bring, which I did by Mr. *Cranburne*, and being to go to the *Blue-Poſts*, ordered him to bring it me thither, and he did bring it back to me to the *Blue-Poſts*, with Captain *Charnock*'s Liſt underneath.

Mr. Sol. Gen. Pray, Captain *Porter*, was there any Body preſent when you ſent the Liſt, and the Priſoner brought it back to you?

Capt.

Capt. *Porter*. Yes, there was Mr. *De la Rue*, and Captain *Pendergrass*, and Mr. *King*, I know of none else.

Mr. *Att. Gen.* Pray do you remember what Healths were drunk after you heard the King was not to go abroad?

Capt. *Porter*. I don't remember what Healths were drunk that Day particularly; but whether it were *Thursday* or *Friday*, (I cannot tell particularly the Day) We drank a Health to the Squeezing of the *Rotten Orange* upon the next *Saturday*.

Mr. *Att. Gen.* Who was present that Day when that Health was drunk?

Capt. *Porter*. Mr. *Cranburne* was there present at that Time, and did drink the Health.

Mr. *Cowper*. Pray, Sir, did he meet you by Appointment on *Saturday* the 15th, or was it by Accident?

Capt. *Porter*. By Appointment, as all the rest did, to get ready, as all the rest did, to go upon the Design; and so it was both Days.

Sir *B. Shower*. If they have done with Mr. *Porter*, we would ask him a Question or two for the Prisoner: We desire to know when it was that those Arms were bought that he talks of? For we must acknowledge that Mr. *Cranburne* heretofore went upon several Messages for Capt. *Porter*; When was that buying of Arms?

Capt. *Porter*. I tell you, I cannot exactly tell the Month.

Mr. *Cranburne*. Do you remember the Year?

Capt. *Porter*. I believe it was less than a Year before the Assassination was on Foot.

Mr. *Cranburne*. If you remember, Sir, it was a Month before Colonel *Parker* was put in the *Tower*.

Capt. *Porter*. It was several Times; I cannot tell the particular Times.

Sir *B. Shower*. My Lord, I desire to know, when he first communicated this Design to Mr. *Cranburne?* and who was by, and where it was?

Capt. *Porter*. I told you I sent for Mr. *Cranburne* one Day in the Week before the 15th, and he came to me at my Lodging in *Norfolk-street*, and I acquainted him that Sir *George Barcley* was come, and there was such a Design on Foot; and I desired him to get those Pistols that he had of mine ready, and cleaned, that they might be ready for the Execution.

Sir *B. Shower*. What Day was that?

Capt. *Porter*. One Day in the Week before the 15th.

Mr. *Cranburne*. Did you ever name Sir *George Barcley* to me in your Life?

Capt. *Porter*. Yes, I did; I told you he was come from *France*.

Mr. *Cranburne*. Where was that, at Mr. —— ?

Capt. *Porter*. In *Norfolk-street*, where I lay.

Mr. *Cranburne*. Who was by? ——Capt. *Porter*. Nobody but myself.

Sir *B. Shower*. Upon what Occasion did you meet there?

Capt. *Porter*. I sent for him to my Lodging.

Sir *B. Shower*. How long had Sir *George Barcley* been in Town, before that Time?

Capt. *Porter*. I cannot tell the Time when he came to Town.

Sir *B. Shower*. How long was it after he came to Town before you saw him? Had you seen him a Week or a Fortnight before? Pray recollect yourself.

Capt. *Porter*. I told you that the first Time I heard of him, was the latter End of *January*; Capt. *Charnock* told me he was come, but I was then sick of the Gout.

Sir *B. Shower*. Now then I would desire to know, who was by, upon the *Friday* before the 22d, at the *Sun*-Tavern in the *Strand*, when you and Mr. *Cranburne* were there? —— Capt. *Porter*. I did tell you, Sir.

Sir *B. Shower*. I desire to know, whether there was any Body besides Mr. *Cranburne*, *Kendrick*, and *Keyes?*

Capt. *Porter*. Sir, I will tell you all I can remember; I was in one Room with Sir *George Barcley*, and there was Sir *William Perkins*, Capt. *Charnock*, and myself; and afterwards I went into another Room, where there was *Kendrick*, and *Cranburne*, and *Keyes*; and *Jeffrey Gunn* came in afterwards; I remember nobody else.

Mr. *Phipps*. Was not *Gunn* there when you first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards.

Sir *B. Shower*. My Lord, this may be a very material Part of our Defence, and therefore we must enquire a little the more into it. Mr. *Porter* is pleased to say, that he was in a Room with Sir *George Barcley*, and *Charnock*, and Sir *William Perkins*; and he came out into another Room, where was Mr. *Cranburne*, *Kendrick*, and *Keyes*; and there he says, after he had been there some Time, *Gunn* came in; I desire to know whether *Gunn* was there when he first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards; but I cannot positively tell, for I was in and out several Times.

Mr. *Phipps*. At the Time that you communicated this Design to Mr. *Cranburne*, what said he to you?

Capt. *Porter*. When I first communicated the Thing to him, I told him there was a Thing on Foot for the Service of King *James*, and desired him to go along with me.

L. C. J. What Kind of Service did you tell him it was?

Capt. *Porter*. He asked me, what kind of Service it was? I told him Sir *George Barcley* was come over, and I told the whole Design of the Assassination of the Prince of *Orange*, that it was intended to take him off, as he came from *Richmond* from Hunting.

Mr. *Phipps*. And pray what did Mr. *Cranburne* say to you?

Capt. *Porter*. He said he would be ready to go along with me.

Mr. *Phipps*. You say, you sent by him three Case of Pistols to Sir *William Perkins*; at that Time did you tell him for what Design those Pistols were?

Capt. *Porter*. I told him, they were for the three Men that Sir *William Perkins* was to mount upon three of his five Horses.

Mr. *Cranburne*. Did you speak to me to carry those Pistols to Sir *William Perkins?*

Capt. *Porter*. I think so, to the best of my Remembrance I ordered you myself to carry them.

Sir *B. Shower*. Captain *Porter*, I desire you to recollect yourself, and tell us plainly, whether the Design was communicated to Mr. *Cranburne* before the 15th? —— Capt. *Porter*. Certainly, Sir.

Sir *B. Shower*. Are you sure of it?

Capt. *Porter*. Yes, Sir, I am sure of it.

Sir *B. Shower*. I ask you, because you know what has been said upon this Occasion in other Trials.

Cranburne. Where did you write the Note, that you say you sent to Sir *William Perkins?* Was that Note sealed, or was it not?

Capt. *Porter*. I did not tell you that I wrote a Note.

Cranburne. You swore that you wrote a Note, and sent it by me to Sir *William Perkins* for two Horses.

Capt. *Porter*. I said no such Thing, Sir.

Mr. *Sol. Gen.* Look you, Capt. *Porter*, let him ask you any Questions; and if they be proper answer them, and let not his Affirmations or Mistakes provoke you to be angry.

Capt. *Porter*. I said, I sent him to Sir *William Perkins*, for a Note to have the Horses from Mr. *Lewis*.

Mr. *Phipps*. Did you send him with a Letter, or was it a Message by Word of Mouth?

Capt. *Porter*. I did send him by Word of Mouth, for a Note.

L. C. J. Pray, Gentlemen, observe the Evidence: Sir *William Perkins* was to give a Note for two Horses, and Capt. *Porter* sent *Cranburne* for the Note.

Mr. *Phipps*. The Question therefore that I ask, is, Whether he sent a Letter for the Note, or whether by Word of Mouth?

Capt. *Porter*. I sent by Word of Mouth.

Mr. *Cranburne*. Pray will you tell the Court what you said upon the 22d to Mr. *Pendergrass* and me, after you came down from the *Blue-Posts*, leaning upon the Rail.

Capt. *Porter*. I don't remember a Word of it, for I cannot remember every Word that I have spoken.

Sir *B. Shower*. If you can remember one Particular, sure you can remember another. If you can't remember this, how came you to remember any Part of the Discourse that happen'd at the *Blue-Posts?*

Capt. *Porter*. Because that was material to this Business, for I had very soon after a particular Occasion to recollect it upon the breaking out of the Plot.

Mr. *Cranburne*. Pray what Hour was it this *Saturday* the 15th, that you communicated this Design to me?

Capt. *Porter*. I cannot tell what Hour, but I say you met me at the *Blue-Posts Saturday* the 15th.

Mr. *Cranburne*. You say, you communicated it to me the 15th?

Mr. *Att. Gen.* He says he communicated it to you, before the 15th.

Mr. *Cranburne*. I desire to know where he was the 14th?

Capt. *Porter*. I say, one Day before the 15th; in that Week I sent for you to come to my Lodgings, and you did come, and there I communicated it to you.

Cranburne. Sir, I was not at your Lodgings that Week.

Mr. *Phipps*. What Day of the Week?

Capt. *Porter*. I cannot be positive whether it was *Thursday*, or *Friday*, or what Day; but one Day that Week it was.

Mr. *Phipps*. You ought to be positive when it was.

Capt. *Porter*. I do tell you as near as I can.

Mr. *Phipps*. With Submission, my Lord, he ought to be positive one Way or other.

L. C. J. Nay, I don't see that he ought to be positive to a Day; he may be so if he can.

Cranburne. Pray what Day did you say you sent me to Sir *George Barcley?*

Capt. *Porter*. I do not say that I ever sent you to Sir *George Barcley*.

Mr. *Phipps*. Can you take upon you to say, That he was at your Lodgings that Week before the 15th?

Capt. *Porter*. To the best of my Knowledge it was one Day that Week.

Mr. *Phipps*. To the best of your Knowledge! Are you sure of it?

L. C. J. Speak as certainly as you can.

Capt. *Porter*. Indeed, I believe so, it was before the 15th. I am sure, I think, it was within three or four Days after Sir *George Barcley* had acquainted me with it, I sent to the Prisoner to come to me to my Lodgings, at Mrs. ——— in *Norfolk-street*, and acquainted him with it.

L. C. J. And when you acquainted him with it, What did you tell him? What Part was he to act in it?

Capt. *Porter*. I told him, I would have him go along with me, and that I had set him down for one of my Party, and would provide him Horse and Arms; and he did agree to go along with me.

Sir *B. Shower*. Mr. *Webber*, Pray let me see *Charnock*'s Trial.

Mr. Sh. *Buckingham*. Why, Sir *Bartholomew*, is the Trial any Evidence?

Sir *B. Shower*. Mr. *Sheriff*, I know what Use I can make of it.

Mr. *Sol. Gen.* Will you ask him any more Questions?

Sir *B. Shower*. No, Sir.

Mr. *Sol. Gen.* Then swear Mr. *De la Rue*. *(Which was done.)* Pray, Sir, give the Court, and the Jury, an Account what you know of the intended Assassination, and what Share the Prisoner had in it.

Mr. *De la Rue*. It is too long a Story to tell you all that I know of this Matter; but, if you please, I will tell you what concerns the Prisoner at the Bar. I am heartily sorry that I have Occasion to appear against him, as I would be truly against any Body: But since I am here upon my Oath, I must declare the Truth, and nothing but the Truth; and I hope I shall not declare any Thing but what is Truth. Upon *Saturday* the 15th of *February*, the Day that the Design was to have been put in Execution against his Majesty, and all that were in the Coach with him, and against his Guards; I went to Mr. *Charnock*'s Lodgings in *Norfolk-street*, to inform myself whether they resolved on that Day to go out upon the Design; and I found by Mr. *Charnock* that they did resolve it, and I stayed there awhile, till such Time as Mr. *Chambers* came in; I did not know whence he came then, but, as I was informed afterwards, he came from *Kensington* to Mr. *Charnock*, and his Boots were dirty; and Mr. *Charnock* told me he had sent a Messenger to Mr. *Porter*; *And*, says he, *if you will stay a little Time, I shall have an Answer.* The Messenger came back, and told him, That Capt. *Porter* din'd at the *Blue-Posts* in *Spring-Garden*. I did not go to dine with him, but went Home, where I saw Mr. *King* at my Lodging, who told me, that the King did not go

out that Day. I told him, I heard he did not: I found by Mr. *Chambers*'s coming back, and that we had no Notice from Mr. *Charnock*, that it was concluded the King did not go out as it was ſuppoſed he ſhould have gone. When I had dined at my Lodging, I went to the *Blue-Poſts* in *Spring-Garden* to Mr. *Porter*, and there were four, or five, or ſix People with him; there was one Mr. *Sherborn*, and Mr. *Kendrick*, and two People that I never ſaw before, and another Perſon, but I can't tell now who he was. When we had been there a little while, in comes this unfortunate Man at the Bar, Mr. *Cranburne*; I don't know where he had been; but by his coming in ſo late, I ſuppoſe he had not dined, and he ordered the Drawer to get him ſome Coſtelets. This is all I can ſay as to that Day. I had ſeen Captain *Porter* twice or thrice between that and the 22d, and he deſired me to be at home on *Friday* Night between Eight and Nine, and he would ſend to me: He did ſend, and I was from home. But when I came I was informed his Servant had been to ſpeak with me; and in the Morning, about Eight or Nine o'Clock, *Saturday* the 22d, he ſent his Servant to me to tell me his Maſter would ſpeak with me at his Lodgings. I went to his Lodgings, and he then lay in *Maiden-Lane*, at one *Brown*'s a Surgeon: When I came in, he was in Bed; and he told me in *French*, *Touts Parties ſont preſts*, All Parties are ready. I underſtood all along that there were three Parties to be engaged; one to attack the King's Coach, and the two others the Guards: Sir *George Barcley* was to head the firſt, and *Porter*, and *Rookwood*, the reſt. Mr. *Porter* aroſe and dreſſed himſelf, and in came Mr. *Cranburne*; and Mr. *Porter* went out to him in the Dining-Room, and what he ſaid I can't tell: But ſoon after came in *Pendergraſs*, Mr. *Keyes*, and Mr. *King*, and then he takes Pen, Ink, and Paper.

Sir *B. Shower*. Who took that?

Mr. *De la Rue*. Captain *Porter* took Pen, Ink, and Paper, and writes down a Liſt of his Party, and puts me down firſt. Mr. *Pendergraſs* aſked me if I was the Captain? And I made him ſome Anſwer, but what in particular I cannot tell; I think I told him I knew of the Thing before the moſt did. But I can remember particularly that Liſt was given to Mr. *Cranburne*, to carry to Mr. *Charnock*; upon what Account it was, I cannot tell; but I concluded, that Mr. *Charnock* was to be acquainted with thoſe Perſons that Mr. *Porter* was ſure of: And Mr. *Porter* at that time told me that he was diſappointed of ſome People, and deſired me to get him ſome other Men in their Rooms; and he ſent particularly to one that Mr. *King* propoſed; and I did go, and brought him to the *Blue-Poſts*, where Captain *Porter* told me he was to dine; and the Gentleman I went to, told me he would meet me at the *Blue-Poſts* in *Spring-Garden*. When I came back to Mr. *Porter*'s Lodgings, Mr. *Porter* and Mr. *Pendergraſs*, and Mr. *Oldfield*, and I, went in a Coach to the *Blue-Poſts* in *Spring-Garden*; and when we had been there a little while, Mr. *Cranburne* came back to give an Account of the Errand Mr. *Porter* had ſent him upon, and he brings this Liſt.

Mr. *Att. Gen.* Who brought it? —— Mr. *De la Rue*. Mr. *Cranburne*.

Cranburne. Whither did I bring it?

Mr. *De la Rue*. To the *Blue-Poſts* in *Spring-Garden*.

L. C. J. You muſt not aſk any Queſtions till they have done with him. But, Mr. *De la Rue*, let me aſk you what Day was this?

Mr. *De la Rue*. This was *Saturday* the 22d of *February*; and he told Mr. *Porter* there was a Liſt of Mr. *Charnock*'s Men at the bottom of that Liſt; and I took the Liſt in my Hand, and there was Mr. *Charnock*'s Liſt of Six or Seven, or thereabouts, of his Party, and at the bottom of it was *R. C.* I think, for *Robert Charnock*. Mr. *Porter* takes Mr. *Cranburne* from the Company into another Room, and I went after them, and he told Captain *Porter*, in my hearing, that the King did not go out that Day. There is one Thing I forgot which now I recollect, and I am upon my Oath to tell the Truth, and the whole Truth. When I was at Mr. *Porter*'s Lodging, he told me the King was to go out; and that Mr. *Chambers*, the orderly Man, had ſent word, That the King reſolved to go out between Ten and Eleven. —— *L. C. J.* Who ſaid ſo?

Mr. *De la Rue*. Mr. *Cranburne* told me ſo at Mr. *Porter*'s Lodgings: I ſay I had forgot it, but it occurs to my Memory now, that he told me there before he went to the *Blue-Poſts*, that the King did go out that Day between Ten and Eleven; for Mr. *Chambers*, the orderly Man, had been with Mr. *Charnock* or Sir *William Perkins*, to let them know ſo much. And afterwards when he came back with the Liſt of Captain *Porter*'s Men, to Captain *Porter* at the *Blue-Poſts* in the *Spring-Garden*; there was at the Foot of that Liſt, a Liſt of Mr. *Charnock*'s Men in another Hand, I ſuppoſe writ by himſelf, but that I cannot ſwear whoſe Hand it was; and Mr. *Porter* took him into another Room, and then Mr. *Cranburne* told him the King did not go out, and I believe it was then between Eleven and Twelve o'Clock; and he alſo told Mr. *Porter*, that Mr. *Charnock* was apprehenſive the Thing was diſcovered, and therefore deſired him to have a care of himſelf, for he himſelf was reſolved not to lie at home that Night; I think, my Lord, Mr. *Porter* did ſend back Mr. *Cranburne* to Mr. *Charnock*; I cannot be poſitive whether he did or not, but I believe he did; becauſe I am ſure Mr. *Cranburne* did tell Mr. *Porter*, Sir *George Barcley* would ſpeak with him; and Mr. *Porter* made Anſwer, Why ſhould he deſire me to go to him, when he knows I am under ſome ill Circumſtances, and he can better come to me? And I believe Mr. *Porter* did ſend Mr. *Cranburne* once again to Mr. *Charnock*.

L. C. J. Well, pray do not ſay any thing of any Matter, but what you can be poſitive in.

Mr. *De la Rue*. But Mr. *Porter* did not go to Mr. *Charnock*, nor did Mr. *Charnock* come to him, therefore they ſtaid there and dined; and after Dinner, or a little before Dinner, *Keyes* the Trumpeter came up and told us, that my Lord of *Oxford*'s Regiment of Guards was returned from *Richmond*, foaming: *Keyes* went down Stairs again to learn Intelligence, as I thought, and came up and told us he ſaw the King's Coaches newly returned to the *Mews*, and Mr. *Cranburne* was by all the Time; I think this was before Dinner, and then we went to Dinner.

L. C. J. I tell you again, don't ſpeak any thing that is material, but what you can be poſitive in.

Mr. *De la Rue*. I am poſitive as to the Thing, and that it was the 22d of *February*, but I cannot be poſitive as to all the Circumſtances. After Dinner there was the uſual Healths, the Jacobite Healths to King *James*, and the Prince of *Wales*, and the Reſtoration, and the like; and after that I think it was Mr. *Porter* took an Orange in his Hand, and ſqueez'd it, I am ſure one in the Company did, and drank ſomething to the Rotten Orange, I cannot very well remember juſt now what it was; but I would be cautious of ſaying any thing but what is Truth; but if your Lordſhip will give me leave to recollect myſelf, I will tell you what it was——Oh! it was to the ſqueezing of the Rotten Orange, and the Health went round, and Mr. *Cranburne* was in the Company, and drank the Health. But being diſappointed and fruſtrated of the Deſign by the King's not going abroad that Day, and Mr. *Porter* being cautioned by Mr. *Charnock* to take care of himſelf, and being told that Mr. *Charnock* would not lie at home that Night, and the Guards returning in that manner, they were all apprehenſive that the thing had taken Air, and the Deſign of Aſſaſſinating the King was diſcovered, and therefore Mr. *Porter* concluded of going out of Town; ſeveral Healths were drunk round, and I think about Two o'clock he went out of Town, and then the Company broke up. This is what I can ſay as to the Priſoner, and I hope I have ſaid nothing but what is Truth.

Mr. *Sol. Gen.* Then, my Lord, we deſire to know whether they will aſk him any Queſtions?

Mr. *Phipps*. At the time you ſay this Liſt was given by Captain *Porter* to Mr. *Cranburne*, did Mr. *Porter* declare to what purpoſe the Liſt was ſent?

Mr. *De la Rue*. No, Sir, not a Word of any ſuch thing. Mr. *King* was by, and Mr. *Pendergraſs* was by, and I think Mr. *Keyes* was by, and he writ a Liſt of his Party, putting me down firſt; and Mr. *Pendergraſs* ſaid to me, You are Captain, and he gave it to Mr. *Cranburne* to carry it to Mr. *Charnock*; what the particular Meſſage was, I cannot be poſitive: Indeed I don't very well remember the Meſſage, but the Liſt was carried to Mr. *Charnock*, and to the beſt of my Memory it was to give Mr. *Charnock* an Account what Men he was ſure of; for Mr. *Porter* told me of ſeveral Diſappointments he had had, of Perſons that had promiſed him, and failed.

Mr. *Phipps*. Can you remember what Mr. *Cranburne* ſaid upon that?

Mr. *De la Rue*. No, I do not.

Cranburne. What Meſſage was that, you ſay, I brought from Sir *George Barcley*?

Mr. *De la Rue*. I do not ſay that you brought any Meſſage from Sir *George Barcley*.

Cranburne. You ſaid that I brought a Meſſage, that Sir *George Barcley* would ſee him.

Mr. *De la Rue*. I do not ſay ſo; but I ſay that you told Mr. *Porter* that Mr. *Charnock* ſent you with a Meſſage to let him know that Sir *George Barcley* was deſirous to ſee Mr. *Porter*, to confer about taking care of themſelves.

Cranburne. Did you hear me name Sir *George Barcley*'s Name?

Mr. *De la Rue*. Yes, I ſay you told Mr. *Porter* that Mr. *Charnock* bid you caution him to take care of himſelf, and that he would go that way, for Sir *George Barcley*, and he, deſired to ſee him; and Mr. *Porter* ſaid it was an unreaſonable thing for Mr. *Charnock* to deſire it, becauſe they knew he was under Circumſtances that it was not proper for him to go, and he wondered they would not rather come to him.

L. C. J. What time a-Day was this?

Mr. *De la Rue*. It was about Twelve o'clock, I think.

L. C. J. Was it after ſuch time as the News was brought that the King did not go abroad that Day?

Mr. *De la Rue*. Yes, my Lord, it was after that time.

Mr. *Phipps*. Were you with Sir *George Barcley* when he was here in *England*? Did you ſee him here?

Mr. *De la Rue*. I did not ſee him on this ſide of the Water. I knew him abroad, and a great many other unfortunate Perſons, that were concerned in this Affair; I knew ſome of them here, and that they were concerned in the Deſign, but I did not converſe with many, indeed with but a very few about it; for to ſhew that I was not a Man that deſigned to trepan or enſnare any Man, I did never exchange two Words about this Matter with any Perſons that I knew were concerned in it, but Sir *William Perkins*, (and that but in a ſmall meaſure) and Mr. *Charnock* and Mr. *Porter*, and Mr. *King*, and Col. *Parker*; except what paſſed upon the 22d, between Mr. *Porter* and Mr. *Charnock*, when Mr. *Porter* ſent Mr. *Cranburne* to Mr. *Charnock*. Mr. *Cranburne* was one who Mr. *Porter* called his Quarter-Maſter: I know this Gentleman was commonly depending upon Mr. *Porter*, but I think I never was much in his Company; I did not know what Deſign he had upon him, but I was told by Mr. *Porter*, that he intended to make him his Quarter-Maſter, and I underſtood Mr. *Porter* was to have a Troop of Horſe in Col. *Parker*'s Regiment.

Mr. *Phipps*. You ſay you knew a great many of them that were concerned, but you diſcourſed and converſed but with a few?

Mr. *De la Rue*. I do ſo, Sir.

Mr. *Phipps*. How do you know that they were concerned, when you did not diſcourſe with them?

Mr. *De la Rue*. By Information from Mr. *Charnock* and Mr. *Porter*.

Mr. *Phipps*. Do you know any thing more of Mr. *Cranburne*, than the Liſt, and what you have ſaid already?

Mr. *De la Rue*. I give you an Account of all that I do know.

L. C. J. Anſwer that particular Queſtion. Do you know nothing more than what you have ſaid?

Mr. *De la Rue*. No, my Lord, I do not remember nor know any more as to Mr. *Cranburne* than what I have declared, and I am ſorry I had occaſion to declare ſo much.

Mr. *Att. Gen.* Then call Mr. *Pendergraſs*. *(Who was ſworn.)*

Mr. *Sol. Gen.* Pray will you give my Lord and the Jury an Account of what you know of the Intended Aſſaſſination, and how far Mr. *Cranburne*, the Priſoner at the Bar, was concerned in it.

Capt. Pendergraſs. My Lord, the 13th of *February* laſt, I came out of *Hampſhire*, Mr. *Porter* ſent for me to come to Town, and I met him that Day at the *Blue-Poſts* in *Spring-Garden*, and there he told me of the Aſſaſſination that was to be done on *Saturday* following: The next Day we dined at the *Roſe-Tavern*, where the Priſoner dined with us, and

we talk'd of the Buſineſs; that was *Friday* the 14th, and we were to be in readineſs the next Day to aſſaſſinate the King, as he was coming from *Richmond*; but ſome Company coming in afterwards, we left off the Diſcourſe, and talk'd no more that Night. The next Day that we were to do the Buſineſs, we met at the *Blue-Poſts* in *Spring-Garden*, and finding the King did not go abroad that *Saturday*, we dined there at the *Blue-Poſts*, and talk'd over again of Aſſaſſinating the King, and the Priſoner was by at the ſame time; they were all mightily concerned the King did not go that *Saturday*; but when we had dined there, we had no further Diſcourſe about the Aſſaſſination that Day, but every body was to prepare againſt the next *Saturday*.

L. C. J. Was that agreed upon then?

Capt. Pendergraſs. Yes, it was by all the Company; ſo we parted that Day. Some time the next Week I met Mr. *Porter*, and Mr. *Porter* aſk'd me, if I had a Horſeman's Sword? I told him, No: Says he to Mr. *Cranburne*, Let Captain *Pendergraſs* have one of the Horſemen's Swords that you have got. Says Mr. *Cranburne* to me, If you will come to my Houſe you ſhall make choice of one yourſelf, for I have ſeveral at home. Said I, Mr. *Cranburne*, I cannot go that Way, but I'll take one of your chooſing, if ſo be you'll leave it at my Lodgings: He ſaid he would do it, and did; he left it at my Lodgings in *Suffolk-Street*, which Sword I have ſtill. The Day following I met him, and he aſk'd me if I had received the Sword? I ſaid, I had it; and he ſaid it was very well. After this I did not ſee Mr. *Cranburne* till *Saturday* the 22d, at which Time I came to Mr. *Porter*'s Lodgings between Nine and Ten o'Clock in the Morning, and the Priſoner at the Bar was there, and I heard Mr. *Porter* give him a Meſſage to go to Sir *William Perkins* for ſome Horſes, I know not how many. The Priſoner went, and in ſome time after came back again, and brought an Account that the King went out that *Saturday* the 22d to *Richmond*; ſo every body was to get ready: And Mr. *Cranburne* ſaid, that Mr. *Charnock* deſired that Mr. *Porter* would ſend a Liſt of his Men; upon which Mr. *Porter* wrote a Liſt of his Men, and gave it to the Priſoner to carry to Mr. *Charnock*, and bid him meet him at the *Blue-Poſts*; and Mr. *Porter*, and Mr. *De la Rue*, and I, took Coach, and went down to *Spring-Garden*, and when we came to the *Blue-Poſts*, there were ſome Perſons that I think Mr. *De la Rue* had appointed to come there: the Priſoner comes thither, and brought the Liſt back, with a Liſt of Mr. *Charnock*'s Men underneath. I know not who the Men were, for I ſaw it only on the one Side of the Table in Mr. *Porter*'s Hand; at the ſame Time the Priſoner brought an Account, that the King did not go abroad that Day, and preſently after we had the ſame Account from other Hands; and Captain *Porter* and I went out of Town, and we heard no more of it.

L. C. J. Are you ſure that he did agree to this Matter before the 15th?

Capt. Pendergraſs. Yes, I am ſure of it; he agreed to it *Friday* the 14th, at the *Roſe-Tavern*, in *Covent-Garden*.

L. C. J. On the 15th, it ſeems they were diſappointed; are you ſure there was an Agreement to purſue it the 22d?

Capt. Pendergraſs. Yes, I am ſure there was, my Lord.

L. C. J. Was the Priſoner there?

Capt. Pendergraſs. Yes, my Lord, I am ſure that the Priſoner at the Bar was there.

Cranburne. Pray, Mr. *Pendergraſs*, was there any Diſcourſe about this Thing when I was there?

Capt. Pendergraſs. Yes, Mr. *Cranburne*, you cannot but remember there was.

Cranburne. What Hour did I come there, pray, Sir?

Capt. Pendergraſs. Truly, I cannot be poſitive to an Hour; but you were there while the Diſcourſe was.

Cranburne. Whether I did ſtay there all the while, and who was in the Company?

Capt. Pendergraſs. All the Company broke up about ſix o'Clock; there was Mr. *King*, Captain *Porter*, Mr. *Kendrick*, Mr. *Cranburne*, Mr. *Keyes*; and myſelf.

Cranburne. Was *Kendrick* there when I was there?

Capt. Pendergraſs. Yes, I am ſure of it; I will do you all the Juſtice in the World that I can.

Sir B. Shower. You ſay, Sir, he did agree upon the 14th to this Deſign; pray what Words did he uſe?

Capt. Pendergraſs. He did agree that we ſhould attack the King the next Day.

Sir B. Shower. Pray, Sir, if you can recollect yourſelf, what did the Priſoner ſay, or whether you took him to agree by being ſilent?

Capt. Pendergraſs. He ſaid, he hop'd we ſhould execute our buſineſs the next Day.

L. C. J. What Day was that?

Capt. Pendergraſs. That was the 14th of *February*, and the ſame Night I gave Account of the Matter to my Lord *Portland*.

Mr. Phipps. Did he agree to be one in the Execution of the Deſign?

Capt. Pendergraſs. Yes, he did; he diſcourſed the Matter to me himſelf.

Mr. Att. Gen. My Lord, we have done with our Evidence.

L. C. J. Well, then, what ſay you to it for the Priſoner?

Sir B. Shower. My Lord, what we have to ſay on behalf of the Priſoner in this Reſpect is this: Here are but three Witneſſes produced, and as to one of them, *De la Rue*, there is no Evidence that he gives your Lordſhip and the Jury that affects this Matter, but only that there was a Liſt given by Captain *Porter*, and carried by the Priſoner to Mr. *Charnock*, and ſo brought back again. But he does not recollect, nor ſwear to any Meſſage that was ſent from *Porter* by the Priſoner to Mr. *Charnock*: Now, my Lord, the bare carrying of a Note of Names will be no Evidence of Treaſon. Mr. *De la Rue* does not ſwear to any Privity of the Priſoner, what the Liſt was for, nor to the Delivery of the Liſt, which is the Overt-Act in the Indictment; nor upon what Account this Liſt was written, or ſent, or brought back again, or any Word that proceeded from Captain *Porter* to him upon giving the Liſt, or any Word when it was brought back again. So that as to *De la Rue*'s Teſtimony, we muſt ſubmit it to the Memories and Recollection of your Lordſhip and the Jury; we think he only proves a Plot in general, of which there is no Peradventure, every body is ſatisfied that there was ſuch a horrible Conſpiracy: Thoſe that have been condemned and executed for it, have own'd it, and ſo it can never be doubted; but he does not ſay any Thing to affect the Priſoner at the Bar; for as to the Drinking of Healths, and being preſent when thoſe Healths were drunk, tho' it be an Evidence of Diſaffection to the Government, or too much good Manners and Complaiſance to the Company a Man is in; yet that Diſaffection, or civil Temper, or Complaiſance, we hope are no Evidences of Treaſon. It is plain the Priſoner did depend very much upon Captain *Porter*; he was in Truth his Servant to go of his Errands, and expected an Office from him, God knows when; but it does not appear by any particular Action, that he did any Thing that can be Treaſon, upon Mr. *De la Rue*'s Evidence. Then, as to what Mr. *Pendergraſs* ſays, I muſt confeſs his Evidence comes Home: for he ſays there was a Deſign of the Aſſaſſination, and ſome Agreement of the Priſoner to it; but I muſt beg your Lordſhip's Favour to obſerve, upon Mr. *Pendergraſs*'s Evidence, if that ſtand alone, it will be but one Witneſs, and then we are ſafe by the Purview of this Act of Parliament.

L. C. J. Ay, and by the Law, before the making of that Act.

Sir B. Shower. Then, as to Captain *Porter*, I muſt beg Leave to ſay, If our Witneſſes are come that were abſent at the other Trial, and they prove what is in my Inſtructions, it will be very much queſtionable, whether there be any Credibility due to his Teſtimony: Then if you take off his Teſtimony, there is only the Evidence of Mr. *Pendergraſs*; and if he be to be believed, to which I have nothing to ſay at preſent, in the Caſe of a Man's Life, upon an Indictment of Treaſon, where the Law requires two credible Witneſſes, his ſingle Teſtimony is not ſufficient to convict the Priſoner. We beg Leave to call our Witneſſes, and then we ſhall leave it to your Lordſhip, and the Jury.

Mr. Phipps. As to the particular Overt-Act laid in the Indictment, the carrying about the Liſt, only Mr. *De la Rue* ſpeaks to it, and Sir *Bartholomew Shower* has given it an Anſwer, and I ſhall not repeat it.

L. C. J. Look ye, for that, if any one Overt-Act is prov'd by two Witneſſes, it's well enough.

Mr. Sol. Gen. Beſides, they miſtake, my Lord, extremely; for Captain *Porter* and Mr. *Pendergraſs* ſpeak both of them to that Particular as to the Liſt.

Sir B. Shower. We do not deny it; the Queſtion is, Whether you have two credible Witneſſes?

Cranburne. Pray, Mr. *Pendergraſs*, do you remember what Captain *Porter* ſaid to you, and I, when we came down to the *Blue-Poſts*, leaning upon the Rail? —— *Capt. Pendergraſs.* Indeed, Sir, I do not.

Cranburne. I would have you recollect yourſelf; as we ſtood againſt the Rails in *Spring-Garden*, when we came down from the *Blue-Poſts*, after the Deſign miſcarry'd, Mr. *Porter* ſaid, Mr. *Charnock* and they might thank themſelves if it were diſcovered; *For*, ſays he, *I never communicated a Word of this Thing to any of my Party.*

Capt. Pendergraſs. Indeed, I don't remember a Word of it, Sir.

Mr. Phipps. My Lord, we have one Piece of Evidence to offer againſt the Teſtimony of Captain *Porter*: He ſays, That he ſent *Cranburne* with *Gunn* from the Cock-pit to ſee for Hackney-Horſes, and that *Cranburne* came to him to the *Sun*-Tavern, and there they had ſome Diſcourſe about executing the Deſign the next Day; and being aſk'd, Who was by, when he communicated the Deſign to *Cranburne?* and particularly, Whether Mr. *Gunn* was by? He ſays he came in afterwards, but was not there at the Time of the Communication about the Deſign. Now we ſhall prove that *Gunn* came in with the Priſoner, and was with him all the Time, and there was no ſuch Diſcourſe happen'd.

Sir B. Shower. Call *Jeffery Gunn*, and *Mary Gerrard*. [*They appeared.*] Your Lordſhip will obſerve, what Captain *Porter* ſwore, That he went into the Room to *Cranburne*, and *Gunn* was not there: Now, if we falſify him in that Particular, we ſhall ſubmit to your Lordſhip how far he is to be believed in the reſt.

Mr. Att. Gen. Pray, Sir *Bartholomew*, aſk your Witneſſes what you will, but make no Deſcants upon their Evidence till you have heard them.

Then the two Witneſſes were ſworn.

L. C. J. Well, look ye, you are both upon your Oaths, conſider what you ſay, ſpeak the Truth, and tell all that you know, and nothing but the Truth. Which do you begin with?

Mr. Phipps. Jeffery Gunn—Pray, Mr. *Gunn*, did you go to the *Sun*-Tavern at any Time with Mr. *Cranburne?* —— *Gunn.* Yes, I did.

Mr. Phipps. What Day of the Month was it?

Gunn. I cannot poſitively tell the Day, it was of a *Friday*.

Sir B. Shower. Was it of a *Friday*, in *February*, or *January?*

Gunn. It was in *February*.

Mr. Phipps. Was it before the Plot broke out? —— *Gunn.* Yes, it was.

Mr. Phipps. How long was it before the Plot broke out?

Gunn. I cannot tell that, truly.

Mr. Phipps. Whence did you go?

Gunn. I was at the Cock-pit, and I went from thence to the *Sun*-Tavern.

Sir B. Shower. Whom did you meet there?

Gunn. I ſaw Captain *Porter* there.

Sir B. Shower. What Room were you in?

Gunn. We went into a Room next the Street.

Sir B. Shower. Who was there with you?

Gunn. There was Mr. *Cranburne*, and I, and Mr. *Keyes*.

Sir B. Shower. How long was it before Mr. *Porter* came in to you?

Gunn. He came in about half a quarter of an Hour after I was there.

Sir B. Shower. Were you there from the Beginning till Mr. *Cranburne* went away?

Gunn. Mr. *Cranburne* and I went from the Cock-pit together.

Sir B. Shower. How long did you ſtay there?

Gunn. I was there about an Hour and a half.

Sir B. Shower. Were you out of the Room at all in that Time?

Gunn. Yes, I was out of the Room once.

Sir B. Shower. How long were you out of the Room?

Gunn. I went Home to my Lodging.

Sir B. Shower. Were you ever with Mr. *Cranburne* at the *Sun*-Tavern at any Time beſides this?

Gunn. Never in my Life.

Sir B. Shower. Whom did you leave with him when you went out?

Gunn.

Gunn. Capt. *Porter*, and Mr. *Keyes*, as I remember.

Sir *B. Shower.* Were you there before Captain *Porter* came to him?

Gunn. I was with Mr. *Cranburne*, and Captain *Porter* came in about a Quarter of an Hour after; we came from the Cock-pit together.

Sir *B. Shower.* Pray recollect yourself, and tell us upon your Oath, were you there when Capt. *Porter* came in?

Gunn. Yes, I think I was there when Capt. *Porter* came in.

Sir *B. Shower.* Did you go and leave him there?

Gunn. We went all out together. I was there about an Hour and a half.

L. C. J. Nay, but you said you were absent some Time.

Gunn. I went Home, and came back again.

Sir *B. Shower.* When you went Home, did you leave Mr. *Cranburne* behind you?

Gunn. Yes, I think so.

Mr. *Phipps.* Did you leave Captain *Porter* with him?

Gunn. I think Capt. *Porter* was with him then.

Mr. *Phipps.* But, upon your Oath, was you in Company with Mr. *Cranburne* at the *Sun*-Tavern, when Capt. *Porter* came first in?

Gunn. Capt. *Porter* went in and out several Times.

Sir *B. Shower.* Did you see Captain *Porter* before you went to your own House?

Gunn. Yes, sure.

Mr. *Phipps.* Then it cannot be true what Mr. *Porter* says, that *Gunn* did not come in till afterwards.

Mr. *Att. Gen.* Now, Mr. *Gunn*, I would ask you a Question or two first, Were you there all the while that Mr. *Cranburne* was there, or did you go Home? —— *Gunn.* I went Home.

Mr. *Att. Gen.* Did you come back again?

Gunn. Yes, I went home and eat some Victuals.

Mr. *Att. Gen.* How long were you absent?

Gunn. I came back in half a quarter of an Hour.

Mr. *Att. Gen.* How far is it to your House?

Gunn. 'Tis not above 100 Yards.

Sir *B. Shower.* Did Mr. *Porter* come in to you before you went Home, when you first came in with *Cranburne?*

Gunn. He came in after we were in the Room.

Mr. *Phipps.* Capt. *Porter* said, when he came into the Room *Gunn* was not there.

L. C. J. He did not say positively, but, as he remember'd; now I would ask you a Question or two.

Sir *B. Shower.* Pray, my Lord, our Inference from this Evidence is this: Capt. *Porter* says, that upon *Friday* the 21st of *February* he was with *Cranburne* at the *Sun*-Tavern, and out of one Room into another; he came to Mr. *Cranburne*, and talk'd with him of this Design, and after that *Gunn* came into the Room, after the Communication was over: Now this Man swears he went from the Cock-Pit with Mr. *Cranburne*, he was with him in the Room at first when Capt. *Porter* came; some Time afterwards he went to his own House, and left Captain *Porter* with Mr. *Cranburne*, and came back again, and they came away together: Now, we say, these two are inconsistent; for Capt. *Porter* swears that *Gunn* was not there till after the Communication was over.

L. C. J. As he remembers.

Mr. *Phipps.* Nay, I think he was positive he came in afterwards.

L. C. J. As I remember, he was not positive; but call Capt. *Porter* again.

Mr. *Phipps.* When you came back from your House, who were in the Room?

Gunn. The same Company as I left, as far as I remember.

Mr. *Mountague.* Was Capt. *Porter* in the Room when you came back?

Gunn. Indeed I can't directly tell, I believe he was.

L. C. J. Pray observe what your Witness says: He says, Capt. *Porter* came in and out, and was there several Times before he went away.

Gunn. Yes, my Lord, he was so.

L. C. J. And you were absent some Time; but were you there some Time before *Porter* came in? ——*Gunn.* Yes, I believe I was.

Then Capt. Porter *came in.*

Mr. *Att. Gen.* Look ye, Capt. *Porter*, you see that Man there?

Capt. *Porter.* Yes.

Mr. *Att. Gen.* Pray give an Account of what you know of that Man's coming in to you at the *Sun*-Tavern.

Capt. *Porter.* I came several Times out of Sir *George Barcley*'s Room into theirs, and to the best of my Remembrance, Mr. *Cranburne* was there before *Gunn* came in.

Sir *B. Shower.* Do you remember whether the first Time that you went out of Sir *George Barcley*'s Room to speak with Mr. *Cranburne*, Mr. *Gunn* was there?

Capt. *Porter.* To the best of my Remembrance he was not; to the best of my Remembrance, Mr. *Gunn*, I saw Mr. *Cranburne* in the Room before you was there.

Sir *B. Shower.* Did you not order *Gunn* to come with him to the *Sun*-Tavern?

Capt. *Porter.* Yes, Sir, I did.

Sir *B. Shower.* Cannot you tell whether they came together?

Capt. *Porter.* I was not in the Room when they came in first, but to the best of my Remembrance he was not there when I came in the first Time.

L. C. J. Now, *Gunn*, you hear what Capt. *Porter* says; Before you went away to your own House, did Mr. *Porter* come into the Room to you?

Gunn. Indeed, my Lord, I am not positive, I think he did.

Mr. *Att. Gen.* Neither of them is positive, and it is a Circumstance not very material; for it seems he was absent, and then the Discourse might be.

L. C. J. No, it is not material, but you see upon a strict Examination what it comes to.

Sir *B. Shower.* They are agreed upon it, I perceive, to be positive on neither Side.

Mr. *Phipps.* Mr. *Cranburne*, pray ask Mrs. *Gerrard* what you have a mind.

Cranburne. Pray what do you know of Capt. *Porter*'s going out in Disguise, and wearing false Hair and Vizards, and going upon the Highway, and such things?

Gerrard. I know not what Mr. *Cranburne* means.

[*At which the People laugh'd.*]

Sir *B. Shower.* It is no laughing Matter, when a Man is upon his Life.

L. C. J. No, no, let him have fair Play; answer the Question.

Cranburne. Do you know any thing of your Master's going abroad in Disguises?

Gerrard. I do not know any thing of my Master's going upon the Highway.

L. C. J. Did he go out with Vizards, or any such Things?

Gerrard. I never saw him wear a Vizard or false Beard in my Life, but he had once a Patch on when he was forced to keep out of the way, upon the Account of the *Dog*-Tavern Business in *Drury-Lane.*

Mr. *Phipps.* See if Mr. *Edward Boucher* is here.

[*He was call'd, but did not appear.*]

Sir *B. Shower.* Call Mrs. *Burton.* [*Which was done, but she did not appear.*]

Mr. *Phipps.* Is *William Hardyman* here? [*He was call'd, but did not appear.*]

Sir *B. Shower.* Then call *Simon Dawson*, and we have done. (*Which was done.*)

Crier. They are all call'd, but they do not appear.

Sir *B. Shower.* My Lord, we must submit it to your Lordship's Directions, upon the Evidence that has been given, as to the Credibility of these Witnesses, and whether what Capt. *Porter* says, and what *Gunn* says, be consistent; so that you can be satisfied there are Two Lawful Credible Witnesses to prove any Overt-Act.

L. C. J. Yes, sure; but I would have you debate it, if you believe there be any thing in it.

Sir *B. Shower.* I submit it to your Lordship's Directions.

L. C. J. The Question is, Whether I should give any Directions at all or no, or whether there be any Occasion for it?

Cranburne. I declare this openly before this Honourable Court, and so many Noblemen as are here, that Mr. *Porter* never made me acquainted with this Design, till what he swore here.

L. C. J. I can't tell; 'tis sworn by two Witnesses.

Cranburne. I do declare, tho' Capt. *Pendergrass* says he does not remember it, that Capt. *Porter* did declare in *Spring-Garden* the 22d, when he came out of the *Blue-Posts* by the Rails, If this Design miscarry, says he, Mr. *Charnock* may thank himself: for I never communicated this Secret to any of my Friends.

L. C. J. But hark ye, do you consider what you say, If this Design miscarry? Pray, what Design was that?

Cranburne. He never named any thing but the Design, he did not say what it was.

L. C. J. But why were you employ'd to carry a List from Capt. *Porter* to Mr. *Charnock*, and to bring a List back again from him to Capt. *Porter?*

Cranburne. I did carry the Note, but there was nothing mention'd what the List was for.

L. C. J. Then you were there on *Friday* the 14th, and there the Design was proposed to Assassinate the King the next Day, and you engag'd in it.

Cranburne. Not a Word of it true, my Lord.

L. C. J. Ay, but Mr. *Pendergrass* swears it, and that you were hearty in the Matter, and hop'd you should do your Business the next Day.

Cranburne. I can't help it if he does swear it.

L. C. J. Then you were at the Meeting at the *Sun*-Tavern, the 21st.

Cranburne. My Lord, you hear what *Gunn* says.

L. C. J. As to that, they are neither of them positive; but you did there promise and undertake the Matter, that Capt. *Porter* is positive in, that it was agreed by you all to do it the 22d; and Mr. *Pendergrass* says, when you were disappointed the 15th, you all agreed to pursue the same Design the *Saturday* following.

Cranburne. My Lord, I did not dine at the *Blue-Posts* that Day.

L. C. J. But you were there; I think indeed Mr. *Pendergrass* says you came in after Dinner, and had some Steaks.

Cranburne. I never heard directly nor indirectly of this Design, till what I heard them swear here.

L. C. J. Gentlemen of the Jury, You do understand for what Crime this Prisoner at the Bar is Indicted: It is for High-Treason, in Designing and Compassing the Death of the King, which was to be effected by an Assassination in the most barbarous and wicked Manner, that any Attempt of that Nature can possibly be made, being to surprise the King, and murder him in his Coach.

The Question, Gentlemen, is, Whether this Prisoner be Guilty of this Crime or no? There have been three Witnesses produced that have given Evidence against him, Capt. *Porter*, Mr. *De la Rue*, and Mr. *Pendergrass*; and they do all tell you that there was such a Design on foot to Assassinate the King, as he came from Hunting at *Richmond*, after he came on this Side the Water, in the Lane between *Brentford* and *Turnham-Green.* There were diverse Persons engaged in this Design, which Sir *George Barcley* was come from *France* to promote and manage: Capt. *Porter*, as it does appear upon his Evidence, was a Person that was principally engag'd, and at that Time was hearty in the Prosecution of it.

As to Mr. *Cranburne*, Capt. *Porter* tells you he was a Man that he had had a long Acquaintance with, and had employed him, and designed to employ him as an Officer under him, in case a Revolution happened, which it seems about that Time, and some Time before it, was expected. Captain *Porter* was to have been a Captain, and I think he designed to promote *Cranburne* to be his Quarter-master; and he sent him to buy Arms; and Preparations were made for that Business; but that is not the Thing that we are now upon; the Matter that now properly falls under our Consideration, is this: The Coming over of Sir *George Barcley*, the latter End of *January*, or the Beginning of *February* last; upon which, as it seems, Mr. *Porter* was engaged; and having an Interest in this *Cranburne*, and there being Horses to be furnished to attack the King and his Guards about *Turnham-Green*, this Man, *Cranburne*, was a Person that was engaged to be one of the Horsemen that were to make the Attack; and he tells you that he did employ him to provide Horses and Swords, and to prepare the Pistols; and that he did engage in it, and particularly that the Design was to be executed on *Saturday* the 15th of *February*, and that he was then ready to go with Capt. *Porter*; but on that *Saturday* the King did not go abroad, whereby the Design was disappointed for that Time: Afterwards, there was a Meeting at the *Sun*-Tavern in the *Strand*, where he met with Sir *George Barcley*, and others of them; and there comes to that Tavern Mr.

Cranburne and others, and they were in another Room, and Capt. *Porter* ſays he came to them, and did diſcourſe about purſuing the Deſign the very next Day, which was agreed, and *Cranburne* was ready to go the next Day.

Then he tells you further, that the next Day being *Saturday* the 22d, the ſecond Time that this Aſſaſſination was to have been executed, upon the Deſire of Mr. *Charnock*, who was a Perſon alſo that was engaged in this Deſign, Captain *Porter* writes a Liſt of the Men he could bring, and ſent it by *Cranburne* to *Charnock*; *Cranburne* carries the Liſt to Mr. *Charnock*, and brings it back again with an Addition of the Names of Mr. *Charnock*'s Men underneath.

Mr. *De la Rue* is called, and he ſwears to that very Circumſtance, that Mr. *Cranburne* was ſent by Captain *Porter* with a Liſt to Mr. *Charnock*, and brought it back again from Mr. *Charnock*, with an Addition of other Names.

Then Mr. *Pendergraſs* tells you, that he was with this Mr. *Cranburne*, the Priſoner at the Bar, the Fourteenth of *February*, and there was a Diſcourſe of going in purſuance of this Deſign the next Day, and the Priſoner agreed to it, which he is poſitive in: He tells you, that when they were diſappointed the 15th, being at the *Blue-Poſts*, they then agreed to purſue it the next *Saturday*; *Cranburne* was one of them that agreed.

Captain *Porter* and *De la Rue* inform you that Healths were drank to the late King, and the late Queen, and the Prince of *Wales*, as they called him, and then at length, as the concluding Health, Captain *Porter*, or ſome of them in the Company, having an Orange in his Hand, ſqueez'd it, and drank a Health to the Squeezing of the Rotten Orange, which was pledged by all, and particularly by Mr. *Cranburne*, as is proved by both Captain *Porter* and *De la Rue*.

So that now, Gentlemen, I muſt leave it to you, whether this is not Evidence ſufficient to prove this Man guilty of the Treaſon whereof he is indicted, that is, of Deſigning and Intending the Aſſaſſination of the King, and being engaged as a Party to execute this Deſign, whenever there was an Opportunity.

The Counſel inſiſt upon it, on the Behalf of the Priſoner, that what Captain *Porter* ſays is not Evidence: In the firſt Place, they urge that he is not a Man of Credit, for they have mentioned that he uſed to be diſguiſed, and wear a Vizard Maſk, and go abroad under odd Circumſtances, and therefore his Reputation they hope is not good enough to make him a credible Witneſs againſt the Priſoner: Now the Priſoner's Witneſs being produced, ſays he never knew him go in Diſguiſe, or wear a Vizard Maſk, but once he wore a Patch, becauſe he was under ſome ill Circumſtances about a Riot in *Drury-Lane*; every Body underſtands what the Meaning of that was, his Drinking of Healths at a riotous Aſſembly, upon the 10th of *June*, and he being under ſome Proſecution for that, occaſioned him to wear that Diſguiſe, but it was not done to hinder any Perſon, or do any Miſchief.

But then, ſay they, he is miſtaken in his Evidence, of the Meeting at the *Sun*-Tavern the 21ſt of *February*, the Day before the laſt, that this Deſign was to have been executed, for whereas he ſays, that *Gunn* was not there when he came to them, yet *Gunn* was in the Company at that Time, and whereas he ſwears poſitively that they diſcourſed of going upon the ſame Deſign to aſſaſſinate the King the next Day, as was agreed the *Saturday* before; *Gunn* heard no ſuch Diſcourſe. *Gunn* is called, and he tells you he did come to the *Sun*-Tavern at that Time, with *Cranburne* and Captain *Porter*, he came into the Room, and he heard no ſuch Diſcourſe. They did open it indeed that *Gunn* had been there all the while, and if ſo, then if there had been ſuch a Diſcourſe, he muſt have heard it. *Gunn* has been examined, and does tell you he was not there all the while; but went out and was abſent for ſome Time, about half a quarter of an Hour.

They have made a Queſtion, whether Captain *Porter* came in when *Gunn* was there? He ſays truly he thinks that Captain *Porter* did come into the Room while he was there, before he went out; but he cannot tell certainly; he was there ſome Time, while he was there. Then Captain *Porter* was called again, and Captain *Porter* does ſay he knows *Gunn* was there; but whether he was there at that Time he came in, he cannot ſay poſitively; but *Gunn* ſays Capt. *Porter* was going in and out ſeveral Times, as *Porter* ſays himſelf; and *Gunn* was abſent for ſome part of the Time. So that I cannot ſee any ſort of Contradiction between the Evidence that *Porter* gives, and the Evidence that *Gunn* gives; the one is uncertain; and ſo is the other as to that Circumſtance.

But, Gentlemen, they would infer, that if there was any ſuch Diſcourſe while *Gunn* was there, it muſt be of neceſſity that *Gunn* muſt have heard it; but it is not neceſſary the Diſcourſe ſhould be when *Gunn* was there: Captain *Porter* ſwears poſitively, that there was ſuch a Diſcourſe of going the next Day to purſue the Deſign, and he ſays he thinks *Gunn* was not preſent at that Time when the Diſcourſe was, and *Gunn* ſays he was abſent ſome part of the Time.

And ſo I muſt leave it to you: Upon the whole Matter, if Mr. *Cranburne* the Priſoner at the Bar, did conſent and agree to act in this bloody and wicked Deſign, then you are to find him Guilty; if you are not ſatisfied of that upon the Evidence you have heard, or you think there is any Inconſiſtency, or Incoherence in the Teſtimony on the one ſide, and the other; and that there is good Reaſon to diſbelieve the Evidence againſt the Priſoner, then you are to acquit him. You have heard your Evidence, and you had beſt conſider of it.

Cl. of the Crown. Who keeps the Jury?

Crier. There is an Officer ſworn.

Then the Jury withdrew to conſider of their Verdict, and about a Quarter of an Hour after returned.

Cl. of Arr. Gentlemen, anſwer to your Names, *John Caine?*

Mr. *Caine.* Here. [*And ſo of the reſt.*]

Cl. of Arr. Are you all agreed of your Verdict? —— *Jury.* Yes.

Cl. of Arr. Who ſhall ſay for you? —— *Jury.* Foreman.

Cl. of Arr. Charles Cranburne, hold up thy Hand. [*Which he did.*] Look upon the Priſoner; how ſay you, is he guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty? —— *Foreman.* Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treaſon committed, or at any Time ſince?

Foreman. None, to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it. You ſay that *Charles Cranburne* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods, Chattels, Lands, or Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge, and ſo you ſay all.

Jury. Yes.

Mr. *Caine.* My Lord, the Jury humbly deſires they may be diſcharged from their Attendance To-morrow.

L. C. J. We cannot do it, unleſs the Jury be full without them; if you come early, we ſhall diſpatch you preſently.

Then the Priſoner was taken from the Bar, and the Court adjourned till Seven o'clock the next Morning.

CLVIII. *The Trial of* Robert Lowick, *for* High-Treaſon, April 22, 1696. 8 W. III.

THIS Day the Juſtice of Oyer and Terminer holden for the County of *Middleſex*, met, and the Court was reſum'd by Proclamation in uſual Form.

Clerk of the Arraignments. Keeper of *Newgate*, ſet *Robert Lowick* to the Bar. (*Which was done.*) You the Priſoner at the Bar, *Robert Lowick*, thoſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Mr. *Mompeſſon.* If your Lordſhip pleaſes to favour me with one Word for the Priſoner at the Bar, I ſhall not trouble your Lordſhip with any thing that was urged by the Gentlemen that were of Counſel Yeſterday, but I ſhall rely upon ſomething that has not yet been ſpoken to. My Lord, they have not laid any Time or Place where the Conſent or Agreement was, for the forty Men that were to ſet upon the King and his Guards: There is a Time laid before where they met and diſcourſed of the Ways and Means how to aſſaſſinate and kill the King; but when it comes to the *Aſſenſerunt, Conſenſerunt, & Agreaverunt*, with Submiſſion, this being another Act, there ought to be another Time and Place laid, and for that I ſhall cite your Lordſhip two or three Caſes; for Men may meet and propoſe, and diſcourſe, and conſult of ſuch Things, tho' they be very ill Things, and yet that may not be Treaſon. It's the Agreement that is the Treaſon, and ſo it was held in Captain *Blague*'s Caſe about taking the *Tower*. They may meet at one Time and Place, and at another Time and Place they may agree, in *Dyer*, 68 *B.* and 69 *Pl.* 28. A Man was indicted for Murder, That he at ſuch a Place in and upon the Perſon that was murdered, *inſultum fecit, & ipſum*, the Perſon that was murdered, *cum quodam cultello*, of ſuch a Price, *percuſſit*; and he does not ſhew the Place where he ſtruck him, nor had the Indictment the Words, *ad tunc & ibidem*, and therefore the Court held it void: So it is likewiſe ruled in *Goodrick*'s Caſe, *Hell.* 35 & 119. and therefore in Indictments for Murder, ſince they generally ſet forth not only the Time and Place of the Aſſault, but likewiſe of the Blow; ſo likewiſe in Things of a more inferior Nature, as Reſcues returned by the Sheriff, that the *Capias* was ſerved, but does not ſhew where the Reſcue was; or tho' he ſhews where the Arreſt was, and an & coupled the Reſcue to it, yet it was adjudged an ill Return, *Dyer* 69. *Pl.* 29. 10. *Edw.* 4. 15 *Fitz. Ret. Vice.* 32 *Bro. Ret. Det. Bre.* 97. and Error 193. *Palm* 564. and in *Noy* 114. there are theſe Words, *Note*, It was moved in Diſcharge of Reſcue, the Return was, that they, *viz. A. B.* aforeſaid, the Bailiffs, *ad tunc & ibidem vulneraverunt, &c.* And the aforeſaid *George*, &c. *Reſcuſerunt* without *ad tunc & ibidem*, referred only to the *Vulneraverunt*, and not to the *Reſcuſerunt*, and therefore the Return was adjudged inſufficient; for, my Lord, although in Conveyances, a Clauſe or Word in the Beginning or End may refer to the Whole, yet in Indictments, every Sentence muſt be certain, plain, and expreſs, and have its own Time and Place: Therefore in *Noy*'s *Rep.* 122. *Raymond* was indicted for ſtopping a Croſs-Way leading from a certain Ville called *Stoake*, into a Ville called *Melton*, in the County of *Dorſet*, and the Indictment was quaſh'd, becauſe in the County of *Dorſet* ſhall refer only to *Melton*, and not to both: So an Indictment of forceable Entry into a Meſſuage *exiſtens Liberum Tenementum* of *J. S.* is not good for want of the Words *ad tunc*, though the Participle *exiſtens* does ſtrongly imply that it was his Houſe at that Time, 3 *Cro.* 754. *Het.* 73. *Noy* 131. *Palm.* 426, *Bridg.* 68. 2 *Cro.* 214, & 610. *Sid.* 102. *Lat.* 109. *&c.* And my Lord *Coke* tells us in *Calvin*'s Caſe 5 *B.* that Indictments of Treaſon, of all others, are the moſt curiouſly and certainly indited and penned; and all thoſe that I have ſeen and obſerved, have contained more Certainty than the Indictment now before your Lordſhip: In *Reginald Tucker*'s Caſe, the Indictment was, That he and *Thomas Place apud Bridgwater, in Com. Somerſett. prædict. Compaſſaverunt*, to kill and depoſe the King, *&c.* and to bring their treaſonable Purpoſes to effect, they the ſaid *Reginald Tucker* and *Thomas Place*, the ſame Day and Year, at *Bridgwater* aforeſaid, in the County aforeſaid, againſt the King, with a great Multitude of People, array'd in a warlike manner, *viz.* with Swords, *&c. ſeipſos illicite & proditorie inſimul ad tunc & ibidem congregaverunt & aſſemblaverunt & guerram publicam contra dictum Dominum Regem apud Bridgwater prædict. in Com. prædict. dicto viceſimo Die Junii Anno primo ſupradicto proditorie paraverunt, ordinaverunt & levaverunt.* So in the Indictment of

Gate, as it is ſet forth at large in a Plea in Bar of *Dower*, brought by his Wife, he with Force and Arms, *apud Villam de Ware, &c.* aſſembled with a great many Perſons, *& Bellum crudele contra dictam Dominam Reginam apud Ware, prædict. ad tunc falſo & proditorie publicavit & levavit, ac inſuper ad tunc & ibidem falſo & proditorie*, proclaimed the Duke of *Northumberland*, to be Lieutenant-General of their Forces; *& etiam falſo & proditorie apud Ware prædict. ad tunc*, proclaimed the Lady *Jean Dudley* Queen. This is in *Bendlowe*'s Reports, publiſhed by Serjeant *Rowe*, *fol.* 55. *placito* 91. So in the Earl of *Leiceſter*'s Caſe, *Plowd. Com.* 385, the Indictment is laid much after the ſame manner, and many other Indictments, which at preſent I am unwilling to trouble your Lordſhip with; and this being one of a new Form and of the firſt Impreſſion, I hope your Lordſhip will hold it inſufficient. And, my Lord, when they go farther, and ſay, *Et quilibet eorum proditorie ſuper ſe ſuſcepit eſſe unum*, there is no Place or Time alledged where that was done, which of Neceſſity ſhould be mentioned: For it is a conſtant Rule in our Books, that what is iſſuable, ought to have a Place where it may be tried. Now, this is iſſuable, and the moſt material Thing in the Indictment is, for Compaſſing the King's Death. The Overt-Acts are, That *Chriſtopher Knightley* the Priſoner, and two others, did conſult to kill the King; and afterwards did agree how to do it, *viz.* by forty Horſemen, *Quorum* theſe ſhould be four, and every one of them did agree to be one; then comes the other Overt-Act of providing Arms for them. Now ſuppoſe they ſhould not prove the laſt, *viz.* the providing Arms; then, my Lord, they muſt reſort to one of the other Overt-Acts, that theſe four did conſult and agree to kill the King; or that theſe four did agree the manner how to do it, as is laid in the Indictment; and 'tis plain they muſt fail of Proof of either of theſe; for by the not proſecuting any one of the Name of *Chriſtopher Knightley*, but preferring a new Indictment againſt one *Alexander Knightley*, it appears that *Chriſtopher Knightley* was not there; and the proving theſe three others making a Conſult and Agreement, is not a Proof of the ſame Overt-Act that is laid in the Indictment, as it ought to be by the late Act; unleſs they can prove that a Conſult of Three is a Conſult of Four: And if it be anſwered, that it is alledged, that *Quilibet eorum ſuper ſe ſuſcepit*, then will that come to be iſſuable, and the moſt material Part of the Indictment; and conſequently a Place ought to have been laid where it ſhould be tried; this, my Lord, is a diſtinct Sentence of itſelf, it is in a *Parentheſis*, and though you take it away, the Senſe of what remains is perfect and intire; and conſequently this Sentence is or ſhould be intire of itſelf, and therefore ought certainly to be expreſſed. Beſides, if your Lordſhip pleaſes, it is not poſitively laid, what theſe Perſons ſeverally undertook to be, there is indeed mention made before of Forty Horſemen, agreed upon to ſet upon the King, then comes the *Parentheſis*, *Quorum iidem Chriſtophorus Knightley, Robertus Lowick, Ambroſius Rookwood & Carolus Cranburne forent Quatuor, & quilibet eorum proditorie ſuper ſe ſuſcepit eſſe unum:* It is perhaps expreſſed fully enough by the Word *Quorum*, that it was agreed theſe ſhould be four of the forty Horſemen; but there wants the Repetition of the Word *Quorum*, to expreſs what they ſeverally engaged to be; and the Word *&* cannot join and connect the Sentences: For *forent* and *ſuſcepit* differ not only in Number, but alſo in Mood and Tenſe, and the Senſe is not neceſſarily coherent; for it might be true, that the Majority of the Company might agree theſe ſhould be four, and yet they themſelves might not ſeverally engage therein, and one or ſome of them might undertake it, and yet the Company not agree to it; and it cannot be mended by Intendment. There was *Vaux*'s Caſe, in the 4 *Rep.* 44. he was indicted for Murder, for perſuading a Man to take *Cantharides*; it was laid, That he *perſuadebat eundem Nicholaum recipere & bibere quendam potum mixtum cum quodam veneno vocat. Cantharides*; and the Indictment ſays, *Quod prædictus Nicholaus neſciens prædictum potum cum Veneno prædicto fore intoxicatum, ſed fidem adhibens dictæ perſuaſioni Willielmi Recepit & Bibit*; but does not ſay, *venenum prædictum*, but yet it adds, *Per quod prædictus Nicholaus immediate poſt receptionem veneni prædicti* languiſhed and died; here, one would think, was a ſufficient Implication, that he took and drank the Poiſon; but it was ruled, that none of theſe Words were ſufficient to maintain the Indictment; for the Matter of the Indictment ought to be plain, expreſs, and certain, and ſhall not be maintained by Argument or Implication, and therefore for Want of thoſe Words the Indictment was held inſufficient, and the Man again indicted for that Offence; and there ſeems much more Incertainty in this Indictment, and therefore I humbly pray your Lordſhip that it may be quaſh'd.

Sir *B. Shower.* My Lord, we think the Objection is fully put, and therefore we deſire to have their Anſwer to it.

Sir Thomas Trevor. Mr. *Att. Gen.* We think, my Lord, this Objection will receive a very plain Anſwer. The Indictment ſets forth, That at ſuch a Place the Priſoner at the Bar did imagine and compaſs the Death of the King: There is a particular Caſe where the Imagining was, and that they, to accompliſh that Treaſon, in compaſſing and imagining the Death of the King, did, among others, *poſtea eiſdem die & anno apud parochiam prædictam*, meet and conſult, *&c.* ſo there's the ſame Place ſet forth again, wherein they did meet and conſult of the Ways and Means, and Time and Place, when, where, and how to aſſaſſinate the King: And immediately it follows, *& conſenſerunt & agreaverunt, &c.* that forty Men, whereof they were to be four, and every one of them undertook to be one, ſhould do ſo and ſo. Now, my Lord, ſay they, It is not ſaid that the Agreement that there ſhould be forty Men to do it, was at the ſame Time and Place where they did meet and conſult about the Ways and Means: But, my Lord, with ſubmiſſion, it is very plain, that the Agreement for forty Men, and the particular Agreement for them to be of the Number, is but the Effect of the Conſultation that is mention'd juſt before: For it is ſaid, they conſulted how they ſhould do it, and they agreed to do it in this manner; the particular manner is ſet forth immediately after that, it is ſaid they did conſult of the manner; ſo that, my Lord, it is Part of the former Sentence; a Particularizing of what they did agree upon at that Conſultation; but it is no diſtinct Overt-Act: If it had been a diſtinct Overt-Act, then the Caſes that have been cited by the Counſel, do ſhew, that there ſhould be a particular Time and Place mentioned for every Overt-Act; but this is only a Part of that Overt-Act that was mentioned generally before: This tells you particularly what the Means were they did agree upon, and the Sentence is not compleat till you have gone over this; ſo that, my Lord, with ſubmiſſion, it had been very improper when they agreed at ſuch a Time and Place, of the Means and Ways how it ſhould be effected, then to ſet forth that it was at the ſame Time and Place where they did conſult of the Ways and Means, that cannot be proper; for it is not laid at firſt, that there was any particular Way propoſed, but only in general, they conſulted of the Ways and Means; therefore, my Lord, all this that Mr. *Mompeſſon* has ſaid, will not be pertinent to this Caſe, it is impoſſible to have been otherwiſe; it is but a Part of the Sentence; and it is not compleat till you have gone over the ſeveral Particulars: As to the Caſe of a *Reſcous*, that is, the Offence upon which the Matter is to be grounded; the *Verberavit* and *Vulneravit* are not the Reſcuing; but where there is not one Sentence compleat, till you come to the End of theſe Words, there it muſt be all taken together; ſo it is here, they conſulted of the Way, and agreed this to be the Way, which they ſet forth in particular: It is joined to the former Part of the Sentence, and the whole is not compleat without it.

Mr. *Sol. Gen.* With ſubmiſſion, my Lord, it cannot be otherwiſe, nor can they make it Senſe otherwiſe. Sir John Hawles.

L. C. J. They ſay you might and ſhould have put in, *ad tunc & ibidem.* Sir John Holt.

Mr. *Sol. Gen.* With ſubmiſſion, my Lord, I ſay it cannot be repeated again: Indeed if you would make it like the Caſe, as Mr. *Mompeſſon* would have it, that forty Men did agree to it, and forty Men did it, it were neceſſary to name Time and Place, as it is in the Caſe of Murder: That he did agree to murder him, and afterwards knock'd him on the Head, there you ſhall lay Time and Place where he agreed, and where he did the Act, for there is an Act done; but in this Caſe there is no Act done, but only an Agreement that forty ſhould do it, whereof theſe four were to be part of the Number. Now, they cry, you do not ſay what theſe four were to be for. Yes, we do: The Forty were to do ſuch an Act, and theſe were to be four of that forty, and every one of them undertook to be one; ſo that it cannot be expreſs'd otherwiſe than it is; for what they ſay of the Indictment's being not in the ſame Form that other Indictments are, that will be no Argument at all; for it does not follow, that there muſt be one expreſs'd Form of Indictment; of Right there are divers Forms of Indictments, and all of them good, becauſe Indictments are to be framed according to the particular Caſe, and they cannot put me an Inſtance of ſuch a particular Caſe as this. As to that of the Miſtake of the Name of *Knightley*, that unqueſtionably can be no Objection at all: For how does it appear to the Court, that this is againſt the ſame Perſon that was before indicted by the Name of *Chriſtopher?* there may be another *Chriſtopher*, for aught they know: But I will ſuppoſe, that the Conſult was proved not, as it is laid, that there were to be four; but only that they were to be three of them, it would be well enough againſt the Priſoner at the Bar, if he be proved to be one.

Mr. *Conyers.* Firſt, we have here laid a Time and Place for the Treaſon alledged in the Indictment, and alſo for the two Overt-Acts, how, when, and where it was to be done, and the providing of Arms for it; and for this Particular of the forty Men, that they would have us put the *ad tunc & ibidem* to that, is but Part of the Overt-Act, which was before alledged; for the firſt Overt-Act mentioned, is the Meeting and Conſulting, and there we lay both Time and Place; that on ſuch a Day, and at ſuch a Place, they did meet and conſult of the Way and Manner how to do ſuch an Act: And then we continue on the Sentence, by particularizing how it was to be effected; that they did agree there ſhould be forty Horſemen to do it, whereof they were to be four: This is but a Part of the Overt-Act, which is the Conſulting and Agreeing upon the Ways and Means; this particular Means agreed upon, being but the Reſult and Effect of the Conſultation before: So that we conceive there is no Want of Time or Place upon which to take Iſſue in this Caſe.

Mr. *Cowper.* My Lord, I think, with ſubmiſſion, there is nothing in their Objection, and I take it to have received a full Anſwer already: Yet I would aſk one Thing of the Gentlemen of the other Side, had the Sentence run without the Words *de iis modis & mediis, &c.* which follow after the Word *conſultavit*, and before the Words *& agreavit*; in this manner, That they did then and there traitorouſly treat, propoſe, conſult, and agree, that forty Horſemen, or thereabouts, with Guns, and ſo forth. If then there had been any Colour to think it neceſſary, that it ſhould be laid in this manner, That they did then and there traitorouſly treat, and then and there traitorouſly propoſe, and then and there traitorouſly conſult, and did then and there traitorouſly agree: And if not, then I would deſire them to tell me why *then and there* is more neceſſary to one Verb *did agree*, than it is to all the reſt, in Senſe and common Speaking. The only Uſe of a Conjunction copulative, is to derive the Force of ſome Words, in a Sentence foregoing, down to a Sentence following, to avoid Repetition: And here, tho' after the Conſultation be put, many Words that relate to that Matter, by Way of Parentheſis; yet the *ad tunc & ibidem* ſtill does refer to all the Verbs following, being joined by the Conjunction copulative; it does not vary the Caſe at all, the putting in that Parentheſis; it is notwithſtanding but as one Sentence: And the ſuppoſing that the Parentheſis ſtood out, makes it very plain, there can be no Colour to ſay there wanted a Repetition of the *ad tunc & ibidem* to every Verb.

Sir *B. Shower.* With ſubmiſſion to your Lordſhip's Judgment, there is no Anſwer made to this Objection. I do agree, if there had been ſeveral Verbs, and no other Words had intervened, that an *&* would have coupled all together, and you need not have repeated *ad tunc & ibidem* to every one: But here is a Fact after the Verbs, that makes one compleat entire Sentence; and if this of the forty Men were left out, it had been a good Sentence, that they did propoſe and treat how, where and when; that's a Sentence of itſelf, the Conſulting and the Treating of the Ways and Means: But then they ſay, and they did agree and aſſent that forty ſhould do it: Now there is no Neceſſity for the interpreting of theſe Words, That they ſhould conſult and agree at the ſame Place and Time; there is no neceſſity to conjoin this Agreement for the forty Men with the Conſultation; they might propoſe and conſult at one Time and Place, and not agree, and afterwards agree at another Time and Place: It is not a Specification, or, as they call it, a ſpecifick Account of the Conſultation, nor a neceſſary Effect of it, ſo as to make it neceſſary to join them together; they might meet and conſult at one Time and

Place, and at another Time and Place they might agree that forty should do it; and therefore when you say at one Time and Place they did consult and propose, and afterwards they did agree; it is not necessarily implied, that it must be at the same Time and Place; and when it is not necessarily implied, we think it necessary in Indictments, for Certainty-sake, to have *ad tunc & ibidem* inserted again.

Mr. Mompesson. My Lord, *Mr. Sollicitor* says, That as to other Precedents, that does not make it necessary that this should be like them; and that it is no Argument that it ought to be so here. My Lord *Coke*, in *Calvin*'s Case, tells us, That by Precedents the Law is known, and that Indictments of Treason are of all Things the most curiously penn'd; and it is common to infer the Law is so, because usually it is so in the Precedents of Indictments. *Mr. Sollicitor* says likewise, That there may be a *Christopher Knightley* besides an *Alexander*; but I cannot take that for an Answer to the Exception I urge, which is the Want of *ad tunc & ibidem* at the *Quorum*, and the *Quilibet*; for the *Quilibet* may come to be in Question as the most material Part of the Indictment, because the Agreement of the Four upon the Meeting of the Four is alledg'd as an Overt-Act. Now, with Submission, they must prove the Assembly of the whole Four, or they do not prove the Overt-Act expresly laid: Then as to the *Quilibet suscepit*, which is the most material Part, it has no Time nor Place.

Mr. Att. Gen. No sure: We do not need to prove all four, for it is a distinct Offence in each, and if any one undertook, it is well enough against him: and for the Time and Place we tell you it is Part of the former Sentence, and makes but an intire One.

Mr. Mompesson. As for the Residue of the Verbs, if they had been omitted, it had been good Sense; but this is a perfect intire Sentence of itself, when it tells you what they consulted and treated of, as in the Case of the *Rescue* that I put; if it had stopp'd there, it had been a good Sentence without the *Vulneraverunt*.

Mr. Att. Gen. The *Rescous* is the Offence in that Case, the other is distinct: But here, in this Case, nothing can be plainer than that all is one Act, as we have laid it, That at such a Time and Place they did consult and treat of the Ways and Means; but then there is no Agreement mentioned till after we have said they did consult of the Ways and Means, and did agree that this should be the Way: This is certainly one intire Sentence that shews what the Agreement was upon the Consultation as the Result of it.

Mr. Cowper. As to what Sir *Bartholomew Shower* says, That we ought to repeat the *ad tunc & ibidem*, unless the Sense of the Words implies a Necessity that the Consultation and the Agreement should be at one Time and Place: My Lord, there can be nothing in that, for it does not arise from the Necessity of the Thing one Way or t'other; but we take it as an intire Sentence, and that the whole Matter is sufficiently connected, and laid to one Time and Place, though it might be divided, it must be taken, as alledged, to be one intire Fact, or else it recurs to the same Objection, that *ad tunc & ibidem* must as well be put to every Verb; for 'tis possible they might propose at one Time and Place, and consult at another, and debate at another as well as agree at another: So that nothing is to be argued from the Necessity of the Thing more in one Case than the other; for one Man might propose it in one Place, and the rest might then shake their Heads at it; and then they might again meet and consult at another Place, and afterwards agree at a Third: But when it is said *then and there* they did meet, consult, and agree, it cannot be understood but that the Agreement was at the same Time and Place with the Meeting and Consult.

Sir B. Shower. But this can be no Answer that Mr. *Cowper* gives now, for proposing, and consulting, and treating, and debating, are all of the same Signification; for one Man's proposing to another, and the other's proposing to him, is consulting, treating, and debating; but now consulting and agreeing are different Things.

Mr. Cowper. So is proposing and consulting: One may propose: but there must be at least Two to consult: There is that nice Difference between them.

Sir B. Shower. Every one must agree for himself, and that must be certainly laid with Time and Place, let the Proposal and Consultation be what it will.

L. C. J. Mr. *Mompesson* puts that Case in *Dyer* upon an Indictment of Murder, That on such a Day, and at such a Place, the Party made an Assault upon the Persons slain, & *percussit*; but does not say, *Et ad tunc & ibidem percussit*, and for not alledging that, the Indictment was held nought.

Mr. Att. Gen. My Lord, that is a different Case from this, because *insultum fecit*, and the *percussit*, are different Crimes; there is a great Difference between an Assault and a Stroke: But here it is, That they did propose and consult of the Ways and Means, and agreed upon this particular Way; that is the same Thing; it is not an intire Sentence till you come to the End of it, then it is compleat when you shew what was the Effect of the Consultation; what they were agreed upon, and not till then.

Mr. Mompesson. A Man's holding up his Hand is an Assault, but he must actually strike to be guilty of Murder: So a Man may debate, and yet not agree: It is the Agreement that is the Treason.

L. C. J. Read the Indictment.

Cl. of Arr. *Decimo die Februarii anno Regni dicti Domini Regis nunc septimo, & diversis aliis diebus & vicibus, tam antea quam postea, apud Parochiam Sancti* Pauli Covent-Garden, *prædict', in Comitatu prædict', falsè, malitiosè, diabolicè, proditoriè, compassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intendebant dictum Dominum Regem nunc occidere, interficere, & murdrare, & stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regnum Angliæ facere, & causare, & ad easdem nefandissimas, nequissimas & diabolicas proditiones & proditorias compassationes, machinationes, & proposita sua prædicta perimplend', perficiend', & ad effectum redigend' ipsi iidem* Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne, & *quam plurimi alii falsi proditores (Jurator' prædictis ignoti) postea, scilicet eodem decimo die Februarii anno supradicto apud Parochiam prædictam in Com' prædicto, ac diversis aliis diebus & vicibus, tam antea quam postea, ibidem & alibi in eodem Com', falsè, malitiosè, advisatè, clandestinè, proditoriè, ac vi & armis conveniebant, proposuer', tractaver', consultaver', consenser', & agreaver' ad ipsum Dominum Regem nunc ex insidiis & dolo percutiend', Anglicè* to assassinate, *interficiend' & murdrand' & ad execrabilem, horrendam & detestabilem Assassination', Anglicè* Assassination, & *Interfectionem ill' citius exequend' & perpetrand' postea, scilicet eisdem die & anno ac diversis aliis diebus & vicibus apud Paroch' præd' in Com' prædicto proditoriè tractaver', proposuer' & consultaver' de viis, modis & mediis ac tempore, et loco ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenser', agreaverunt & assenser' quod quadragint' homines Equestres aut eo circiter (quor' iidem* Christophorus Knightley, Robert Lowick, Ambrosius Rookwood & Carolus Cranburne *forent quatuor, (& quilibet eor' proditorie super se suscepit esse unum) cum Bombardis, sclopis & sclopetis, pulvere bombardico, & globulis plumbeis onerat', & cum gladiis, ensibus & aliis Armis armat' insidiati forent & essent in subsessu, Anglicè* in Ambush, *ad eundem Dominum Regem in Rheda sua, Anglicè* his Coach, *existen' quando foris iret invadend'. Quodque quidem & competens numerus de hominibus illis sic armat' in satellites, Anglicè* the Guards, *ipsius Domini Regis, eum tunc attendend' & secum existen' aggressi forent & eos expugnarent & devincerent, dum alii eorundem hominum sic armat' ipsum Dominum Regem percuterent, interficerent occiderent & murdrarent.*

Mr. Mompesson. The Consult is like the Assault, and the Agreement is like the Stroke.

L. C. J. Treby. It is a nice Case as you would have it, but I think it is very natural as the King's Counsel put it at first; they lay the Consultation of the Ways and Means how it should done, and then they conclude that thus it shall be done: All which makes but one intire Thing.

L. C. J. They say they met that Day at St. *Paul Covent-Garden*, that's in the Beginning, and did consult how to kill the King; and they consented and agreed among themselves, that it should be done in this Manner: Does not this refer to both Time and Place in the Beginning? It is a continuing on of the same Sentence, and makes all but one and the same Act; it is the Result of the Consultation at that Time and Place.

Sir B. Shower. But, my Lord, it might be at another Place: They might consult at one Place, and conclude at another.

Mr. Conyers. But it is laid to be at the same Place, for no other Place does appear, and it is one continued Sentence.

L. C. J. Treby. You would make the Repetition so frequent and reiterated, that it would become absurd.

Mr. Att. Gen. Indeed I do not know what these Gentlemen would have.

Sir B. Shower. We would have this Indictment as all others are, the Precedents are as we say, and we hope this shall pursue 'em, or else be quash'd.

L. C. J. Look ye here, Sir *Bartholomew Shower*; suppose this Part should not be right, that will not vitiate the whole Indictment.

Mr. Mompesson. But your Lordship won't suffer them to give Evidence of that Part that is vicious.

L. C. J. Yes, yes; it comes within the first Words of the Time and Place laid; they may give Evidence of it, because this is but a setting forth for the Manner agreed upon for the Execution of the Design that was before consulted and treated of; it is comprehended in the former Words; and if they had omitted this out of the Indictment, the Indictment had never been the worse; there had been a sufficient Overt-Act alledged to prove the Compassing and Imagining the Death of the King; for if People at such a Place and Time meet; and propose the Way and Means how to effect it, do you think the Indictment would not be good enough without laying the particular Means agreed upon? Certainly it had been well enough if this had been omitted. Do you think they cannot give this in Evidence as a Proof of the Overt-Act? Certainly they may.

Sir B. Shower. The Question will be, my Lord, then upon the Whole, Whether the Conclusion of the Indictment, *contra legiantiæ suæ Debitum*, shall be taken distributively to every Fact? And if so, then there ought to be Time and Place alledg'd to every Fact.

L. C. J. Suppose you lay several Overt-Acts, and prove but one, yet he is to be found guilty of the High-Treason, which is the Imagining and Compassing the Death of the King, which is the Crime laid in the Indictment; then suppose this was left out of the Indictment, they might give it in Evidence as a Proof of the Overt-Act, that it is well laid for Time and Place; and therefore though it be express'd, and not so fully and particularly laid, we cannot quash the Indictment for it, because the Indictment would have been good, though that had been omitted.

L. C. J. Treby. That is certainly true, it is no Cause for quashing the Indictment.

Mr. Sol. Gen. The Indictments against the Regicides were for Compassing the Death of the King, and they gave in Evidence that he was put to Death, though they charged in the Indictment, only the Compassing and Imagining the Death of the King.

L. C. J. Ay sure, that is an Overt-Act with a Witness, the Indictment was not laid for Murdering the King, but for Compassing his Death, which is the Treason according to the Act of Parliament of the 25th *Ed.* III. and as an Overt-Act they gave the Cutting off his Head in Evidence.

Mr. Att. Gen. The Indictment says, they compassed and imagined the King's Death, and they agreed to do it in this Manner; if this be not all one intire Sentence, I know not what is.

L. C. J. As to your Case, Mr. *Mompesson*, which you quote out of *Dyer*, it is possible a Man may make an Assault at one Time, and at another Time make an Assault and give a Stroke; but this is all one Act, it does but specify what was generally consulted of and proposed.

L. C. J. Treby. Pray, do you think a Man may demur upon a common Action of Battery, where 'tis said first, at such a Time and Place, *Insultum fecit, verberavit, & vulneravit*, because there is not a Place set to every Word.

Mr. Mompesson. Indictments ought to be very curiously penn'd, and what is good in an Action will not be good in an Indictment, with Submission.

L. C. J. Treby. But suppose you shew'd it for Cause upon special Demur.

Mr. Mompesson. My Lord, I cannot tell what it would amount unto.

L. C. J. You cannot quash the Indictment at this Time; that is not possible, because the Indictment is good as to the rest, supposing this was not so well as it might be.

Mr. Mompesson. Then, my Lord, I am in your Lordship's Judgment, whether they shall be admitted to give Evidence in this particular Thing?

L. C. J. They may certainly give in Evidence the Agreement to have Forty Men to kill the King, as a Proof of the Consultation, Agreement, and Consent to kill the King; and the Consenting to have Forty Horsemen

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is an Evidence of their treating, propoſing, and conſulting to kill the King. Then for your Objection of *Quilibet ſuſcepit* to be one, that is well enough, it is all ſtill but one Sentence.

Sir B. Shower. One of which is it? for they have not laid in the Indictment what is, whether it be one of the Four, or one of the Forty.

L. C. J. Whether it be one of the Four, or the Forty, is not material; for cannot one be found guilty, and the reſt acquitted? The one is not charged with the Act of the other, but they are ſeveral Offences, and each muſt anſwer for himſelf. In all Indictments, Offences are ſeveral. Suppoſe an Indictment of Conſpiracy, and it is laid in the Indictment that Four did conſpire; can't you prove that two conſpired? no Queſtion you may. It is not certainly neceſſary that every one ſhould be proved to have conſpired. Suppoſe it were alledged that Four did beat a Man, and does not ſay *Quilibet eorum* beat him, you may give in Evidence that one did beat him.

Sir B. Shower. No Queſtion of that in Caſe of a Battery, but in the Caſe of a Conſpiracy there muſt be more than one.

L. C. J. Nay, I will aſk you even in an Action of Conſpiracy, where the very Giſt of the Action is Conſpiring together, cannot two be found guilty, and the reſt acquitted? In Riots there muſt be Three or more. It may be you'll lay Ten, but it is ſufficient, I hope, if you prove it upon any Three of them.

Mr. Att. Gen. The Difference is betwixt Contracts and Crimes; for Contracts they are joint, but Crimes they are in their own Nature ſeveral.

Mr. Sol. Gen. Beſides, my Lord, though they be out of Time, yet this is not to the Abatement of the Indictment, but to the Evidence; how do they know but we will give it in Evidence that *Chriſtopher Knightley* was one?

L. C. J. Treby. Mr. *Mompeſſon* moves it as a *Caveat* againſt your giving it in Evidence.

Sir B. Shower. If in an Outlawry againſt diverſe, they leave out theſe Words, *Nec eorum aliquis comparuit*, that is every Day held to be nought, and for that Reaſon we ſay, the *Quilibet eorum ſuſcepit* is neceſſary too, and without being laid cannot be given in Evidence, and if it be laid, it ought to have Time and Place.

L. C. J. Treby. The Default of Appearance muſt be a ſeveral Thing, and when he lays it jointly *non comparuerunt*, it may be true that all did not appear, if any one made Default; but when you charge Men with a Fact done, though in the plural Number, yet it is a diſtinct ſeparate Charge upon every one.

Cl. of Arr. Robert Lowick, thoſe Men that thou ſhalt hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.—*George Ford.*

Lowick. I do not except againſt him.

Cl. of Arr. Hold the Book to Mr. *Ford.*

Cryer. Look upon the Priſoner. You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cl. of Arr. Thomas Trench.
Lowick. I have nothing to ſay againſt him. (*He was ſworn.*)
Cl. of. Arr. John Wolfe.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. James Bodington.
Lowick. I challenge him.
Cl. of Arr. John Raymond.
Lowick. I ſay nothing againſt him. (*He was ſworn.*)
Cl. of Arr. George Hawes.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. Thomas Glover.
Lowick. I challenge him.
Cl. of Arr. Matthew Bateman.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. James Partherith.
Lowick. I challenge him.
Cl. of Arr. Joſeph Bliſſet.
Lowick. I challenge him.
Cl. of Arr. Alexander Forth.
Lowick. I challenge him.
Cl. of Arr. Francis Chapman.
Lowick. I challenge him.
Cl. of Arr. Nicholas Roberts.
Lowick. I challenge him.
Cl. of Arr. Thomas Playſted.
Lowick. I challenge him.
Cl. of Arr. John Hall.
Lowick. I challenge him.
Cl. of Arr. William Partridge.
Lowick. I challenge him.
Cl. of Arr. Peter Levigne. —— *Lowick.* I challenge him.
Cl. of Arr. Thomas Moody. —— *Lowick.* I challenge him.
Cl. of Arr. Thomas Ramage.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of. Arr. Edward Townſend. —— *Lowick.* I challenge him.
Cl. of Arr. William Gunſon. —— *Lowick.* I challenge him.
Cl. of Arr. John Wyborne. (*He did not appear.*)—*William Strode.*
Lowick. I challenge him.
Cl. of Arr. William Wild.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. William Pitts.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. William Smith.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. Moſes Cook.
Lowick. I challenge him.
Cl. of Arr. Benjamin Boltby.
Lowick. I do not except againſt him. (*He was ſworn.*)
Cl. of Arr. Elias Fletcher.
Lowick. I have nothing to ſay againſt him. (*He was ſworn.*)
Cl. of Arr. Crier, countez. George Ford.
Cryer. One, &c.
Cl. of Arr. Elias Fletcher.
Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

L. C. J. Now the reſt of the Jury that have appeared are diſcharged.

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, If any one can inform my Lords, the King's Juſtices of *Oyer* and *Terminer*, the King's Serjeant, or the King's Attorney-General, before this Inqueſt be taken, of the High-Treaſon, whereof the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance.

The Names of the Twelve ſworn are theſe.

George Ford, Eſq;	*George Hawes*, Eſq;	*William Pitts*, Gent.
Thomas Trench, Eſq;	*Matthew Bateman*, Eſq;	*William Smith*, Gent.
John Wolfe, Eſq;	*Thomas Rammage*, Gent.	*Benjamin Boltby*, Gent.
John Raymond, Eſq;	*William Wild*, Gent.	*Elias Fletcher*, Gent.

Cl. of Arr. Robert Lowick, hold up thy Hand. (*Which he did.*) You that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Robert Lowick*, late of the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, Gentleman, for that he, together with *Chriſtopher Knightley*, late of the ſame Pariſh and County, Gentleman; *Ambroſe Rookwood*, late of the ſame Pariſh and County, Gentleman; and *Charles Cranburne*, late of the ſame Pariſh and County, Yeoman; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as falſe Traytors againſt the moſt Serene, moſt Illuſtrious, moſt Mild, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. their Supreme, True and Rightful, Lawful, and Undoubted Lord, the Cordial Love, and True and Due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King ſhould, and of Right, ought to bear, withdrawing, and utterly to extinguiſh, Intending and Contriving, and with all their Strength Purpoſing, Deſigning and Conſpiring the Government of this Kingdom of *England*, under him our ſaid Sovereign Lord the King that now is, our Right, duly, happily, and very well eſtabliſhed, altogether to ſubvert, change, and alter, as alſo the ſame our Lord the King to Death and final Deſtruction to put, and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and moſt miſerable Slavery to *Lewis* the *French* King to ſubjugate and inthral, the 10th Day of *February*, in the Seventh Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times as well before, as after, at the Pariſh of St. *Paul, Covent-Garden*, aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traitorouſly, did compaſs, imagine, and contrive, purpoſe, deſign, intend, our ſaid Lord the King that now is, to kill, ſlay, and murther; and a miſerable Slaughter among the faithful Subjects of our ſaid Lord the King, throughout this whole Kingdom of *England*, to make and cauſe, and the ſame their moſt wicked, impious, and deviliſh Treaſons, and traitorous Compaſſings, Contrivances, and Purpoſes aforeſaid, to fulfil, perfect and bring to Effect, they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, and very many other falſe Traytors, to the Jurors unknown; afterwards, to wit, the ſame 10th Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and divers others Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, ſecretly, and traitorouſly, and with Force and Arms, did meet together, propoſe, treat, conſult, conſent, and agree, him our ſaid Sovereign Lord the King that now is, by lying in Wait and Wild, to aſſaſſinate, kill and murder; and that execrable, horrid, and deteſtable Aſſaſſination, and Killing the ſooner to execute and perpetrate; afterwards, to wit, the ſame Day and Year, and diverſe other Days and Times, at the Pariſh aforeſaid, in the County aforeſaid, traitorouſly did treat, propoſe, and conſult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what Manner, our ſaid Lord the King, ſo by Lying in wait, the more eaſily they might kill, and did conſent, agree, and aſſent, that Forty Horſemen, or thereabouts; of whom the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, ſhould be four; and every one of them traitorouſly took upon himſelf to be one, with Guns, Muſkets, and Piſtols, loaden with Gunpowder, and Leaden Bullets, and with Swords, Rapiers, and other Arms armed, ſhould lie in Wait, and be in Ambuſh, the ſame our Lord the King in his Coach being, when he ſhould go abroad, to ſet upon, and that a certain and competent Number of thoſe Men, ſo armed, ſhould ſet upon the Guards of him our ſaid Lord the King then attending on him, and being with him, and ſhould fight with them, and overcome them, whilſt others of the ſame Men ſo armed, him our ſaid Lord the King to aſſaſſinate, kill, ſlay, and murther; And they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, their Treaſons, and all their Traitorous Intentions, Deſigns, and Contrivances aforeſaid, to execute, perpetrate, fulfil, and bring to Effect, afterwards, to wit, the aforeſaid 10th Day of *February*, in the Seventh Year aforeſaid, at the Pariſh aforeſaid, in the County aboveſaid, divers Horſes, and very many Arms, Guns, Piſtols, Rapiers, and Swords, and other Weapons, Ammunition, and Warlike Things, and military Inſtruments, falſely, maliciouſly, ſecretly, and traitorouſly did obtain, buy, gather together, and procure, and did cauſe to be bought, obtain'd, gather'd together, and procured with that Intent, them, in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murder of our ſaid Lord the King, that now is, as aforeſaid, to uſe, employ, and beſtow; and the ſame Premiſſes the more ſafely and certainly to execute, do, and perpetrate, he the aforeſaid *Chriſtopher Knightley*, with one *Edward King*, late of High-Treaſon, in Contriving and Conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted, by the Conſent and Aſſent of divers of the Traytors and Conſpira-

tors aforeſaid, the ſaid tenth Day of *February*, in the ſeventh Year aboveſaid, traitorouſly did go and come to the Place propoſed, where ſuch intended Aſſaſſination, Killing and Murder of our ſaid Lord the King, by lying in Wait, ſhould be done, perpetrated and committed, to view, ſee, and obſerve the Conveniency and Fitneſs of the ſame Place, for ſuch lying in Wait, Aſſaſſination and Killing, there to be done, perpetrated, and committed; and that Place being ſo viewed and obſerved, afterwards, to wit, the ſame Day and Year, his Obſervations thereof to ſeveral of the ſaid Traitors and Conſpirators did relate and impart, to wit, at the Pariſh aforeſaid, in the County aforeſaid; and the aforeſaid *Charles Cranburne*, the ſame Day and Year there in order, the ſame execrable, horrid, and deteſtable Aſſaſſination, and killing of our ſaid Lord the King, by the Traitors and Conſpirators aforeſaid, the more readily and boldly to execute, perpetrate and commit, adviſedly, knowingly, and traitorouſly, did bear and carry among divers of thoſe Traitors and Conſpirators forwards and backwards, from ſome to others of them, a Liſt of the Names of diverſe Men of thoſe who were deſigned and appointed, our ſaid Lord the King, ſo as aforeſaid, by lying in Wait to kill and murder, againſt the Duty of the Allegiance of them the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*; and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity, as alſo againſt the Form of the Statute in ſuch Caſe made and provided: Upon this Indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and the Country, which Country you are: Your Charge is to inquire, whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge. If you find him Not Guilty, you are to inquire whether he fled for it; if you find he fled for it, you are to inquire of his Goods and Chattels, as if you had found him Guilty; if you find him Not Guilty, and that he did not fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr. *Mountague*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment of High-Treaſon againſt *Robert Lowick*, Priſoner at the Bar; and the Indictment does charge him with compaſſing and imagining the Death of the King, and endeavouring to ſubvert the Government, and inſlave this Kingdom of *England*, and bring it under *French* Tyranny and Slavery; and the Indictment ſets forth that *Robert Lowick*, the Priſoner at the Bar, the Tenth of *February*, met ſeveral falſe Traitors, and there conſulted and treated how to aſſaſſinate his Majeſty; and agreed, that forty Horſemen do get together, ſome to attack the Guards, while others were to aſſaſſinate the King in his Coach; and the Indictment charges him likewiſe with getting together Horſes and Arms for this purpoſe; to this he hath pleaded Not Guilty. We will call our Evidence, and prove the Fact againſt him, and we do not doubt but you will do your Duty.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, this is an Indictment of High-Treaſon, in conſpiring and compaſſing the Death and Deſtruction of the King; the Nature of our Evidence againſt the Priſoner at the Bar is this.

You will hear, Gentlemen, by the Witneſſes, that about *Chriſtmas* laſt a Conſpiracy and Deſign was ſet on foot to aſſaſſinate the King; and accordingly to accompliſh it, there were ſeveral Perſons ſent over from *France* by the late King *James*, who were Part of his Guards, and particularly Sir *George Barcley* was to be the Head of them; he was a Lieutenant of the Guards there, and he was ſent over in *January* laſt, and there were a great many Troopers ſent over, who were to be under his Direction, particularly Mr. *Harris*, who will give you an Account, that he was ſent over by Order of King *James*, and he was told particularly King *James* had a Service for him to do in *England*, and he hoped it might be an Opportunity to advance him. He was to obſerve the Orders of Sir *George Barcley*, and by what Token he ſhould know him; he was to meet him in *Covent-Garden*, and he was told he might find him there twice a-Week in the Square, about ſix o'clock, after it was dark; and that he might know him, he told him, he would have his white Handkerchief hanging out of his Pocket; accordingly Mr. *Harris* came over, and Mr. *Hare* came with him, and they came and did meet with Sir *George Barcley*; and they, together with Sir *George Barcley*, and ſeveral others here in *England*, Mr. *Porter*, Mr. *Charnock*, and Sir *William Perkins*, did enter into Conſultation how to effect it: There were ſeveral Meetings about it, and you will find the Priſoner at the Bar was at ſeveral Meetings to that Purpoſe; and they did undertake among them, to provide ſo many Men as might make about the Number of Forty, which they thought ſufficient for the Execution of this Deſign.

Gentlemen, you will hear that the Priſoner at the Bar did treat with ſeveral Perſons to be engaged in it; particularly about the 5th of *February*, he ſent to one *Bertram*, and aſked him if he would be engaged in a Deſign for King *James*'s Service, that was quickly to be executed, without aſking of Queſtions; and afterwards, I think, he undertook he would: So about the 14th of *February* he met him again, and that was the Day before the firſt Time they intended to attack the King, and then being ſo near the Time when it was to be executed, he thought it proper to acquaint him with the Thing he had engaged him in; and he did acquaint him, That the next Morning they were to be ready to attack the King and his Guards, and bid him be ſure to get his Boots and other Things ready for that purpoſe, and he gave him a Guinea in order to it. *Bertram*, it ſeems, on the 15th of *February* did not come, and the King it ſeems did not go abroad that Day, ſo they were diſappointed at that Time; but the *Sunday* after *Bertram* met him, and Mr. *Lowick* complained that he had not come upon the *Saturday* according as he had undertaken; and he told him it would have been the ſame Thing, he would have diſappointed them if the King had been in the Field.

Gentlemen, you ſhall find, That as he thus engaged Mr. *Bertram*, ſo he was to provide ſeveral others; and did declare, That at his own Charge he had got two or three; he complained of it as a Hardſhip put upon him, That whereas Mr. *Harris* had 6 *s.* a-Day Subſiſtence, and was only to take care of himſelf, he, Mr. *Lowick*, had at his own Charges engaged and provided ſeveral.

You will find, Gentlemen, that Mr. *Rookwood*, who was tried Yeſterday, had ſeveral Meetings about it with Mr. *Lowick* and Mr. *Harris*; they did think it to be a barbarous Thing: But however, they were reſolved to obey Orders, and the Priſoner in particular ſaid he would obey Orders, though he thought it a very wicked Thing.

Gentlemen, you will find by the Evidence how the Matter was carried on; the Priſoner was to be engaged in it, and did not only embark himſelf in Perſon, but engaged others, and did treat with them about it. We ſhall call our Witneſſes, who will give you a full Account of it, and then we ſhall leave it with you, who we queſtion not will do Juſtice. Firſt call *George Harris*. (*Who appeared, and was ſworn.*)

Att. Sol. Gen. Pray will you give an Account to my Lord and the Jury, what you know of the intended Aſſaſſination, and what Part the Priſoner at the Bar had in it?

Mr. *Conyers*. Begin from the firſt, and tell your whole Knowledge as you did Yeſterday.

Mr. *Harris*. On the 14th of *January*, New Stile, I was ordered to wait on King *James* at Dinner; after Dinner was over, I was called in, where was Col. *Parker* and Mr. *Hare* at the ſame Time, and King *James* told me he was very ſenſible of the good Service I had done him; and now he had an Opportunity of doing ſomething for me: I was to go into *England*, and there to be ſubſiſted, and I was to follow the Orders of Sir *George Barcley*; the King told me I ſhould find Sir *George Barcley* in *Covent-Garden*, with a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thurſdays* between the Hours of ſix and ſeven in the Evening, and that was the Sign I was to know him by; and he ordered me to go to Mr. *Caroll*, that is Secretary to the late Queen, and Col. *Parker* went along with me, and he ordered me ten *Lewidores*, and Mr. *Hare* as much, which Mr. *Caroll* gave us; and if that were not ſufficient, or if we were Windbound at *Calais*, we had Orders to apply to the Preſident of *Calais* to be furniſhed with what we wanted: Accordingly we went, and the Wind not ſerving when we came to *Calais*, we were forced to ſtay there, and our Charges were paid to our Landlady by the Preſident of *Calais*, according to the Order we received at St. *Germains*; when the Wind ſerved fair we went on board, and came to *Rumney-marſh*, to one Mr. *Hunt*'s Houſe, and from thence he furniſhed us with a Couple of Horſes; and we came the Sandy-way to one Mr. *Tucker*'s, and from thence to Mr. *Croſs*'s, and from thence to *Graveſend*, and from thence to *London*: We came up in the Night-tide, and being late when we came to Town, *Sunday*-night, we lay at an Inn at the lower-end of *Gracechurch-ſtreet*; the next Day we went to look for Sir *George Barcley*, but not finding him in *Covent-Garden*, according to what King *James* told us, I admired at it; but one Mr. *Berkenhead* meeting my Comrade the next Day, ſaid, Sir *George Barcley* deſired to ſee us, and appointed us to meet him, which we did that Night; where Sir *George Barcley* aſk'd us how the King and Queen, Prince and Princeſs did; he told us at that Time he had no Money for us, but in a few Days we ſhould have Money; and accordingly he ſent us Money. We had five Guineas, but it was at twice; two Guineas at one Time, and three at another, and this was for a Month's Subſiſtence at five Shillings a-Day, Guineas going then at thirty Shillings. And afterwards when Major *Holmes* delivered the Horſe, upon *Saturday* the 15th, we had another Guinea, that made up what we had to be ſix Shillings a-Day when we had Horſes, and five Shillings a-Day when we had none: And as for Mr. *Lowick*, the firſt *Saturday* which was deſigned for the Aſſaſſination, I happened to be at Mr. *Counter*'s Lodgings in *Holbourn*, a Confectioner's; and there I ſee Mr. *Lowick* come in.

Mr. *Conyers*. Who lodged there, pray, Sir?

Harris. Sir *George Barcley* and Mr. *Counter* had Lodgings there; and Mr. *Lowick* came in there, but I cannot ſay he ſtay'd there any Time, I think he went out preſently afterwards. The next Week I met Mr. *Lowick* in *Red-Lyon Fields*, and diſcourſed with him there about this Matter, and I told him what a barbarous and inhumane Thing it was that we ſhould be the Murderers of the Prince of *Orange*, and that it would render us odious to the World, and that we ſhould be a continual Reproach to ourſelves; he did agree it was ſo: But in concluſion, Mr. *Lowick* ſaid he would obey Orders, and he ſaid Sir *George Barcley*, he was ſure, would not do it without Orders. That Day when we were walking out, we met Sir *George Barcley* and Major *Holmes* riding in the High-way up towards *Iſlington*, and we ſpoke to him, for Mr. *Lowick* told me the Thing was diſcovered, and his Name was given up, and other Gentlemen's, and I think another; and ſo he told me that one *Harriſon* told him of it, and forewarned him that Night from lying in his Lodging; and he told him that he believed it would not be ſafe for the Reſt to lie in their Lodgings, or to that effect.

Mr. Att. Gen. When he ſaid he would obey Orders, What was the Diſcourſe about?

Harris. We were talking of murdering the Prince of *Orange*: And not only that, but I do believe that Mr. *Lowick* is ſo ſenſible that what I ſay is true, and he is a Man of ſo much Conſcience and Honour, that he will not contradict any thing that I affirm or have ſaid here. On *Saturday* the Two-and-Twentieth we dined at the *Caſtle*, a Tavern or a Cook's Shop, at the End of *Red-lyon Street*. I was much in a Sweat, and he aſked me what made me ſo? I told him I had been getting Captain *Rookwood*'s Party ready; and I told him (laughing) that Captain *Rookwood* ſaid I ſhould be his *Aid du Camp*, and ſo I was getting the Men together: Says he to me, You may very well do it, for you have Six Shillings a-Day, and I have nothing. Mr. *Lowick*, you know what I ſay to be true; I know not why you lift up your Hands; but you did tell me I might very well do it, having ſix Shillings a-Day, and you had nothing, and yet brought a Couple of Men at your own Charge, and that their Horſes could not be diſcharged unleſs you went. Theſe were his Words, my Lord, or to this effect.

Mr. Att. Gen. What do you mean by being diſcharged?

Harris. I mean this, that I believe he paid for them; and they were waiting at a Houſe till he came.

Mr. *Conyers*. Why were they to be diſcharged that Day?

Harris. The Reaſon why they were to be diſcharged that Day, was, becauſe Captain *Rookwood* had told him before, that the Prince of *Orange* did not go out that Day; and therefore we went together to walk towards *Iſlington*.

L. C. J. What Day was that?

Har. The ſecond *Saturday* that it was to have been executed. I was not a Spy upon any Man's Actions: I cannot tell what they did any more than I tell you: I do not wrong you any Way in the World, Sir, I am ſure on it.

L. C. J. When was it that you ſpoke with Mr. *Lowick* about murdering the King?

Har. It was *Monday*, *Tueſday*, *Wedneſday*, or *Thurſday*, I cannot be exact to the Day, but it was one of theſe Days, after the firſt *Saturday*; I cannot be poſitive what the Day was.

L. C. J. Well, it was between the two Days?----*Har.* Yes, it was.

L. C. J. How did you know of that Deſign of murdering the King?

Har. I was inform'd of it by Captain *Rookwood* the firſt *Saturday*, and I met Mr. *Lowick*, and had this Diſcourſe about it: and afterwards they informed me that Mr. *De la Rue* did not lie at his Lodgings, and the Thing was diſcovered, and they believed that *Rue* had diſcovered it: And I deſire you'll call Mr. *De la Rue* as to this Matter; for I believe he will own it.

Mr. Sol. Gen. How came you to truſt him with ſuch a Diſcourſe?

Har. Becauſe we met there at *Counter*'s Lodgings, and we had ſeveral times Diſcourſes of it; there was Major *Bernard* and Capt. *Rookwood* beſides, and I always declared againſt it as a barbarous and inhuman Thing, not to be anſwer'd before God or Man, and that we ſhould be odious to all the World if the Thing were effected, as I believ'd it would not be. I would never ſhew my Head after ſuch a Thing.

Mr. Sol. Gen. Do you remember who began the Diſcourſe of this Matter?----*Har.* I cannot tell that. I can't come to every Particular.

Sir *B. Shower.* You ſaid juſt now, you apprehended Mr. *Lowick* to be a Man of Conſcience and Honour; Pray what were his Sentiments about it?

Har. His Sentiment was, That he would obey Sir *George Barcley*'s Orders; and he was ſure Sir *George Barcley* would not do it without Orders.

Sir *B. Shower.* Did not he declare it to be a barbarous Deſign?

Har. I can't remember every particular Thing that he ſaid; for I am not a Spy upon any Man's Actions.

Lowick. When you were talking of that Deſign that you ſpeak of, pray, did I conſent to any ſuch Thing?

Har. I tell you how far you conſented; you ſaid you wou'd obey Sir *George Barcley*'s Orders, and you was ſure he would not do it without Orders.

Mr. *Mompeſſon.* Did you ſee any of Sir *George Barcley*'s Orders?

Har. No, I did not, I was to follow his Orders; but what Orders he had I cannot tell.

Mr. Sol. Gen. What did Sir *George Barcley* tell you you were to do?

Har. Sir *George Barcley* declared, on the firſt *Saturday*, that we were his Janizaries, and talk'd of attacking and bringing away the Garter: I cannot ſay this Gentleman was by then; and afterwards Sir *George Barcley* went out and returned, and came in again into the Room, and declared that we were Men of Honour, and that we were to attack the Prince of *Orange*.

Mr. *Mompeſſon.* Did Sir *George Barcley* give the Priſoner at the Bar any Orders?----*Har.* I don't tell you he did.

Mr. *Mompeſſon.* You ſay you met Sir *George Barcley* and Major *Holmes* upon the Road going to *Iſlington*: How do you know the Priſoner was there?

Har. Why, was not I with him? I am very ſorry to come upon this Account; but you know it is Truth all that I ſay; and I am ſure you are ſenſible I do you no Wrong: He met Sir *George Barcley* and Major *Holmes*, and he went down and ſaid ſomething to Sir *George Barcley* in the Highway, what it was I don't know; but I ſtood, and Captain *Rookwood* and Mr. *Bernard* ſaid ſomething to him, which you very well know.

Mr. Att. Gen. What was it?-----*Har.* I can't tell, Sir.

Mr. Att. Gen. We do not deſire you to tell what you can't tell: Is this all you know?

Har. It is all at preſent that I recollect.

Mr. Sol. Gen. Then pray ſwear Mr. *Bertram.* [*Which was done.*

Mr. *Conyers.* Pray will you give an Account to my Lord and the Jury what you know of this intended Aſſaſſination, and how far the Priſoner was concerned in it.

Bertram. My Lord, about the Beginning of *February* laſt, Major *Lowick* came to me, and aſk'd me if I would eſpouſe a Thing with him that might be for my Advantage; I told him that I thought I might eſpouſe any Thing that he thought fit to engage in.

Mr. *Mompeſſon.* Whom did you tell ſo?

Bertram. Major *Lowick*: And he told me it was well, and deſired me to aſk no more Queſtions: I did not; but it went on to the 14th of *February*, when he deſired me to be at his Lodgings at Twelve o'Clock. I was ſo about that Time, but he was not within, and I ſtay'd till he came in, and he took me up into his Chamber, and told me he believed they ſhould ride out in ſome little Time; and he told me he believed the King was to be ſeiz'd in his Coach, and he gave me a Guinea to buy me Neceſſaries.

L. C. J. What Neceſſaries?---*Bertram.* I can't ſay he nam'd any.

Mr. Att. Gen. But for what Purpoſe were thoſe Neceſſaries?

Bertram. I don't know that he nam'd any Thing, indeed.

Mr. Att. Gen. Well; did he tell you when you were to be ready?

Bertram. If you pleaſe to give me leave, I'll tell you: He deſired me not to be out of the Way; and the next Morning I was to meet him at the Purl-Houſe in *Hart-ſtreet*. I did not meet him; and the next Time I ſaw him, I am not poſitive whether it was the next Day after the Fifteenth when I was to meet him at *Hart-ſtreet*, but did not ſo; but the next Time I ſaw him, he aſk'd me why I did not meet him according to his Appointment? I told him, I had ſome Reaſon for it; and he anſwer'd me again, That he believed, if the King had been in the Field, I would have done the ſame; but I have not ſeen him ſince, till I ſaw him at the Bar.

Mr. Att. Gen. Had you no Diſcourſe of Horſes that you were to provide?

Bertram. I do not remember any particular Thing more than I have told you.

Mr. Att. Gen. Did he not tell you what the Deſign was you were to go about?

Bertram. He did not tell me of any other Deſign than as I tell you, for he believed I knew of it; I thought ſo at leaſt: The firſt time I knew of it was from Mr. *Charnock*.

L. C. J. What did he tell you was the Deſign that you ſhould engage in for your Advantage upon *Friday* the 14th, when he gave you the Guinea?

Bertram. He told me, he believed they ſhould ride out very ſuddenly, and that the King was to be ſeized in his Coach.

L. C. J. Did he tell you when the King was to be ſeized?

Bertram. No, he did not tell me when; but this was the 14th, the next Morning I was to meet him at *Hart-ſtreet*, but did not.

Mr. Sol. Gen. Who did he tell you the King was to be ſeiz'd by?

Bertram. He did not nominate any one elſe, for he obliged me not to ask him Queſtions, nor I did not.

Mr. Sol. Gen. Did he name himſelf to be concerned?

Bertram. He named himſelf ſo far, as that he believed he ſhould ride out very ſuddenly.

Mr. Sol. Gen. Was it the next Morning, or the next Day?

Bertram. I cannot ſay that he named any particular Time.

Mr. Att. Gen. Will they ask him any Queſtions?

Sir *B. Shower.* No, I think we ſhall not.

Mr. *Mountague.* Pray, Mr. *Bertram*, will you anſwer me one Queſtion, What did he ſay to you when he check'd you for not coming according to his Appointment?

Bertram. I took it as a Kind of a Check: He told me, that if the King had been in the Field, he believed I would have done the ſame.

Sir *B. Shower.* There is one Thing we muſt a little examine this Gentleman to: Were not you under a Neceſſity before that Time that he gave you the Guinea? Pray what Condition were you in?

Bertram. Under Neceſſity, Sir! I was never very plentiful of Money of late.

Sir *B. Shower.* Did he never give you a Guinea or two before in Charity, and out of Compaſſion to your Neceſſities?

Bertram. He has given me Money ſeveral Times before; and I believe if I would have ask'd him for any Money, he would have given it me.

Mr. Att. Gen. Was this Money given you for Charity, or for any other, and what Purpoſe?

Bertram. I did not ask him for any thing; but he gave it me, and ſaid, There's a Guinea to buy you Neceſſaries.

Mr. Att. Gen. What was the Diſcourſe before that?

Bertram. I told you, he ſaid, he believed they were to ride out very ſuddenly, and he believed the King was to be ſeized in his Coach, and he deſired me not to be out of the Way.

Mr. *Cowper.* And when he gave you the Guinea to buy you Neceſſaries, was it immediately after this Diſcourſe?

Bertram. Sir, it was at the ſame Time.

Lowick. Did not I give your Wife a Guinea two Months before this?

Bertram. Yes, Sir; I acknowledge I was informed you did, I was not in Town then.

Lowick. Pray, let the Court know that.

L. C. J. Did he tell you the King was to be ſeized in his Coach, before he told you they were to ride out very ſuddenly?

Bertram. No, afterwards; and then he gave me the Guinea.

Sir *B. Shower.* His words are not coupled together, they have no Relation to one another.

L. C. J. No; but he told him they were to ride out very ſuddenly, and the King was to be ſeized in his Coach, and gave him a Guinea to buy him Neceſſaries at the ſame Time.

L. C. J. Treby. There's no doubt he was engaged in the Deſign with thoſe other Perſons.

Mr. *Conyers.* And afterwards he rebuked him becauſe he had not met him; and he ſaid, it would have been the ſame Thing if the King had been in the Field.

Mr. *Mountague.* What Day in the Week was it that you failed him?

Bertram. It was on a *Saturday*.

Juryman. Pray, my Lord, we deſire to know, who he did underſtand by the King that was to be ſeized.

L. C. J. What did he call the King?

Bertram. He ſaid nothing but the King.

L. C. J. Who did you underſtand by that?

Bertram. I leave it to the Court, I am not to interpret Things.

L. C. J. Treby. Did he name the Prince of *Orange*, or King *James*? Did you think King *James* was to be ſeized?

Bertram. My Lord, I tell you what he ſaid, I am not to interpret his Words.

Mr. Att. Gen. Do you believe he meant King *James*, or this King, that was to be ſeized?

Bertram. I believe it might be the King here.

L. C. J. Take the Words as they are; he ask'd him before, Whether he would engage in a Deſign that might be for his Advantage? On *Friday* the 14th of *February* he meets him at his Lodging, and tells him, he was to ride out ſuddenly, and that the King was to be ſeized in his Coach, and appointed him to meet him the next Morning, and gave him a Guinea to buy him Neceſſaries.

Mr. *Mompeſſon.* Pray, has not Mr. *Lowick* given you Clothes, Linen and other Things at any other Time?

Bertram. Sir, you have been always ready to ſerve me, I muſt acknowledge, and you have been very kind to me.

Lowick. If you pleaſe to give an Account of my Character, whether ever I was guilty of any bloody Thing.-----*Bertram.* No, Sir.

Sir *B. Shower.* How long have you known Mr. *Lowick*?

Bertram. I believe I have known him this 20 Years.

Sir *B. Shower.* What Behaviour has he been of?

Bertram. He has always had very good Behaviour, and the beſt; he has had the beſt Character of all Mankind.

Sir *B. Shower.* Did you ever know him inclin'd to do a raſh Action?

Bertram. Never in my Life.

Sir *B. Shower.* Did you ever know him do a malicious Action?

Bertram. No; but he had always the Character of a good Man, and was always ready to ſerve any Man in his Neceſſities, and to do Good; he has that general Character abroad.

L. C. J.

L. C. J. Where does he live?

Bertram. He lived laſt at *Brewnlow-ſtreet*, but he has no Wife nor Family, and ſo has no fix'd Being.

L. C. J. What was his Way of Living?

Bertram. He was bred a Soldier, and has been abroad.

L. C. J. Where?——*Bertram.* In *Ireland.*

L. C. J. In whoſe Service?

Bertram. In the Service of King *James.*

Lowick. He knows particularly, that once I was upon a Party, and ſaved five Officers from being killed in cold Blood.

L. C. J. What Countryman is he?——*Bertram. Yorkſhire.*

Mr. *Mompeſſon.* Was he accounted of a cruel or a bloody Nature?

Bertram. No; of a quite contrary.

Juryman. My Lord, I deſire to know for what Cauſe he gave him or his Wife a Guinea.

Bertram. I know not what that Guinea was for that he gave me the fourteenth of *February*, any otherwiſe than as I have told you.

Mr. *Mompeſſon.* What was the Guinea given to your Wife for?

Bertram. For that Guinea given to my Wife, it was out of his own Kindneſs and Goodneſs to my Family and me.

Mr. Att. Gen. What was the other Guinea for? You are upon your Oath.

Bertram. Indeed, Sir, I cannot tell; he gave it me to buy me Neceſſaries.

Mr. Att. Gen. Was there nothing elſe mentioned, what Neceſſaries thoſe were to be?

Bertram. No, Sir; upon my Oath there was not any Particular mentioned.

Mr. Att. Gen. What made him ſo kind to you, pray?

Bertram. We were both born in a Town, and I believe we are near related.

Sir *B. Shower.* You ſay you are Towns-People, and have been long acquainted, and you knew him in *Ireland*; pray, did you ever know that he ſaved any People's Lives?

Bertram. I was not in that Action myſelf, but all that were in it gave that Relation, that he was very favourable, and did ſave People's Lives, particularly one Captain *Harlow*, and brought him and other Priſoners, and I remember the Thing: It was about a Fortnight before the Buſineſs of the *Boyne*, upon a *Sunday* Morning, that they took thoſe Priſoners, and he did perſuade ſeveral Parties that he commanded, to decline killing as much as they could: I was not in this Action, but this I heard of all that were in it, and from the Priſoner.

Mr. Sol. Gen. When he gave you that Guinea, did not he ſpeak any Thing of a Horſe that was to be provided for you?

Bertram. Not a Word: I never did ſee a Horſe upon that Account, nor was I Maſter of a Horſe, nor was I told I ſhould have a Horſe in any reſpect whatſoever.

Juryman. How could you ride out, as you ſay they were to do, without a Horſe, or without knowing any Thing of a Horſe to be provided for you?

Bertram. I did not know of a Horſe.

L. C. J. But he ſaid you were to ride out ſpeedily.

Bertram. No: he ſaid in general, we ſhould ride out ſuddenly.

Mr. Att. Gen. Who was there beſides yourſelf?——*Bertram.* Nobody.

Mr. Att. Gen. Then that *we* muſt mean you and him. And how were to ride out without a Horſe? Pray mind what you ſwear.

Bertram. I was to meet him the next Morning, but did not.

Mr. Att. Gen. Pray, what cou'd you underſtand by that, that you were you to ride out ſuddenly, and had no Horſe?

Bertram. That was underſtood, that if I did ride out, I muſt have a Horſe.

Mr. Att. Gen. Who ſhould you have it from? Had you a Horſe of your own?——*Bertram.* No, I had not.

Mr. Att. Gen. Did you intend to hire a Horſe?

Bertram. No, I did not.

Mr. Att. Gen. Did not you aſk where you were to have a Horſe?

Bertram. No, I did not aſk nor inquire, nor was it promis'd me I ſhould have a Horſe.

Mr. Att. Gen. Did he tell you where you were to ride?

Bertram. The next Morning I was to meet him.

Mr. Att. Gen. For what? To ride out was it?

Bertram. I can't really tell whether it was upon that Account or not.

Mr. Att. Gen. Whether did he tell you where he was to ride?

Bertram. Indeed, he did not.

Juryman. It is very ſtrange that you did not aſk him where he was to go, nor aſk him for a Horſe.

Bertram. I was ſo ſenſeleſs, that I neither did aſk him about a Horſe, nor ever knew of any that was to be provided for me.

Juryman. Did you underſtand what was meant by the Riding out ſuddenly?

Bertram. I did take it to be about the Buſineſs, the ſeizing of the King.

Juryman. Did he compare it to attacking him in the Field?

Bertram. No, he did not; but he ſaid, he believed the King would be ſeized in his Coach; he made no Compariſons.

Mr. *Mountague.* Pray, Mr. *Bertram*, why did you not meet him? What Reaſons had you for not doing it?

Bertram. I thought it not requiſite to meet him.

Mr. *Mountague.* What! had you no Mind to the Thing?

Bertram. No, I had not; becauſe I thought the Thing very unlawful

Mr. Att. Gen. Pray, what was that Thing you ſpeak of, that you thought was unlawful?

Bertram. I thought it was about ſeizing and killing the King.

L. C. J. Pray, mind; there is nobody deſires you ſhould ſpeak more than the Truth; but on the other ſide, being upon your Oath, you are to ſpeak the whole Truth; for if you conceal any Part of the Truth, though you have a Kindneſs for your Countryman, Mr. *Lowick*, who has been kind to you, you will forſwear yourſelf, for you make a different Repreſentation of the Matter, and make it appear quite otherwiſe than it is; pray do not ſtrain one Ittle, but let us have all the Truth.

Bertram. I don't believe I ſtrain one Bit.

Mr. *Mountague.* Then tell my Lord why you did not meet him?

Bertram. I did believe it was about ſeizing and killing the King, and I did think it to be illegal.

Mr. *Mountague.* Why did you think it was about that?

Bertram. Becauſe Mr. *Charnock* had told me of it before.

Mr. Att. Gen. How did you know that was what *Lowick* ſpoke to you about?

Bertram. I did ſuppoſe it to be the ſame, becauſe he deſired me at firſt to aſk no Queſtions, no more did I; but I took it always to be the ſame Thing.

Mr. Att. Gen. What did he ſay to you?

Bertram. He told me he had a Buſineſs to propoſe to me, if I would engage in, that would be for my Advantage, but I muſt aſk no Queſtions; talk'd of Riding out ſuddenly, and that the King was to be ſeized in his Coach; and having heard of it from *Charnock*, I thought it was the ſame Buſineſs.

Mr. Att. Gen. Then, my Lord, we have one Witneſs more. Call Capt. *Fiſher.* [*He did not appear.*] If he does not appear, we ſhall let them go on, and when he comes in, we can examine him afterwards.

L. C. J. Is he a material Witneſs?

Mr. Sol. Gen. We do apprehend he is a very material Witneſs.

L. C. J. If you think him a material Witneſs, it will not be proper for them to enter upon their Defence, till they have heard the whole Accuſation.

The Court ſtaid for Mr. Fiſher's *coming for near an Hour, and at laſt he came in and was ſworn.*

L. C. J. Who is this?

Mr. Att. Gen. This is one Captain *Fiſher.*

Mr. Sol. Gen. Pray, Captain *Fiſher*, do you know Mr. *Lowick*, the Priſoner at the Bar?

Capt. *Fiſher.* I have not talked with Mr. *Lowick* ſince the 8th of *February*, and then he talked that he would be ready to ſerve his Maſter to the uttermoſt of his Power.

Mr. Att. Gen. What Maſter?----Capt. *Fiſher.* King *James.*

Mr. Att. Gen. What particular Service?

Capt. *Fiſher.* He named no particular Service, but only that he would be ready to ſerve his Maſter to the uttermoſt of his Power.

Mr. Att. Gen. Where was this?

Capt. *Fiſher.* At the *Cock* in *Bow-ſtreet.*

Mr. Att. Gen. Who was in Company?

Capt. *Fiſher.* There was Mr. *Harriſon.*

Mr. Att. Gen. Pray, give an Account of what you know of this barbarous, bloody Deſign.

Capt. *Fiſher.* I believe there was a Deſign to ſeize the Prince of *Orange.*

Mr. Att. Gen. What do you know of it? You ſay you believe it.

Capt. *Fiſher.* I believe it by my Knowledge, becauſe I was concerned in it.

Mr. *Att. Gen.* By whom was that Deſign carried on?

Capt. *Fiſher.* By Sir *George Barcley* and Mr. *Harriſon.*

L. C. J. What was the Deſign?

Capt. *Fiſher.* We were to fall upon the Prince of *Orange.*

L. C. J. You called him ſo, the Prince of *Orange?*

Capt. *Fiſher.* Yes, my Lord.

Mr. Att. Gen. Well, tell us what happened.

Capt. *Fiſher.* It was to have been done the 15th of *February*, and we met accordingly the 14th, but the King not going Abroad, it was put off.

L. C. J. Who met on the 14th?

Capt. *Fiſher.* I met only Mr. *Harriſon* and Sir *George Barcley*, then it was put off till the 22d; upon the 21ſt, we met at the *Three-Tuns* in *Holbourn*, and from thence we came to the *Sun-Tavern* in the *Strand*, and there was nobody but Mr. *Harriſon* and I together, and Sir *George Barcley* came to us; I believe there were about 14 or 16 in the Houſe; there Sir *George Barcley* told me, Mr. *Lowick* was to meet me and two more at an Inn by St. *Giles*'s Pound, and that we were to go together to ſeize the Prince of *Orange* the 22d.

L. C. J. Did you meet him?

Capt. *Fiſher.* I did not meet him, it being put off by the King's not going abroad.

L. C. J. This does not affect Mr. *Lowick* at all.

Mr. Att. Gen. It does not, we acknowledge; but at that Time which you ſpeak of, the 8th of *February*, had you any Knowledge of the Aſſaſſination?

Capt. *Fiſher.* There was no Aſſaſſination at that Time, at leaſt, it was not then declared.

Mr. Att. Gen. What was your Diſcourſe about then?

Capt. *Fiſher.* There was Notice of the King's preparing to come for *England.*

Mr. Att. Gen. You ſay Mr. *Harriſon* was there?

Capt. *Fiſher.* Yes, and talked very little about the Matter, but only that there were Preparations for the King's coming.

Mr. Att. Gen. What did *Lowick* ſay to you?

Capt. *Fiſher.* I have told you all that Mr. *Lowick* ſaid to me.

Mr. Att, Gen. Repeat it again.

Capt. *Fiſher.* He ſaid he would be ready to ſerve his Maſter to the uttermoſt of his Power.

Mr. *Cowper.* Had you no Diſcourſe about an Act of Parliament?

Capt. *Fiſher.* Mr. *Lowick* ſaid it was not convenient to talk with more than one at any Time, for there was an Act of Parliament on Foot, that under two Witneſſes nothing ſhould affect a Man's Life in Treaſon.

Mr. Att. Gen. The Act of Parliament was then a-making.

L. C. J. When Mr. *Lowick* ſaid he would ſerve his Maſter, what Diſcourſe had you about it?

Capt. *Fiſher.* Mr. *Lowick* ſaid not a Word within, but at the Door he ſaid he would ſerve his Maſter to his Power.

Mr. Att. Gen. What was that, that they would not talk with above one at a time?

Capt. *Fiſher.* Nothing that was thought treaſonable Practices ſhould be diſcourſed before above one at a time; ſo I underſtood it.

Mr. Sol. Gen. Then, my Lord, we have done.

Sir *B. Shower.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of Counſel in this Caſe for the Priſoner at the Bar, and we do hope here is not Evidence ſufficient to convict him of High-Treaſon; the Queſtion is not, Whether there was a Plot or a Conſpiracy to Aſſaſſi-

nate

nate the King, or to prepare for an Invaſion; but all that you are to conſider, Gentlemen, is, whether the Evidence againſt Mr. *Lowick* be ſufficient to convince you, that he did deſign to Seize and Aſſaſſinate the King; there are three Witneſſes produced; but we think this laſt Witneſs, *Fiſher*, his Teſtimony does not hurt him in the leaſt. We know your Lordſhip will declare and direct the Jury, that the Evidence in a Caſe of Treaſon ought to be plain, not only with reſpect to the Fact, that it was done, but alſo of ſuch Facts as are the Evidences of a Man's Intentions; and thoſe are not to be conſtrued by Strains and Intendments, or Implications, unleſs they be ſuch as Evidently, Naturally, and to common Underſtanding expreſs the Intention, it cannot be good Evidence in Treaſon: Now we ſay, that Captain *Fiſher* has ſaid nothing at all that will affect the Priſoner; for all that he ſays is, that the Eighth of *February* he ſaid he was ready to ſerve his Maſter to the utmoſt of his Power, and any Words as well as theſe may be conſtrued to make a Man guilty of Treaſonable Intentions; for it might be a Recollection of Favours received, or it might be a grateful Intent to ſerve him upon particular Occaſions; but that is no Evidence upon this Indictment. Suppoſe it was to ſerve him upon the ſuppoſed intended Invaſion, yet, with Submiſſion, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned of preparing Arms, or Encouraging Men, or Seducing the King's Subjects, in order to the better reſtoring of the late King *James*, or the expected Landing of the *French*, or the like. All that is laid to the Priſoner's Charge is, the Compaſſing the King's Death, and a Deſign to Aſſaſſinate him in his Coach; and in order to the Aſſaſſination, he was to buy Arms and Horſes: Now all that he ſays is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter; and nothing he ſays that *Lowick* ſhould ſay, but is applicable the other Way, and tends more naturally to the Invaſion, than to the Aſſaſſination. Your Lordſhip obſerves, there was ſome Notice taken of what Mr. *Lowick* ſhould ſay, concerning the Act of Parliament, that he would not talk with above one at a Time: How far, when Life is concerned, ſuch looſe Diſcourſe ought to be inforced before a Jury, I muſt leave to your Lordſhip; though a Man may be innocent, yet he may be cautious, and the more innocent, perhaps the more cautious; but that is applicable to the Invaſion too, and has no Relation to the Treaſon in this Indictment more than any other. It ſhews he was more wary than others were, but it is not applicable to the Fact that he now ſtands charged with. Then the whole of the Evidence depends upon the Teſtimony of Mr. *Harris* and Mr. *Bertram*; and we think they are not two Witneſſes to one Thing, and what they ſay muſt be ſtrained, and intended, and preſumed, to make Evidence of Treaſon; for what Mr. *Harris* ſays about the Diſcourſes between him and the late King *James*, about receiving Orders from Sir *George Barcley*, and his Paſſage over from *France*, and the ſeveral Stages he and Mr. *Hare* travell'd, and the Diſcourſes between Sir *George Barcley* and him: Your Lordſhip will acquaint the Jury, that is no Evidence to affect Mr. *Lowick*, nor what *Berkenhead* and *Hare* agreed upon does any way affect Mr. *Lowick*; for thoſe Things may be all true, and yet Mr. *Lowick* innocent of what he ſtands charged with in this Indictment; he ſays, That upon the firſt *Saturday* he ſaw Mr. *Lowick* at the Confectioner's, but he cannot ſay he ſtaid there at all; there was not a Word ſpoken by Mr. *Lowick* that he remembers then, but what he ſays that ſeems to touch, and the only Thing that touches Mr. *Lowick* in all this Evidence is, that upon *Monday*, *Tueſday*, *Wedneſday* or *Thurſday*, it is a pretty large Time, between the Fifteenth and the Twenty-ſecond, he was talking with Mr. *Lowick* about the Barbarity of this Buſineſs, and that *Lowick* after all ſaid he would obey Orders: Now with Submiſſion, my Lord, to make that to have Relation to the Aſſaſſination muſt be by a forc'd, ſtrain'd Intendment; he does not declare what the Orders were; nay, he does not affirm there were any Orders for the Aſſaſſination, but only that he would obey Orders; here's no Order by Writing, no Order by Parole that Mr. *Lowick* declared he would obey. As to what *Lowick* declared about his Intention of Riding out and Seizing the King in his Coach, that cannot be intended; the Order that he was to obey to aſſaſſinate the King, that Order does not appear; there are no Footſteps of it in all the Evidence; ſo that there is nothing in Teſtimony that will hurt Mr. *Lowick*: Then upon the Two-and-twentieth, when they dined together, Mr. *Harris* ſays, that there was a Diſcourſe of two Men; but it does not appear, nor does the Witneſs give any Account what thoſe two Men were to be for: 'Tis true, two Men he was to get diſcharged; but that is not Evidence that theſe Men were to make a Part of thoſe Forty; neither the Words before nor the Words after can have that Conſtruction; nay, it does not appear it was for any Purpoſe at all: Now in the Caſe of Life, where a Man ſtands at the Bar, we hope ſuch an Evidence ſhall not be conſtrued to make a Proof of a Treaſonable Intention, that theſe were to aſſaſſinate the King, or to make Part of the Forty that were to do it; when it does not appear they were there, nor who they were, nor any Sort of Notice taken or given upon what Account they were provided. And then as to Mr. *Bertram*'s Evidence, it is palpable that his Evidence, and whatſoever he ſays, cannot amount to make one Witneſs to prove an Overt-Act within this Statute, and that there muſt be two Witneſſes the Law requires. What does Mr. *Bertram* ſay, to prove any Man guilty of Treaſon, but only by Intendment, Thought or Suſpicion? It is true, Mr. *Bertram*'s Evidence would be good enough to commit a Man upon Suſpicion of Treaſon, but to Convict him it cannot be. He ſays, that in the Beginning of *February* he ſpoke to him, and told him he would employ him in a Buſineſs that would be for his Advantage, but he muſt aſk no Queſtions: This is very dark, for the Meaning of it does not appear what was intended by it; it might be one Thing as well as another; it might be to employ him in his Family, or it might be to ſend him of a Journey, or it might be the taking of a Farm; but to apply that as an Evidence of a Charge of High-Treaſon, that we think is very hard, and we hope your Lordſhip will think ſo too: But then he comes and tells you further of a Diſcourſe upon the Fourteenth, of his riding out ſuddenly, and that the King was to be ſeized in his Coach; but he does not ſay that he was to ſeize him, nor that he would be concerned in it, nor that he knew of it, nor did declare at what time it was to be done, nor any thing certain whether it was a Prophecy, or a Dream, or a Story that he related again, or what it was; there is no Connection between the Riding out ſuddenly, and the other Words of ſeizing the King in his Coach: Then he ſays he gave him a Guinea to buy him Neceſſaries; the Man acknowledges Mr. *Lowick* ſeveral times had given him in Charity-Money Clothes and other Things, and gave his Wife a Guinea, as you obſerve, in Charity; but he gave him this Guinea on Purpoſe to buy him Neceſſaries; and it is hard that a Man's Charity to a Countryman, to a Townſman, to an antient Acquaintance of Twenty Years ſtanding, to a Perſon that he had been familiar with formerly, and known to have lived well, ſhould be miſinterpreted and ſtrain'd, to make it a giving him Money as Subſiſtence, and a Reward for the doing ſuch a Miſchievous Bloody Act: We ſay, his Charity to this Man formerly is inconſiſtent with the Suppoſition that he could be privy to ſuch a barbarous Deſign now; and we hope the Jury will conſider the Character that that very Man has given to my Client; for the ſame Witneſs gives you an Account of his Behaviour all along, that he was not given to Raſh and Barbarous Actions, nor guilty of any Malicious Thing; nay, that he prevented Miſchief, and the Killing of People in cold Blood. We muſt leave it to the Jury's Conſideration, and your Lordſhip's Direction. All theſe Things that they ſay may be true, and *Lowick* be not guilty; and the acquitting of Mr. *Lowick* will be no Reflection upon the Witneſſes, nor any Diſcredit to the Teſtimony that has been given of this Conſpiracy; but we hope 'tis doing Juſtice to this Man, the Witneſſes not coming up to the Proof of what is laid in the Indictment. We muſt beg your Lordſhip's Patience a little longer, and call ſome Witneſſes to give you an Account how long they have known Mr. *Lowick*, and what his real Character is; they will tell you he is a peaceable, good Man, and ſhew you that his Temper and Inclination was rather to a ſober, quiet Life, than to lead him to ſuch Action, and that they cannot think him likely to be tempted to be concerned in ſuch a Deſign; and then we muſt leave it to the Jury. Call Mrs. *Yorke*.

Lowick. I believe there is nobody here that knows me, but will give me that Character. (*Mrs.* Yorke *came in, and was ſworn.*)

Sir *B. Shower*. Pray, Mrs. *Yorke*, how long have you known Mr. *Lowick?*

Yorke. About a Dozen or Fourteen Years.

Sir *B. Shower*. What Sort of Diſpoſition is he of?

Yorke. He is a Civil, Honeſt Man as ever I ſaw in my Life, or ever knew of; and I never heard otherwiſe from any one that knew him.

Sir *B. Shower*. What was he in his Actions? Was he Malicious, or Good-natur'd?

Yorke. As good a natured Man as ever I ſaw.

Mr. *Mompeſſon*. Has he the Reputation of a Cruel, Bloody-minded Man?

Yorke. Quite the contrary. He lodged in my Houſe half a Year; it is not quite a Year ago ſince he lay at my Houſe. He was the moſt obliging Man that ever lay in my Houſe. He was ſo civil to all the Lodgers, that they admired him for his Goodneſs, and made them in Love with him.

L. C. J. How came he to lodge at your Houſe?

Yorke. He came from his other Landlady; they could not agree; his other Landlady was a Sort of a Shrew, and therefore he did not care for ſtaying there; and I deſired his Company, becauſe I knew him to be ſo obliging and civil a Man.

L. C. J. Where is your Houſe?

Yorke. In *Bloomſbury*.

L. C. J. What is his Way of Living? Is he a Man of an Eſtate?

Yorke. I cannot tell; I did not enquire into that.

L. C. J. Had he no Employment to get his Living by?

Yorke. I do not know any Thing of that; I never enquired into it; he paid me very honeſtly for my Lodging, and he is a very good Man, for any Thing I know.

Sir *B. Shower*. Then call Mrs. *Moſely*.

(*She came in, and was ſworn.*)

L. C. J. Well, what do you aſk this Gentlewoman?

Sir *B. Shower*. Pray, Mrs. *Moſely*, will you tell my Lord and the Jury, do you know Mr. *Lowick?*

Moſely. Yes, Sir, I do.

Sir *B. Shower*. How long have you known him?

Moſely. Near Twenty Years.

Sir *B. Shower*. Pray give an Account, upon your Knowledge, what Diſpoſition and Temper he is of, whether he is Raſh, Malicious, Bloody, and Ill-natured.

Moſely. He is a peaceable, virtuous, honeſt Man, and a Man that I never heard or ſaw that Creature that could ſpeak any ill Thing of him in my Life; nor I never heard him ſpeak any Thing maliciouſly of any Creature in my Life, to do them a Prejudice: So far from that, that he is a Man has a Character, perhaps, above any Man that I could ſpeak or hear of in my Life. I ſpeak it even above my own Relations; they may have ſome Paſſions; but I never ſee that Gentleman in a Paſſion in my Life. He has lain in my Houſe ſeveral Times, and he has had Company come to him, but never any that was Scandalous one Way or other. I never ſaw him fuddled; nor ever heard him ſwear, nor any one accuſe him of any of thoſe Things.

Mr. *Mompeſſon*. Call Dr. *William Mew*. (*He did not appear.*)

Sir *B. Shower*. The Priſoner has ſomething to ſay for himſelf, my Lord; but we muſt ſubmit to your Lordſhip's Conſideration, and the Jury's, whether there be any Evidence but what is dark, and ſavours of Suſpicion only; ſuſpicious it is; but whether there be any Evidence that is plain and direct as the Law requires in Caſes of High-Treaſon, we muſt leave it to your Conſideration, for we apprehend there is none.

Lowick. My Lord, as to this Buſineſs, the Thing that I ſtand accuſed of, the Aſſaſſination, I know nothing in the World of it, nor never did, directly or indirectly; and if I am convicted, and could, to ſave my Life, be the Death of the pooreſt Child in the World, I would not ſave my Life to do it.

L. C. J.

L. C. J. Look you, I would put you to make Anſwer to ſome Things; you were at Sir *George Barcley*'s, at the Confectioner's in *Holbourn*; and it is ſworn he came over upon ſuch a Deſign. Then you were with Mr. *Harris* at *Red-Lion-Fields*, and there he was ſpeaking to you of the Horridneſs of the Deſign that was to be executed upon the King's Perſon the *Saturday* before, and he told you he did miſlike it; and thereupon you anſwered that you would obey Orders, and that Sir *George Barcley* had Orders for it, otherwiſe he would not do it.

Lowick. Sir *George Barcley* never ſpoke one Word of it to me.

L. C. J. Every Body knows now upon what Deſign he came over from *France*, and when Mr. *Harris* ſhewed Diſſatisfaction with the Thing, you made that Anſwer to his Diſcourſe.

Lowick. He never ſaid one Syllable to me of it. I truſt to your Lordſhip's Judgment, and the Jury's Mercy.

L. C. J. And then I would have you anſwer to another Thing; when you dined together on the *Saturday* the two-and-twentieth, what were thoſe two Men that could not be diſcharged without you?

Lowick. My Lord, I know nothing in the World of two Men.

L. C. J. You went to diſcharge them, for the King did not go abroad that Day.

Lowick. I know nothing of it.

L. C. J. He ſwears this, and that's as to him; but then as to *Bertram*, what deſign was that that you were to engage *Bertram* in for his Advantage, and he was to aſk no Queſtions?

Lowick. My Lord, he is a poor Man, and my Countryman, and I have at all Times, from time to time, for this ſeven Years, helped to ſubſiſt him and his Family, that he will not deny; and I have ſeveral Times given him both Clothes and Money.

L. C. J. Then I would ask you again, When he came to your Lodging on *Friday* the 14th of *February*, and you told him the King was to be ſeized in his Coach, and ſaid that we were to ride out very ſuddenly, and you appointed him to meet the next Morning; and becauſe he did not meet you blamed him, and ſaid, It would have been the ſame Thing if the King had been in the Field. Look you, I would have you give Anſwer to this if you can.

Lowick. I remember nothing in the World of it, not a Word I aſſure you; and to the beſt of my Remembrance, I did not ſee him in two Days after.

Mr. Att. Gen. My Lord, I muſt beg leave to anſwer to the Objection that the Counſel for the Priſoner have made, that there are not two Witneſſes to prove the Overt-Act laid in the Indictment, and ſo the Law is not ſatisfied. In Anſwer to that, I deſire your Lordſhip's Favour to obſerve how the Evidence is, and then we ſhall ſee whether there are not plainly two poſitive Witneſſes of the Overt-Act, by agreeing to aſſaſſinate the King. The firſt Witneſs is Mr. *Harris*; your Lordſhip obſerves, that Mr. *Harris* gives an Account that Mr. *Lowick* was at Sir *George Barcley*'s Lodgings the firſt Day that it was to have been executed; and that afterwards, between the fifteenth and the two-and-twentieth, thoſe being the firſt and ſecond Days that this was to be done, when he and *Rookwood*, and the Priſoner *Lowick*, were walking together in *Red-Lion-Fields*; and there had ſome Diſcourſe about the intended Aſſaſſination, and the Barbarity and Bloodineſs of it, and Mr. *Harris* and Mr. *Rookwood* were averſe to it. Mr. *Lowick* ſaid he would obey Orders, and he was ſure Sir *George Barcley* would not do it unleſs he had direct Orders for it; that was twice repeated by him, as *Harris* ſwears: And afterwards Mr. *Harris* tells you, that the two-and-twentieth he dined with Mr. *Lowick*, and Mr. *Lowick* obſerved that Mr. *Harris* came in, in a great Sweat, and asked him how it happened; he ſaid he had been about to get ready *Rookwood*'s Party that were to ſeize the King; for he was to have one Party. Says Mr. *Lowick* to him, You need not grudge to do it, you have ſix Shillings a Day, I have nothing; and yet I, at my own Charge, am to provide two. This is as poſitive Evidence as well can be of his being privy to the Deſign; and his engaging People at his own Charge, ſhews a great deal of Forwardneſs and Zeal in the Priſoner to the Buſineſs. My Lord, I think this is poſitive and plain Evidence, and not only made out by Inferences and Conſtructions, as Sir *B. Shower* ſays, but plain, poſitive Proof. The firſt Day he was with ſeveral of them, and when they diſcourſed of the Thing afterwards, he declared he would obey Orders; and what could thoſe Orders be but for what they were diſcourſing of? And nothing was diſcourſed of but this Deſign they were engaged in, and this was to juſtify the Thing, and take off the Apprehenſion of the Barbarity of it: This is *Harris*'s Teſtimony. The next Witneſs is *Bertram*, and he tells you, that the fifth of *February* the Priſoner ſent for him, and when he came to him, he asked if he would engage in a Buſineſs that might be for his Advantage, and ask no Queſtions; ſo at that Time he did not acquaint him what the Thing was, but that ſhews it was a Thing that was to be kept ſecret at that Time, in regard he did not think fit to acquaint him at the firſt Inſtance. But the fourteenth of *February*, when he met him again, the Day before the firſt Time that it was to be put in Execution, *Bertram* ſwears he told him that they were to ride out the next Morning; that muſt be *Lowick* and *Bertram*, for there was nobody elſe there; and that the Prince of *Orange* was to be ſeized in his Coach. Was it poſſible the Priſoner could be ignorant of it? When he engaged him to go upon a Deſign without aſking Queſtions; ſent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be ſeized in his Coach, and bid him be ready againſt next Morning, and gave him a Guinea at that Time; the Witneſs ſays it was for Neceſſaries, but he does not pretend that it was for Charity, as formerly. And that muſt be for Neceſſaries for that Purpoſe that they were then diſcourſing of, when he deſired him to be ready the next Day, and gives him Money to buy him Neceſſaries: What can that be, but Neceſſaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, becauſe he thought it a very wicked and unlawful Thing, and ſo he diſappointed him; and the next Time *Lowick* chid him, and told him, he would have ſerved him ſo if the King had been in the Field. This is plain, though I believe *Bertram* does ſpeak as tenderly as he can, being his Friend and old Acquaintance, and is willing to ſay as little as he can of him: So that I believe nobody thinks but what *Bertram* ſays againſt the Priſoner is true, and what he ſwears is plain and poſitive. To ſhew that *Lowick* did engage in the Deſign, he acquainted him with it the fourteenth, by telling him the King was to be ſeized, and they were to ride out, and he was to be ready the next Day.

L. C. J. He does not ſay they were to ride out the next Day.

Sir *B. Shower.* No, the Words were, We are to ride out ſuddenly.

Mr. Att. Gen. I think he did ſay they were to ride out the next Morning.

L. C. J. No, Call him in again.

Mr. *Cowper.* The Words were, We ſhall ride out ſuddenly, and bid him meet him next Morning; and afterwards chid him for not meeting accordingly, and told him it had been the ſame Thing if the King had been in the Field.

L. C. J. If you cannot agree upon the Evidence, you muſt call in the Witneſs.

Mr. *Mountague.* My Lord, we are agreed upon the Evidence, it was ſuddenly.

L. C. J. Well then, there is no Occaſion; have you done on both Sides?

Counſel. Yes, my Lord, we ſubmit it to your Lordſhip.

L. C. J. Gentlemen of the Jury, this Priſoner at the Bar, *Robert Lowick*, is Indicted of High-Treaſon, for Compaſſing and Imagining the Death and Deſtruction of the King by an Aſſaſſination; you have heard what Evidence has been given upon this Indictment. And in the firſt Place, It is proved to you that there was a Deſign to aſſaſſinate the King; which was to be carried on under the Conduct and Management of Sir *George Barcley*. The Queſtion that you are now to conſider of is, whether the Priſoner at the Bar was concerned or engaged in the Proſecution of that Deſign? There have been two Witneſſes produced, who have given their Evidence, and have been very ſtrictly examined, and Obſervations have been made upon the Teſtimony they have given.

The firſt Witneſs is Mr. *Harris*; and he gives you ſome Account of the Original of this Deſign. He tells you how he was at St. *Germains*, and introduced to the late King *James*, who did expreſs a great Kindneſs for him, and told him that he had an Opportunity of doing ſomething for him that would be for his Advantage: And that he and one *Hare*, who was preſent at that Time, ſhould go into *England*, (for it ſeems they were both together introduced by Colonel *Parker*) and ſhould be ſubſiſted in *England*, and thereupon Directions were given them what Courſe they were to take; which was to go to *Calais*, and to each of them Ten *Lewidores* were given for their Charges; and they were acquainted, that if it happened that if they ſhould lie there ſo long for Want of a Wind to bring them over hither that their Money was ſpent, Proviſion ſhould be made for their Supply there. They had farther Directions, that when they came into *England*, they ſhould apply themſelves to Sir *George Barcley*, and follow his Orders, with Inſtructions how to find him; being told that Sir *George Barcley* would be walking in *Covent-Garden* every *Monday*, and every *Thurſday* Night, about the Hours of ſix or ſeven o'Clock, and that they ſhould know him by a white Handkerchief that was to hang out of his Pocket.

Mr. *Harris* further tells you, That they did come to *Calais* in order to embark for *England*, and there they happened to ſtay a conſiderable Time, even ſo long that their Money would not defray their Expences there, and they found it true as it was promiſed them; for the Preſident of *Calais* paid the Reckoning for them at the Place where they lodged; and afterwards they came into *England*, and landed in *Kent*, and came to *Rocheſter*, and from thence to *London*. About the latter End of *January*, *Old Stile* (for it ſhould ſeem it was the 14th *New Stile*, which is the 4th *Old Stile*, they were at St. *Germains*), he tells you that he did go, the firſt *Monday* after their Arrival, into *Covent-Garden*, to look after Sir *George Barcley*, but then miſt him. But afterwards his Companion, Mr. *Hare*, met with one *Berkenhead*, and complaining that they had not met with Sir *George Barcley* according to the Directions they had abroad; whereupon, by the Means of *Berkenhead*, they were brought to the Speech of Sir *George Barcley*, who gave them Reception, and owned that he had Authority to ſubſiſt them; but ſaid he had not then Money, but ſhortly ſhould, and when he had, they ſhould be ſure to receive their Subſiſtence. He tells you, that after this, Sir *George Barcley* gave them Subſiſtence Money, paying them at the Rate of five Shillings a Day when they had no Horſes, and when they had, ſix Shillings a Day: So they put themſelves altogether under his Command and Conduct. He has given you an Account what Diſcourſe he had with Mr. *Rookwood*, from whom he diſcover'd what the Deſign was in which he was to be engaged. And the Deſign to aſſaſſinate the King was firſt intended to be put in Execution on *Saturday* the 15th of *February*; at which Day Mr. *Harris* and others being at Sir *George Barcley*'s Lodgings, Sir *George* ſaid, they were his *Janiſaries*, and afterwards careſt them, and ſaid they were Men of Honour, and told them that they were to attack the Prince of *Orange* and his Guards; but it ſeems the King not going abroad that Day, they loſt that Opportunity.

Truly, Then Mr. *Harris* began to be a little troubled, when he underſtood the Meaning of his being under Sir *George Barcley*'s Conduct. And he ſays that after that firſt *Saturday* the 15th, and before the next *Saturday* the 22d, he met with *Lowick*, *Rookwood*, and *Bernarde*, and he was complaining of his being engaged in ſuch a Deſign as this was. He called it then the Murder of the Prince of *Orange*, and ſaid it was a barbarous Thing, and he did not like it, nor *Rookwood* neither; but as for *Lowick*, whether he diſliked it, or no, I know not, but he made Anſwer to him, I will obey Orders: Says he, Sir *George Barcley* has Orders for it, or otherwiſe he would not do it.

Then you are told further, that after this, on *Saturday* the 22d, Mr. *Harris* dined with *Lowick* at a Cook's at the End of *Red-Lion-Street*, and being there together, *Harris* being in a Sweat, and was asked the Reaſon by *Lowick*, he ſaid he had been giving of Orders for the getting ſome Men together that were to go under *Rookwood*; and *Lowick* told him he might very well do it, for he had Pay 6*s.* a Day; but ſays he, I am to ſubſiſt two Men, and have nothing at all. Mr. *Harris* wiſhed him to go to Sir *George Barcley*, and complain of it to him, but he ſaid he would not; but it ſeems, it being then underſtood by them that the King did not go

abroad that Day, *Lowick* said he must go and discharge the two Men, and went about it. This is the Sum and Substance of Mr. *Harris*'s Evidence against Mr. *Lowick*.

The next Witness is *Bertram*, and he tells you, that sometime before the fifteenth of *February*, which was, as I told you, the very first Day that they did design to assassinate the King, Mr. *Lowick* sent for him, and told him, that he would put him upon a Business that should be for his Advantage, if he would undertake it without asking any Questions; this was sometime before, but the certain Day *Bertram* does not remember; but he tells you farther, that on *Friday* the fourteenth of *February*, he was with *Lowick* at his Lodgings, and he said unto him, that the King, he did believe, was to be seized in his Coach, and we are to ride out suddenly; and then he gave him a Guinea to buy him Necessaries, and withal bid him meet him at the *Purle-house* in *Hart-street* next Morning; and *Bertram* tells you, he had understood what this Design was, for he had it before from *Charnock*, and did forbear to go the next Morning, because he did dislike it. After this Mr. *Lowick* met him and chid him for disappointing of him, in not meeting him as he directed, for, says he, it would have been the same thing if the King had been in the Field. This is the Sum and Substance of the Evidence that *Bertram* has given against him.

Now *Bertram* being cross-examined on the behalf of the Prisoner, says, he hath known him a great while, and that he is a Man of a peaceable and fair Disposition, very charitable, and that he has given him Money before, and particularly a Guinea to his Wife in his Absence.

Indeed I might have mentioned the Evidence of *Fisher* to you, but that is but circumstantial, and does not come home to the Case; but being given it may be mention'd; and that is, about the Eighth of *February*, *Fisher* had some Discourse with *Lowick*, and it seems there was Notice taken of the intended Invasion, and *Lowick* said he would serve his Master faithfully; and that the Witness thought was meant of the late King; and he said at another Time, that he would not discourse with above one at a Time, because of the late Act of Parliament that was then a-passing, relating to High-Treason, that required two Witnesses. Now, I say, this is not any Proof against the Prisoner, but it is a Circumstance that may shew his Inclination to the late King.

The Counsel for the Prisoner have insisted upon the Insufficiency of the Evidence that has been given on behalf of the King, and have said, that the late Act of Parliament requires two Witnesses, which is true, but not two Witnesses to any one Overt-Act; but if there be two Witnesses, one to one and another to another Overt-Act, that is sufficient; but they say that it is not so in this Case.

In the first Place, they object against the Evidence that is given by *Harris*, they say it is short, that must be left to your Consideration; whether the Evidence that is given by *Harris* concerning Mr. *Lowick*, does prove to your Satisfaction, that he consented and agreed to the Assassination of the King, you are to weigh the Evidence; when it is sworn that when *Harris*, *Rookwood*, and the Prisoner were walking in *Red-Lion-Fields*, and talking of this horrid Design, and *Harris* complained that it was a barbarous Thing to murder the Prince of *Orange*, as they call'd him, you must consider what Answer *Lowick* did make about obeying of Orders; then his subsisting of Men at his own Charge without Pay, and complaining of his having no Pay, and his discharging them the last Day that the Assassination was intended, that I must leave to you, whether or no this is not an Evidence, if you believe the Witness, to satisfy you that he was engaged in this Design.

Then, Gentlemen, he has also been desired to give an Answer to this Question, and to tell upon what Design he was to employ *Bertram* that should be for his Advantage; but he was to ask no Questions; and afterwards whether he did tell him the King was to be seized in his Coach, and they were to ride out suddenly, and bid him meet him the next Morning, and when he did not meet him, he said, It would have been the same Thing if the King had been in the Field. If this be an Evidence of Mr. *Lowick*'s engaging in, and agreeing and consenting to the Design, then here will be another Witness against the Prisoner besides *Harris*.

Gentlemen, you are to judge of this Matter and of the Evidence. It is true, we are not to put in the Case of a Man's Life, any forced and violent Constructions upon any Words or Discourses; but if the Evidence be plain and clear, though he did not say in express Words, that he did design to assassinate or kill the King; yet, if upon the whole Discourse that past between them it appears plainly, clearly, and satisfactorily to you that he did consent and agree to this Design, or was engaged in it, here's another Witness, I say, to prove him guilty, besides *Harris*; you are to consider the whole Evidence, the subject matter of Discourse, and if you are satisfied, I say, that he was engaged in such a Design by the Proof of *Bertram*, as well as of *Harris*, then there are two Witnesses, which is as much as the Law requires.

But, indeed, the Counsel have called several Witnesses to prove that the Prisoner has lived very peaceably and quietly; one Woman says, She has known him twelve Years, and that he lodged at her House, and that he was a Man of great Temper and Candour, and not disorderly, but had a general good Esteem and Character: And then there is another, Mrs. *Moseley*, that proves the like, and says, She has known him these twenty Years, and she says no Man has a better Character: And Mr. *Bertram* hath said, that he was not of a rash or bloody Temper.

Now, Gentlemen, I must leave it to you, upon the Evidence that you have heard, there are these Witnesses that have been produced, and there are these Circumstances that appear in the Case; if you are satisfied upon this Evidence that has been given, that the Prisoner Mr. *Lowick* did consent to, and engage himself in that Design of Assassinating the King, then you are to find him guilty; if you are not satisfied, you are to find him not guilty; you have heard your Evidence, and had best consider of it.

[*Then an Officer was sworn to keep the Jury, who withdrew, and staid out about half an Hour, and then returned.*]

Cl. of Ar. Gentlemen of the Jury, answer to your Names. *George Ford.*

Mr. *Ford.* Here. [*And so of the rest.*]

Cl. of Ar. Are you all agreed of your Verdict?—*Jury.* Yes.

Cl. of Ar. Who shall say for you?—*Jury.* Foreman.

Cl. of Ar. Robert Lowick, hold up thy Hand. (*Which he did.*) Look upon the Prisoner; how say you, Is he guilty of the High-Treason whereof he stands indicted, or not guilty?—*Foreman.* Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements had he at the Time of the Treason committed, or at any Time since?

Foreman. None to our Knowledge, we do not find any.

Cl. of Ar. Then hearken to your Verdict, as the Court hath recorded it. You say that *Robert Lowick* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, Chattels, Lands or Tenements at the Time of the High-Treason committed, or at any Time since to your Knowledge, and so you say all?

Jury. Yes.

L. C. J. Discharge the Jury.

Cl. of Ar. Gentlemen of the Jury, the Court discharges you, and thanks you for your Service.

L. C. J. Mr. *Attorney*, Will you have the Prisoners set to the Bar?

Mr. Att. Gen. Yes, if your Lordship please.

Then the Keeper of Newgate *brought* Rookwood *and* Cranburne, *and all three were set to the Bar.*

Mr. Att. Gen. If your Lordship please to give Judgment against the Prisoners that are convicted.

L. C. J. Ask them what they have to say for themselves in Arrest of Judgment.

Cl. of Ar. Robert Lowick, hold up thy Hand; you stand convicted of High-Treason, in conspiring the Death of the King by Assassination, what can you say for yourself why the Court should not give Judgment against you, to die according to Law?

[*Then the Keeper bid him kneel.*]

L. C. J. No, no, he need not kneel; if you have any thing to say, Mr. *Lowick*, we will hear you.

Lowick. I throw myself upon the King's Mercy.

Cl. of Ar. Ambrose Rookwood, hold up thy Hand. (*Which he did.*) You stand convicted of the same High-Treason, for Conspiring the Death of the King by Assassination, what can you say for yourself, why the Court should not give you Judgment to die according to Law?

Rookwood. All that can be said has been said already, and so I shall say no more.

Cl. of Ar. Charles Cranburne, hold up thy Hand. Thou standest convicted of High-Treason, in Conspiring the Death of the King by Assassination, what canst thou say for thyself, why the Court should not give thee Judgment to die according to Law?

Cranburne. I have nothing to say but what I have said already.

Cl. of Ar. Then, Crier, make Proclamation.

Crier. O yes, all Manner of Persons are commanded to keep Silence while Judgment is in giving, upon Pain of Imprisonment.

L. C. J. You, the Prisoners at the Bar, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, you have been indicted, and upon full and clear Evidence have been convicted of High-Treason; a Treason that was advanced to the highest Degree both of Malice and Mischief against the King and Kingdom; you design'd to assassinate the King with an Intent to subvert the State, and by the introducing of a foreign Power to destroy the ancient Liberty and Constitution of *England*.

Our *French* and Popish Enemies, by whom you were employ'd in this bloody Enterprise, did very well know, that the Wisdom and Courage of his present Majesty has rescued this Kingdom from that Slavery and Oppression which they often threatned to bring upon us; they knew that under his Government we have been protected in the Enjoyment of our Religion, Laws and Liberty for several Years, and that his Majesty is the Head of the Protestant Interest, and the Protector and Preserver of the Liberty of *Europe*; and that upon the Preservation of his Life, and the Safety of his Person, the Good and Happiness of Multitudes of People do depend, which the *French* King's Pride and Ambition has been ready to take hold of any Opportunity to enslave and oppress.

Your being engaged in such a horrid Design against so precious a Life, and to be the bloody Instruments to give that dismal Stroke, which would have brought Misery and Desolation upon so many Men, renders you worthy to undergo a greater and more severe Punishment than by the Law of *England* can be inflicted; but that there is no greater provided for such Criminals, is to be imputed to the ancient Honesty and Integrity of *English* Men, who, when they fram'd this Constitution of Government, never imagined *England* should produce such degenerate Wretches, as would endeavour by Plots and Contrivances to betray their Country to a foreign Yoke, and subject themselves and their Fellow-Subjects to the slavish Dominion of Strangers.

Your Crime being so great, it is now high time for you seriously to reflect upon it; and though you deserve to suffer the greatest of Punishments, yet I have that Compassion for your Persons, that I wish heartily you would make use of that Opportunity which is now put into your Hands, to repent. And since you are adjudg'd by the Law unworthy to live here, that you will make Preparation to appear at another Tribunal, where you must have another Trial, and, without an hearty and sincere Repentance, receive a more severe Sentence. I hope this Calamity, and the Judgment that is to fall upon you, will be an Admonition to you to take better Advice in the last part of your Time which is left you, than you have done in the whole Course of your Lives, and that you will be wiser than to follow the Direction of those Guides whose Principles and Doctrines have so far perverted and corrupted you, as to engage you in such a bloody Design. I shall leave you to make that Preparation for another World, which is proper for Men in your Condition, and pronounce the Judgment of the Court, which the Law hath appointed and the Court does award;

That all of you be conveyed from hence to the Prison from whence you came, and from thence every one of you is to be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by your Necks, and to be cut down while you are alive, your Privy-Members are to be cut off, and your Bowels are to be cut out of your Bodies, and burnt in your View; your Heads are to be cut off, and your Bodies to be divided into four Parts, and your Heads and Quarters are to be disposed where his Majesty shall appoint. And I pray God to have Mercy on all your Souls.

Cranburne.

Cran. I humbly desire the Liberty of my Wife and Relations to come to me, and such Divines as I shall desire may have free Recourse to me.

L. C. J. You shall have that Liberty that is allowed to all Persons in your Condition.

Rook. I must beg the same Favour to have some few Friends and Relations come to see me without a Keeper.

L. C. J. You shall have a Warrant for your Friends to come to you.

Rook. I beg your Lordship that you would please to specify it in the Warrant, because they would not grant it hitherto without a Keeper being by.

L. C. J. You mean, you would have your Brother permitted to come to you.

Rook. Yes, and some few Relations.

L. C. J. What is usually done in such Cases, let it be done.

Lowick. My Lord, I desir the same Thing, that my Sister may come to me, and that the little time I have, I may be in private with my Friends.

Mr. Att. Gen. If your Lordship please, they may give the Names of those they would have admitted to them, and then the Keeper will attend your Lordship for your Direction.

L. C. J. That the Keeper must take care of, lest they allow such a Liberty as may endanger an Escape; for their being alone may prove a dangerous thing.

Mr. Att. Gen. It is reasonable they should tell who they are, before they be admitted.

L. C. J. You allow them, I suppose, to have private Discourse in the same Room, if a Keeper be by.

Cran. No, my Lord, we never had.

Mr. Att. Gen. Such as your Lordship thinks proper to be admitted to them may have Discourse with them in private, if the Keeper be in the Room, but no others but such as your Lordship shall allow; for we know what has been the Effect of a Liberty of Access to some Prisoners.

L. C. J. Let us have a Note of those Names that you would have come to you, and we will give Directions that shall be proper in it.

Cl. of Arr. Sheriff of *Middlesex*, you must take them into your Custody till Execution is done

Then the Keeper took away the Prisoners.

On *Wednesday*, *April* 29. *Ambrose Rookwood*, *Robert Lowick*, and *Charles Cranburne*, were drawn to *Tyburn*, where the two former deliver'd the following Papers to the Sheriffs.

Major Lowick's *Paper.*

IN the Name of the Holy Trinity, Father, Son, and Holy Ghost, *Amen.* In the first Place, I die in the Religion I was baptiz'd, *viz. Roman* Catholick, and humbly beg the Prayers of all good People for a happy Resurrection, and of all Catholicks for the Good of my Soul.

As for being engag'd in this for which I die, it was never so positive that I had a Horse from the Beginning to the very Last, nor never see any allow'd me, or the two Men I was to provide, as was sworn against me at my Trial; nor had I any on that Account; nor was I at any of their Meetings when they settled any such thing. And as for any Order or Commission from King *James*, I never see any since I came last into *England*, which is now about five Years; and I am confident none that knows King *James* will believe he would give any such Order.

Indeed, I must confess, I believe King *James* was a-coming to assert his own Right; and I should, if on Shore, have done any thing in my Power to have assisted him; and, in order to that, I should have been very glad to have had a Horse, but never had any.

And as for being concern'd in any bloody Affair, I never was in my Life, but have done my Endeavour to prevent, as much as I could, on all Occasions; and if the killing the most miserable Creature in the World, or greatest Enemy, would now save my Life, restore the King, and make me one of the greatest Men in *England*, I first would choose to die, because against the Law of God.

If any who are now Sufferers on this Account, think I have been too forward, and a Promoter to this Design, I do now declare it was never my Inclination to do any rash thing. However, I beg their Pardons, and of all the World I have offended, either in Thought, Word, or any Action whatsoever, and do freely forgive my Enemies, and hope, thro' the Mercy of my Saviour Jesus Christ, to have Remission of all my Sins. Good God preserve the King, Queen, Prince, and Princess, and all that royal Blood of *Stuarts*; and may *England* never want one of that direct Line to govern them, and make them once more happy! I have had the Honour to serve my royal Master in several Commissions, and the last as Major, and strove ever to serve him to the best of my Power, and ever to be just to those whom I had the Honour to command. Lord Jesus, into thy Hands I recommend my Spirit! O Jesus, receive my Soul!

Robert Lowick.

Brigadier Rookwood's *Paper.*

HAVING committed the Justice of my Cause, and recommended my Soul to God, on whose Mercies, thro' the Merits of Jesus Christ, I wholly cast myself, I had once resolv'd to die in Silence; but second Thoughts of my Duty to others, chiefly to my true and liege Sovereign King *James*, moved me to leave this behind me.

I do therefore, with all Truth and Sincerity, declare and avow, that I never knew, saw, or heard of any Order or Commission from King *James* for the assassinating the Prince of *Orange*, and attacking his Guards; but I am certainly inform'd that he, the best of Kings, had often rejected Proposals of that Nature, when made unto him.

Nor do I think he knew the least of the particular Design of the attacking the Guards at his Landing, so much talk'd of, in which I was engaged as a Soldier, by my immediate Commander, much against my Judgment; but his Soldier I was, and as such I was to obey and act according to Command.

These twelve Years I have served my true King and Master, King *James*, and freely now lay down my Life in his Cause. I ever abhorr'd Treachery, even to an Enemy; if it be a Guilt to have comply'd with what I thought, and still think, to have been my Duty, I am guilty. No other Guilt do I own.

As I beg all to forgive me, so I forgive all from my Heart, even the Prince of *Orange*, who, as a Soldier, ought to have consider'd my Case before he sign'd the Warrant for my Death. I pray God may open his Eyes, and render him sensible of the much Blood, from all Parts, crying out against him, so to prevent an heavier Execution hanging over his Head, than what he inflicts on me.

Ambrose Rookwood.

After which they were executed as Traitors, according to their Sentence.

CLIX. *The Trial of* Peter Cook, *at the* Old-Baily, *for* High-Treason, *May* 9, 1696. 8 Will. III.

Saturday May 9, 1696.

THIS Day being appointed for the Trial of Mr. *Peter Cook*, upon an Indictment of High-Treason found against him by the Grand Jury for the City of *London*, upon the Commission of Goal-Delivery of *Newgate*, holden for the said City, upon which Indictment he had been arraigned, and upon pleading not guilty, Issue had been joined; and the Court having been adjourned unto this Day for the Trial by publick Proclamation in usual Manner, the Court was resumed, and the Names of the Men returned to serve on the Jury having been called over, according to the Pannel, and the Defaulters recorded; the Court proceeded as follows.

Cl. of Arr. Set *Peter Cook* the Prisoner to the Bar. [*Which was done.*] You Prisoner at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and You, upon Trial of your Life and Death; if therefore you will Challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Cook. Sir, I desire you would not name them too fast, for my Eyes are very bad.

Cl. of Ar. *John Ewer.*

Cook. Who must I apply myself to, Sir? I desire to know whether he is a Freeholder in *London?*

Cl. of Arr. I know nothing to the contrary, Sir, he is returned as such by the Sheriff; you had best ask him himself, he can best tell.

Cook. Are you a Freeholder in *London*, Sir?

Mr. *Ewer.* Yes, Sir, I am a Freeholder.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Sherbrook.*

Cook. Sir, are you a Freeholder in *London?*

Mr. *Sherbrook.* Yes, Sir, I am.

Cook. I challenge you.——No, Sir, I beg your Pardon, I do not challenge you.

Cl. of Arr. Then hold Mr. *Sherbrook* the Book: [*Which was done.*] Look upon the Prisoner: You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge according to your Evidence. So help you God.

Cl. of Arr. *Joseph Billers.*

Cook. Are you a Freeholder, Sir, in *London?*

Mr. *Billers.* Yes, I am. [*Challeng'd.*]

Cl. of Arr. *John Brand.*

Cook. Pray, Sir, don't go too fast; Are you a Freeholder in *London*, Sir?

Mr. *Brand.* I am no Freeholder in *London.*

L. C. J. Treby. What say you, Mr. *Attorney?*

• Sir *Thomas Trevor.* * *Mr. Att. Gen.* My Lord, I would not have any Body that is not a Freeholder serve; so he was set by.

Cl. of Arr. *William Hull.*

Mr. *Hull.* My Lord, I am no Freeholder in *London.*

L. C. J. Treby. Why, what Estate have you?

Mr. *Hull.* What I have, is in Leases.

L. C. J. Treby. What, Leases for Years, or Leases for Lives?

Mr. *Hull.* Leases for Years, Sir.

L. C. J. Then he cannot serve upon the Jury.

Cl. of Arr. *Edward Leeds.*

Cook. Hold, Sir, let me see; are you a Freeholder in *London*, Sir?

Mr. *Leeds.* Yes, Sir. [*Challeng'd.*]

Cl. of Arr. *Thomas Clark.*

Cook. Hold, Sir, I pray let me look upon my Paper. I challenge him.

A Stander-by. He does not appear.

Cl. of Arr. *Nathan Green.*

Cook. Where is he, Sir? Are you a Freeholder?

Mr. *Green.* Yes, I am, Sir. [*Challeng'd.*]

Cl. of Arr. *Thomas Emes.*

Cook. Are you a Freeholder, Sir?——Mr. *Emes.* Yes, I am.

Cook. Were you one of Sir *John Freind*'s Jury?---Mr. *Emes.* Yes, I was.

Cook. Then I challenge you for Cause, and I give you my Reason.

Mr. Serj. *Darnall.* I pray, let us hear your Reason; give your Reason for your Challenge.

Cook. It is for being of Sir *John Freind*'s Jury.

Mr. Serj. *Darnall.* Then you challenge him for Cause.

Cook. Yes, that he was of Sir *John Freind*'s Jury.

L. C. J. Treby. Well, Brother *Darnall*, how is that a Cause of Challenge? You are the Prisoner's Counsel, let us hear what you say to it?

Mr. Serj. *Darnall.* My Lord, what we have to say to it, is this; Here are some Persons returned upon this Pannel, that were formerly Jurors in a Cause that was try'd for the same Species of Treason that this Gentleman, the Prisoner, is charged with in this Indictment; and I think the Witnesses at that Trial did mention in their Evidence my Client, as being present at those very Consults, about which they gave their Evidence; these Gentlemen gave Credit to those Witnesses, and found the Verdict against the Person then accused. We humbly submit it to your Lordship and the Court, whether we may not for this Cause challenge this Person as not indifferent, it being for the same Cause and Consult that the other was try'd for.

Mr. Att. Gen. Sure Mr. *Serjeant* is not in earnest in this Objection.

Mr. Serj. *Darnall.* My Client thinks it a very good Objection, that he is not indifferent, and I desire he should be satisfied in it.

Mr. Att. Gen. If he thinks so, he may except against him; but if he insist upon it as a Cause of Challenge, we desire you would put the Case, and my Lords the Judges determine it.

Mr. Serj. *Darnall.* I have told you what the Case is.

L. C. J. Treby. But you hear the King's Counsel insist upon it, to have you make it out in Point of Law.

Mr. Serj. *Darnall.* My Lord, I have stated the Case as my Client desired, and we submit it to you.

L. C. J. Treby. Well, there is nothing in it.

Mr. Serj. *Darnall.* Then my Client, if he will not have him serve, must challenge him peremptorily; which he did.

Cl. of Arr. *Francis Byer.*

Cook.

Cook. Sir, are you a Freeholder?——Mr. *Byer.* Yes, I am. [*Challeng'd.*]
Cl. of Arr. *James Denew.*----Mr. *Denew.* I am no Freeholder.
Cl. of Arr. *Henry Hunter.*
Cook. Hold, hold, my Lord, I challenge him as being one of Sir *John Freind*'s Jury.
Mr. *Baker.* Nay, that was not allow'd in Mr. *Eames*'s Caſe; but you challeng'd him peremptorily, and ſo you muſt now, if you have a Mind to it.
Cook. I challenge him.
Cl. of Arr. *John Hall.*
Cook. Are you a Freeholder in *London*, Sir?
Mr. *Hall.* Yes, I am, Sir. [*Challeng'd.*]---Cl. of Arr. *John Cullum.*
Cook. Sir, are you a Freeholder in *London?*
Mr. *Cullum.* Yes, Sir. [*Challeng'd.*]
Cl. of Arr. *John Cox.*
Mr. *Cox.* My Lord, I am no Freeholder in *London.*
Cl. of Arr. *John Hedges.*
Cook. Hold, I pray, Sir, let me look upon my Paper, Sir; are you a Freeholder in *London?*—Mr. *Hedges.* Yes, Sir, I am. [*Challeng'd.*]
Cl. of Arr. *Thomas James.*
Mr. *James.* My Lord, my Name is not *Thomas.*
Mr. Sher. *Buckingham.* He is returned, it ſeems, by a wrong Name; we did not know it.
Mr. Serj. *Darnal.* Then you cannot ſwear him.
Cl. of Arr. *Thomas Poole.*
Cook. Are you a Freeholder in *London*, Sir?—Mr. *Poole.* Yes, Sir.
Cook. I challenge him, as being of Sir *John Freind*'s Jury.
Mr. Att. Gen. That has been over-rul'd already.
Cook. I challenge him.
Cl. of Arr. *Peter Parker.*
Cook. Are you a Freeholder in *London?*—Mr. *Parker.* Yes, Sir, I am.
Cook. I challenge you, Sir, as being one of Sir *John Freind*'s Jury.
Mr. *Baker.* Nay, you can't offer it again.
Cook. I challenge him.
Cl. of Arr. *George Grove.*
Cook. Where is he? Are you a Freeholder in *London*, Sir?
Mr. *Grove.* Yes, Sir. [*Challeng'd.*]
Cl. of Arr. *Nathaniel Wyerſdell.*
Cook. Are you a Freeholder in *London?*
Mr. *Wyerſdell.* Yes, Sir, I am. [*Challeng'd.*]
Cl. of Arr. *Samuel Blewit.*
Cook. Hold, pray, are you a Freeholder, Sir?
Mr. *Blewit.* Yes, I am. [*Challeng'd.*]
Cl. of Arr. *John Wolfe.* [*Challeng'd.*]
Cl. of Arr. *Joſeph Wolfe.* [He did not appear, and was ſaid to be no Freeholder.]
Cl. of Arr. *William Smith.*
Cook. Are you a Freeholder, Sir?—Mr. *Smith.* Yes, I am. [*Challeng'd.*]
Cl. of Arr. *Edward Fenwick.*
Cook. Are you a Freeholder, Sir?—Mr. *Fenwick.* Yes, Sir, I am.
Cook. I do not challenge him.
Cl. of Ar. Then ſwear Mr. *Fenwick.* [*Which was done.*]
Cl. of Arr. *Benjamin Hooper.*
Cook. Stay, Sir, pray ſtay a little, where is he?—*Cl. of Arr.* There he is, Sir.
Cook. Which is the Gentleman? Are you a Freeholder in *London*, Sir?
Mr. *Hooper.* Yes, Sir.
Cook. I challenge you.
Mr. *Hooper.* I thank you, Sir.
Cl. of Arr. *Nathaniel Long.*
Cook. Are you a Freeholder, Sir?——Mr. *Long.* Yes, Sir.
Cook. I challenge him as being one of Sir *John Freind*'s Jury:
Cl. of Arr. The Court has adjudged that no Cauſe of Challenge; therefore I take no notice of it, but as to a peremptory Challenge.
Cl. of Arr. *Richard Chiſwell.*
Cook. Are you a Freeholder in *London*, Sir?
Mr. *Chiſwell.* Yes, Sir. [*Challeng'd.*]
Cl. of Arr. *John Child.*
Cook. Hold, pray, a Moment; I have not croſt theſe laſt in my Paper, but I challenge this Man, being of Sir *John Freind*'s Jury.
Mr. *Baker.* You have had that anſwered over and over again, as no Objection; it is nothing but a peremptory Challenge.
Cl. of Arr. *William Walker.*
Mr. *Walker.* I was one of Sir *John Freind*'s Jury.
Cook. I challenge him for the ſame Reaſon.
Mr. Att. Gen. But that is no Reaſon at all.
Cook. Then I challenge him.
Cl. of Arr. *John Wells.*
Cook. Sir, are you a Freeholder?—Mr. *Wells.* Yes, Sir, I am. [*Challeng'd.*]
Cl. of Arr. *John Hibbert.*
Cook. Which is he, Sir?——*Cl. of Arr.* He ſtands upon your Left-hand; the Man in the black Peruke.
Cook. Are you a Freeholder, Sir?-Mr. *Hibbert.* Yes, I am, Sir. [*Challeng'd.*]
Cl. of Arr. *Daniel Wray.*
Cook. Stay, Sir, are you Mr. *Wray?*---Mr. *Wray.* Yes, Sir, my Name is *Wray.*
Cook. Are you a Freeholder in *London*, Sir?—Mr. *Wray.* Yes, Sir.
Cook. I challenge you.----Mr. *Wray.* I thank you, Sir.
Cl. of Arr. *John Petit.*
Cook. Which is he?——Mr. *Petit.* I am the Man, Sir.
Cook. Are you a Freeholder in *London*, Sir?--Mr. *Petit.* Yes, Sir. [*Chall.*]
Cl. of Arr. *John Sherbrook.*
Cook. I challenge him, as being one of Sir *John Freind*'s Jury.
Mr. *Baker.* But you have heard that denied to be an Exception over and over.
Cook. I challenge him.---Cl. of Arr. *Stephen Blackwell.*
Cook. Are you a Freeholder, Sir?—Mr. *Blackwell.* Yes, I am. [*Chall.*]
Cl. of Ar. *William Hatch.*
Cook. Pray give me time to mark them; pray, who is this Man you now call?
Cl. of Arr. *William Hatch.*
Cook. Sir, are you a Freeholder?---Mr. *Hatch.* Yes, I am. [*Challeng'd.*]
Cl. of Arr. *Henry Beadle.*
Cook. Are you a Freeholder, Sir?—Mr. *Beadle.* Yes, I am.
Cook. I do not except againſt him. [*Was ſwern.*]
Cl. of Arr. *John Stredwick.*
Mr. *Stredwick.* My Lord, as I apprehend, I am no Freeholder.
L. C. J. Treby. Why do you apprehend ſo?
Mr. *Stredwick.* It is my Wife's Eſtate, not mine.
Cl. of Arr. Then your Wife has a Freehold, it ſeems.
Mr. *Stredwick.* Yes, ſhe has.
L. C. J. Treby. That is Freehold enough; for you have an Eſtate for your Wife's Life.
Mr. *Baker.* And after that too; for it is not given over to any body elſe, and ſhe won't give it from him.
Cook. Sir, are you a Freeholder in *London*, or no?
Mr. *Stredwick.* I apprehend, Sir, I am not.
Mr. *Baker.* He ſays he has an Eſtate for his Wife's Life.
Cl. of Arr. Then he is a Freeholder, What do you ſay to him?
Cook. Are you poſitive you are a Freeholder in *London*, upon your Word?
Mr. *Stredwick.* I think not.
Mr. *Baker.* Why, your Wife's Eſtate is yours for your Life.
Cook. My Lord Chief Juſtice, if your Lordſhip pleaſes, here is a Man that ſays poſitively he thinks he is no Freeholder; I deſire your Lordſhip's Judgment, whether he be a Freeholder or not?
L. C. J. Treby. Why, let him put his Caſe, if he make a Doubt of it.
Mr. *Stredwick.* I am not poſſeſt of an Eſtate myſelf.
L. C. J. Treby. But is not your Wife an Inheritrix?
Mr. *Stredwick.* Yes, my Lord, ſhe is.
L. C. J. Treby. Then you are ſeiz'd of a Freehold in her Right; and, Mr. *Cook*, your own Counſel will tell you, and ſatisfy you, that that is a Freehold ſufficient for this Service.
Mr. *Baker.* His Wife's Father ſettled it upon her and her Heirs.
L. C. J. Treby. No queſtion, it is a ſufficient Freehold if the Wife be living.——Mr. *Baker.* Yes, ſhe is.
Cook. I challenge him.----Cl. of Arr. *William Prince.*
Cook. I challenge him, as being one of Sir *John Freind*'s Jury.
Mr. *Prince.* I thank you, Sir.
Cl. of Arr. *John Simmons.*
Mr. Att. Gen. We challenge him for the King.
Cl. of Arr. *Robert White.*
Cook. Are you a Freeholder, Sir?---Mr. *White.* Yes, I think ſo.
Cook. Pray tell me whether you are, or not?
Mr. *White.* Indeed I think ſo, Sir. [*Challeng'd.*]
Cl. of Arr. *Edward Brewſter.*
Cook. Where is Mr. *Brewſter?* Are you a Freeholder, Sir, in *London?*
Mr. *Brewſter.* Yes, Sir.
Cook. I challenge him. Pray, Sir, I deſire to know how many I have challenged?----Mr. *Baker.* You have challenged Thirty-Three.
Cook. How many beſides thoſe that are of Sir *John Freind*'s Jury?
Mr. *Baker.* You have but two more to challenge, Sir.
Mr. Serj. *Darnal.* I thought you had heard the Opinion of the Court, Mr. *Cook*, that it will not hold as a Cauſe of Challenge that he was of Sir *John Freind*'s Jury; therefore thoſe are all reckoned among the peremptory Challenges, and you can challenge but two more in all.
L. C. J. Treby. Not without Cauſe, but as many more as you can have good Cauſe againſt.
Cl. of Arr. *John Reynolds.---Cook.* I except not againſt him. [*Was ſworn.*]
Cl. of Arr. *Joſeph Brookbank.*
Cook. I have nothing to ſay to him. [*He was ſworn.*]
Cl. of Arr. *Adam Bellamy.*
Mr. *Bellamy.* My Lord, I am no Freeholder.
L. C. J. Treby. Why, what Eſtate have you?
Mr. *Baker.* He has Eſtate enough, I know, for Value.
Mr. *Bellamy.* I have only a Leaſe.
L. C. J. Treby. A Leaſe for Years?----Mr. *Bellamy.* Yes, my Lord.
Cl. of Arr. *David Grill.*——Mr. *Grill.* I am no Freeholder, my Lord.
Cl. of Arr. *William Rawlins.—Cook.* I accept of him. [*He was ſworn.*]
Cl. of Arr. *Samuel Roycroft.*
Cook. Are you a Freeholder, Sir?—Mr. *Roycroft.* Yes, Sir. [*Challeng'd.*]
Cl. of Arr. *Thomas Parker.*
Cook. How many have I to challenge, do you ſay?
Cl. of Arr. But one, Sir; What ſay you to Mr. *Parker?*
Cook. I do not except againſt him. [*He was ſworn.*]
Cl. of Arr. *James Robinſon.*
Cook. I have nothing to ſay to him. [*He was ſworn.*]
Cl. of Arr. *Joſeph Morewood.* [*Challeng'd.*]
Mr. *Baker.* You have challeng'd all your Number now.
Cl. of Arr. My Lord, we have gone through the Pannel, we muſt now call the Defaulters again. *Thomas Clark.*——Mr. *Clark.* Here.
Sir *B. Shower.* Was he here when he was call'd over?
Mr. Att. Gen. That's nothing, he is here now.
Sir *B. Shower.* But if there be a Default of the Jury, and the King's Counſel have challenged any one, they ought to ſhew their Cauſe; therefore we deſire that they may ſhew their Cauſe why they challeng'd Mr. *Simmons?*
L. C. J. Treby. The King has Power to challenge without ſhewing Cauſe till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Counſel muſt ſhew Cauſe.
Sir *B. Shower.* Here is a Default of Jurors, my Lord.
L. C. J. Treby. Nobody is recorded abſolutely a Defaulter, if he comes in time enough to be ſworn.
Cl. of Arr. Swear Mr. *Clark.* [*Which was done.*]
L. C. J. Treby. When there is an apparent Default of Jurors, then they muſt ſhew their Cauſe: but here his Appearance, it ſeems, was recorded, and ſo he was no Defaulter; and you might have challenged him for Cauſe ſtill.
Cl. of Arr. *James Dry.*——Mr. *Dry.* My Name is not *James.*
Serj. *Darnal.* Then you cannot ſwear him: Here are Three miſtaken in their Names.
L. C. J. Treby. That is in the Copy in your Brief, Brother, it may be.
Serj. *Darnal.* No, my Lord, the Officers admit it.
Mr. Att. Gen. My Lord, we deſire thoſe Gentlemen, that ſay they are no Freeholders, may be ſworn to that Matter. [*Which was accordingly done.*] And ſeveral of them that had ſtaid, did deny the having of any Freehold upon Oath, and ſome were gone away. *L. C. J.*

L. C. J. Treby. Pray take care to estreat the Issues, and return greater Issues the next time.

Mr. Just. *Rokeby.* Truly, the Court must put some great Penalty upon them for trifling with the Court in respect of their Duty that they owe to the King and Country, in regard of their Estates.

Cl. of Ar. Pray let the Officers be called who summoned this Jury, Mr. *Sheriff.*

[*Which was done*] And they examined concerning their summoning those who made Default, and the Issues of those who were recorded as Defaulters were ordered to be estreated.

Then the Court not being able to proceed for want of a Jury, they ordered another Pannel to be ready against *Wednesday* next, to which time, at Seven in the Morning, the Court was by Proclamation adjourned.

Die Mercurii Decimo Tertio Maii. Anno Dom. 1696.

The Court being met according to the Adjournment, the Pannel was called over, and the Defaulters Recorded, and several excused for Absence upon Sickness, and being out of Town before the Summons. Then Mr. Serjeant Darnall *desired, before the Jury was called, to move something against the Pannel: and made his Motion thus.*

Mr. Serj. *Darnall.* IF your Lordship pleases, I have somewhat to offer to you before you go upon this new Pannel, and I confess I think it is my Duty to the Court, as well as to the Prisoner, to state the Case as it is, and submit it upon the Reason of Law, and the Authorities that I shall offer, whether the Proceedings upon this new Pannel will not be erroneous? My Lord, the Question is, Whether, as this Case is, the Prisoner has had a Copy of the Pannel of his Jury by which he is to be tried, according as the late Law requires? He had a Copy of the former Pannel, and upon that Pannel Nine were sworn, and their Names all entered upon Record, and made Parcel of the Record. Therefore now the Question is, Whether he can be tried upon a new Pannel? We are in a Case that rarely happens; and in a Case of Life and Death, I know your Lordship will be careful not to vary from the ancient Practice, or to make a new Precedent, because of the Consequences. It must be agreed in this Case, that the old Pannel upon which the Prisoner took his Challenges, and of which Nine were sworn, is Parcel of the Record. Now, my Lord, to add a new Pannel, upon which Twelve more shall be sworn, and all this appear upon Record, and the Prisoner tried upon the last Pannel, will not this be Error? I offer this before the Jury be called and sworn, because we desire to be fairly tried; and we design to rest upon the Fact in this Case. If it should appear, That he is tried upon a Pannel that is unduly made and returned, that will be of evil Consequence one way or other. And can this be duly made, if another appear upon Record before it? And can any body say it is quash'd or abated? Or can it be so? My Lord, in *Stamford*'s Pleas of the Crown, p. 155. it is said, *If any of the Pannel die after the Return, and before their Appearance, so that there are not enough left to make the Jury, yet the Pannel shall not be quash'd, nor is it abated, but it is Cause to grant a* Tales. And certainly, my Lord, it is a stronger Case, when by reason of Challenges, which the Law gives the Prisoner Liberty to make, there are not enough left, that there shall not be a new Pannel, but that a *Tales* shall be granted; for if a new Pannel might be made, it cannot appear who were challenged, or who were admitted. And if your Lordship pleases to consider, the Intention of the Law in giving the Prisoner Power to challenge, is, that he may have an indifferent Jury; but that would be prevented by such a Practice as this; for when it has been discovered upon the old Pannel whom the Prisoner chose, and whom he challenged upon the new Pannel, the Persons challenged may be set first, and those that were chosen may be omitted, or so postponed, that none of them whom he thought equal to try him, can serve upon the Jury. And truly, my Lord, if I am rightly informed, that is the Case upon this new Pannel; some of those that were admitted and sworn are left out, and most of them, I think, are put last in the Pannel whom he thought equal Men to try him, and all those whom he challenged peremptorily are the first Men in the Pannel. This, my Lord, is the Case before you; and if this be admitted, the Use and End of Challenges, which are in benefit and favour of Life, would be defeated. And for Authorities in this Case, besides the Reason and Ground of the Law, many cannot be expected, because it is a Fact that rarely happens. I find none of the ancient Practisers ever knew it, but I find that a *Tales* ought to be granted; so it is said in several Books, as in *Stamford*, 155, 156. when-ever upon the Principal Pannel all the Jury does not appear, or so many of them do not, that there are not enough left to make a Jury, which is our very Case; then in such Case the Pannel shall not be quash'd or abated, but a *Tales* granted; so is 14 *H.* VII. 7. there the Question was, Whether there should be a greater Number returned upon the *Tales* than were in the Principal Pannel? And there the Difference was insisted upon, and agreed, That where it is between Party and Party, where Life is not concerned, it shall not; but where Life is concerned, and the Prisoner has Power to challenge 35 peremptorily, there the Judge may award as many upon the *Tales* as he pleases, that there may be enough to remain after the Challenges; so that if this old Pannel be not abated, and could not be quash'd, and a *Tales* might be granted to consist of any Number, I conceive the Prisoner cannot be tried upon this new Pannel, but it will be Erroneous: and I humbly submit to your Lordship whether you will proceed upon it.

Sir *B. Shower.* If your Lordship pleases to spare me a Word of the same Side, with Submission, We think there ought to have been an *Habeas Corpora*, with a *Tales*, such as had been before Sworn, being to be Part of the Jury now, and that is the proper Way to bring the Prisoner to his Trial in this Case; the King's Counsel cannot expect we should produce many Precedents, for I believe this is the Second of the Kind that ever happened, at least within Memory, That a Trial in Treason was put off *pro defectu Juratorum*, though I have a Precedent that I think is express in the Case; but we insist, in the first Place, That a *Tales* does lie at Common-Law in the Case of Life; and so the Book that Mr. *Serjeant* cited in *Stamford* is express; and then we say, that the Answer which we expect, that we are now before Justices of Gaol-Delivery, is not sufficient, because the Justices of Gaol-Delivery, though they do not usually award Process by way of Writ, but before their coming, they command the Sheriff to have his County ready there, and so in fact it is a Parol Precept; yet when it is returned, then it is entered upon Record, either *Præceptum est Vice Comiti quod venire faceret*; or, *Ideo veniat Jurata*; and the Jury are entered upon Record: So that take it to be before Justices of Gaol-Delivery, yet the Sheriff having returned a Pannel, and that being upon the File, as appears before your Eyes, in Obedience to your Command, and that Copy of the Pannel being delivered to us two Days before *Saturday* last, we humbly submit it to your Lordship, whether by Force of the Common-Law, and of the late Act of Parliament, we ought not to be tried by that Pannel: We insist upon it, that the Act intends, and expressly designed, that not only the Prisoner should have a Copy of the Pannel that the Sheriff returned at any time after, but that he should be tried by the Pannel that we had a Copy of at first; for it is not said a Copy, *toties quoties* the Court shall think fit to award a Precept for a new Pannel, but the Words of the Act are, a Copy of the Jury duly returned by the Sheriff; now this we had, and your Lordship knows it is not a returned Pannel till it be in Court, and then it becomes Part of the Record: My Lord, I do agree, the Justices in some Cases have quash'd and set aside Pannels and Juries, and ordered new ones; and I confess there was an extraordinary Case in the Time of King *Charles* the Second, which was upon the Indictment against *Whitebread*, where, after the Jury charged, and Evidence given, the Jury was discharged, and a new Pannel made the next Sessions, upon which Mr. *Whitebread* was tried and convicted; how just or regular that was, I will not insist upon now, but I am sure there were great Complaints of that Practice, and few Precedents can be shewn of the like: But besides, the Parties themselves waved it there, no Objection being taken against it; but we insist upon it in this Case, that this being upon Record, is Part of the Record, and so appears to the Court: If the Record indeed were to be made up upon a Writ of Error, perhaps it would be no Error, because it may be they would leave it out; but here it appears there was a Pannel of Record before you, and this must either be quash'd, or altered, or continued on by Process; you have Power to quash it, if it be unduly returned by the Sheriff. If there be any evil Practices for procuring the Pannel, either by the Prosecutor or the Prisoner; if there be no Freeholders return'd, or the same happen in any other respect not to be legally done according to the Command or Precept of the Court; but because there is a Default of Appearance of Jurors, no Pannel was ever quash'd upon that Account. Then say we, if it be not quash'd, this Pannel must continue; for, What shall become of it? Why should it not continue? It is not within the Act of Parliament that gives the Justices Power to make a new Pannel, as in the Case of a Grand Jury when they are Guilty of Concealments, or refuse to find Bills upon great Evidence, but we have no such Case before you, nor do I know any such Rule as can reach this; so that, we take it, there is no Difference between this Case, as before Justices of Gaol-Delivery, and other Justices; that Process does lie against the Jury that does not appear even in Treason and Felony, there is no Dispute; and it is very properly so, if it be before Commissioners of *Oyer* and *Terminer*; first, a *Venire facias*, and then upon Default, a *Habeas Corpora*, that is the proper Way; then take it before Justices of Gaol-Delivery, there it is entered upon Record, *Præceptum est Vice Comiti*, &c. and here is a Pannel returned by Virtue of this Precept, and some of the Jury do not appear, and so there are not enough to Try the Prisoner after a great many Sworn and Challenged, and this entered upon Record. What shall become of that Pannel, it cannot be quash'd nor abated? My Lord, there is a Case that does warrant that Opinion of a *Tales* in a Case of Felony; and if there may be a *Tales*, then there may be a *Habeas Corpora*, and there are Directions how the Jurors shall be Sworn again, upon their appearance on the *Habeas Corpora*, and that is *Wharton*'s Case in *Yelverton* 23.

Mr. Just. *Powell, jun.* Do not dispute that; it is plain, that a *Tales* does lie in Felony, upon a Commission of *Oyer* and *Terminer*; but can you shew me, Sir *Bartholomew*, any where, that upon a Commission of Gaol-Delivery a *Tales* does lie?

Sir *B. Shower.* Sir, I can only shew the Reason of the Law, and I cannot find that does contradict what we now contend for.

Mr. Just. *Powell.* I tell you, Sir *Bartholomew*, there is no *Tales* but with a *Habeas Corpora* to bring in the first Jurors, and that cannot be upon a Parol Precept on a Commission of *Oyer* and *Terminer*, there goes a *Venire facias*, which is a Writ upon which the *Habeas Corpora* may be grounded, but there is no *Venire facias* upon a Commission of Gaol-Delivery.

Sir *B. Shower.* Why should there not be a Precept in nature of an *Habeas Corpora* for a Jury return'd, upon a Precept as well as on a Writ?

Mr. Just. *Powell.* No, it never was done; the Commission of Gaol-Delivery is a general Commission that does authorize the Sheriff to impannel, and have a Jury ready at the Day appointed for the Delivery of the Gaol, to try the Prisoners; it doth import in itself a general Precept for that Purpose, before Issue joined, which the Sheriff cannot do in the Case of a Commission of *Oyer* and *Terminer*, but must have a Writ of *Venire facias*, after Issue joined.

Mr. Sol. Gen. In all Cases that they cite, there is a Writ of *Venire facias*, upon which the After-process, by Writ, may be grounded; but here is no Foundation for any future Process by Writ, because it is only by Parol Precept. Sir *John Hawles.*

Mr. Att. Gen. Sure these Gentlemen don't think what they say; the Pannel is not Part of the Record, and there is no Record of it; nothing but the Clerk's Entry in a Paper, or Note, for his own *Memorandum.*

Mr. Juſt. *Rokeby.* Brother *Darnal*, have you any Book that ſays, Juſtices of Gaol-Delivery muſt award a *Tales* upon Default of the Jurors?

Mr. Serj. *Darnal.* No, my Lord, I cannot ſay ſo.

L. C. J. Treby. Suppoſe all the Jury had been challeng'd, or dy'd.

Mr. Juſt. *Powel.* There could be no quaſhing of it, but it would fall of itſelf, for want of a Jury.

Mr. Juſt. *Rokeby.* If, according to your Doctrine, we muſt keep to the firſt Pannel, the Conſequence wou'd be, there would be no Trial at all.

Sir *B. Shower. Stamford* makes no Difference that I can ſee.

Mr. Att. Gen. But theſe Gentlemen have been told the Difference upon which this Matter is grounded; a *Tales* cannot be without a *Habeas Corpora*, and a *Habeas Corpora* cannot be without a *Venire facias*; but a Commiſſion of Gaol-Delivery cannot award a *Venire facias*, becauſe that is not to be awarded till Iſſue joined.

Mr. B. *Powis.* The Return of this Pannel before Juſtices of Gaol-Delivery, is an Act of the Sheriff, by virtue of the Commiſſion, and nothing appears of Record till the Jury are Sworn.

Mr. Juſt. *Rokeby.* They object that it is upon Record.

L. C. J. Treby. By the Record, they mean the Clerk's Note.

Mr. Att. Gen. If you pleaſe to look upon the Indictment, there is no Entry at all, and that is all the Record before you.

Mr. Juſt. *Powel.* Does it appear upon Record, that Nine were Sworn?

Mr. *Baker.* No, there is nothing upon the Record.

Cl. of Ar. It does not appear till the Record is made up, and nothing is entered till Twelve are Sworn.

Mr. Serj. *Darnal.* There will be a great Inconvenience, if a Pannel may be changed at any Time.

Mr. Juſt. *Powel.* This is a Caſe that never happened before, and may be never may again.

Sir *B. Shower.* The Law will hold the ſame, in caſe it does appear upon Record, as well as where it does not: But we ſay, a Pannel return'd in Court is a Record.

Mr. Juſt. *Powel.* No, it will not; becauſe, when a Jury does appear, and the Twelve are Sworn, then it becomes Parcel of the Record; and therefore *Whitebread*'s Caſe * was quite another Caſe, and was indeed held to be an extraordinary Caſe; but that comes not up to us, for there a full Jury was Sworn, and Evidence given.

Mr. Serj. *Darnal.* It may be, the ſame Jury will not be returned.

Mr. Juſt. *Powel.* But if you have a Copy of the Jury, you are at no Miſchief.

Mr. Serj. *Darnal.* Some that were in the former Pannel are quite left out.

Mr. Sher. *Buckingham.* There are none left out, but what were not Freeholders, that I know of.

Mr. B. *Powis.* He ſays the Fact is not true, as you have alledged it.

Mr. Sher. *Buckingham.* And Mr. Serjeant *Darnal* has been pleaſed to reflect upon us, as if we had pack'd this Jury, by altering the Places of the Names, which, my Lord, we do utterly deny, and we only left out thoſe that were not Freeholders.

M. B. *Powis.* The Sheriff ſays, he has not poſtponed any of them, and only left out thoſe that were not Freeholders.

Mr. Serj. *Darnal.* If the Law were as plain with us as the Fact in that Caſe, we ſhould have a very good Caſe of it.

Mr. Sher. *Buckingham.* Mr. *Serjeant*, I have both the Pannels here; they may be compared.

Mr. Serj. *Darnal.* I ſaid no Harm, Mr. *Sheriff*, nor meant any Reflection upon you.

Mr. Sher. *Buckingham.* Mr. *Serjeant* was pleaſed to ſay, the excepted Men were put in the Front, and thoſe that were Sworn were put laſt.

L. C. J. Treby. There is nothing at all in the Objection.

Mr. Juſt. *Powel.* Really, becauſe it was opened as a Reflection, it will be proper for the Sheriff to clear it.

Mr. Sher. *Buckingham.* My Lord, the Anſwer I give to it, is, That particularly one that was Sworn laſt Time, is now at the very Beginning of the Pannel; and, in general, they are mix'd promiſcuouſly, without any Deſign or Study in the leaſt. He ſays we have left out thoſe that ſerved before: I ſolemnly proteſt, I know not one Man returned upon the laſt Pannel that is left out, unleſs it appeared that he is no Freeholder; and we had no Reaſon to put in them, that we knew could not ſerve.

Mr. Serj. *Darnal.* That can't appear to us, that they are not Freeholders.

Mr. Juſt. *Rokeby.* But it appears to him, and therefore he did well to leave them out.

Mr. Sher. *Buckingham.* What I ſay, I am ready to give upon my Oath.

Mr. Serj. *Darnal.* I ſay there is one *Henry Beadle* left out, and he was one that was Sworn.

Mr. Sher. *Buckingham.* I will not ſay for a particular Man; I proteſt that I did not know he was left out; if it be ſo, it was by Miſtake; for I know Mr. *Beadle* very well, and I take him to be an honeſt Man, and very well-affected to the Government as any Man.

Mr. Serj. *Darnal.* We deſired to be tried by Men that are honeſt and well-affected to the Government.

Mr. Sher. *Buckingham.* There you have of them, Sir.

Mr. Serj. *Darnal.* Thoſe that were Sworn are put laſt of all, and there is not above one of them that is within poſſibility of coming on again.

Mr. Sher. *Buckingham.* It will appear by Mr. *Cook*'s Challenges, and the other Pannel, that they ſtood late before; and *Thomas Clark*, who was Sworn the laſt Time, ſtands tenth Man upon the Pannel.

Mr. Serj *Darnal.* He was Sworn after we had gone through the Pannel, and took all our Challenges, not appearing at firſt.

Mr. Sher. *Buckingham.* I tell you, they ſtand for the moſt part as they did, for aught I know.

Mr. Serj. *Darnal.* There is but one in Threeſcore and Ten, that can be Sworn now, of them that were Sworn before; and there were Nine of them then Sworn.

Mr. Att. Gen. That is a Miſtake. Indeed there are a great many added to the Pannel, becauſe there was a Defect the laſt Time, and therefore now they may perhaps ſtand later.

Mr. Serj. *Darnal.* I do not ſpeak to reflect upon the Sheriffs: I go according to my Inſtructions.

Mr. Juſt. *Powel.* If it had been ſo, it had been well enough; for you muſt be contented, the Court muſt take it as the Sheriff returns it, and you have a Copy of it.

Mr. Att. Gen. Here are four of them that were Sworn before, that ſtood above ſixty off in the old Pannel.

Mr. Sher. *Buckingham.* The firſt Man that was ſworn, Mr. *Sherbrook*, ſtands within the firſt Twelve now, as well as before.

Mr. J. *Powell.* If they had been all new, there had been nothing in that.

Mr. Juſt. *Rokeby.* Truly, I can't ſee but that the Sheriff hath done like an equal, juſt, fair, and honeſt Officer.

Mr. Att. Gen. They may challenge as they will.

L. C. J. Treby. You are to conſider, that this happens becauſe you run out as far as your utmoſt Number, that Time you challenged Thirty-five peremptorily, and divers others for Cauſe, ſo as not to leave enough for a Jury; and from that alone aroſe a Neceſſity of increaſing the Number of the Pannel.

Mr. Serj. *Darnal.* It was our Client that challenged them, we do not adviſe him whom to challenge.

Mr. Juſt. *Rokely.* But you muſt take the Conſequence of it, which cauſes this Addition to the Pannel.

L. C. J. Treby. What do you complain of? They that are returned, are put in the ſame Order as they were before; they that were Sworn, were (for the moſt part) late in the Pannel then, and ſo they are now. I do not find any Thing done to the Prejudice of the Priſoner.

Mr. Serj. *Darnal.* If the Chriſtian Names had not been miſtaken, there had been perhaps enough to have been Sworn.

L. C. J. Treby. That's a good Argument for a new Pannel, becauſe the Chriſtian Names were miſtaken before.

Mr. Juſt. *Powel.* It was by Defect of Jurors, and therefore there was an abſolute neceſſity of a new Pannel.

L. C. J. Treby. I am of the ſame Opinion.

Wharton's Caſe is well known: It was much cited as to another Point in *Buſhel*'s Caſe. It was a Trial at the *King*'s-*Bench* Bar at *Weſtminſter* by a Jury of *Kent*, upon an Indictment of a Murder.

And I think you ſay the Caſe of *H. 7.* was between Party and Party in Appeal. And I believe *Stamford*'s Diſcourſe, in the Place cited, relates chiefly to Appeals.

I ſhall not deny that a *Tales* may poſſibly be upon an Indictment before Juſtices of *Oyer* and *Terminer*; though 'tis not uſual, nor do you ſhew, or our experienced Clerks know any ſuch Precedent. I agree, that in the mentioned Caſes a *Tales* was proper; for in both Caſes (*viz. of Appeal and Indictment removed into the* King's-Bench), the Proceſs for the Jury, was as it ought to be, by Writs of *Venire facias*, &c. upon which a full Jury not appearing, there muſt be a *Tales*. But in proceeding to Trial before Juſtices of *Oyer* and *Terminer* on ſuch Indictment as is here, though I will not ſay but they may proceed by Writ of *Venire facias*, yet I do ſay, that the more known Courſe is by Precept, in nature of a *Venire facias*: And the Uſage is, that after (and never before) the Priſoner hath pleaded not Guilty, there goes a Precept to the Sheriff, under the Seals of the ſaid Juſtices of *Oyer* and *Terminer*, returnable at ſuch Day as they ſhall adjourn to, for returning a Jury to Try it; (as was done lately, upon Advice, in the Caſe of *Rookwood*, &c.) and upon the Return of that, if, after Challenges, there are not enough left to make a Jury, whether thoſe Juſtices ſhall iſſue a Precept in nature of a *Habeas Corpora*, or *Deſtringas*, with a *Tales*, or another Precept in the ſame Form as before, and without taking notice of the former, is a Queſtion *not* in Judgment before us. For we are about proceeding to a Trial on an Indictment in this Court of Gaol-Delivery, (which is the Court wherein generally all capital Crimes are tried, as well at this Place as at the Aſſizes) and, I think, here cannot be a *Tales*; I am ſure it is not neceſſary. For, *Firſt*, Here is never any Writ of *Venire facias*, &c. *Secondly*, Nor ever a Precept for returning a Jury to try a particular Iſſue: But this Court takes the Pannels of Juries returned by the Sheriff, without any particular Precept to him.

The Courſe of proceeding by virtue of a Commiſſion of Goal-Delivery, which is the Law in this Caſe, is this, *viz.* There is, antecedent to the Coming of the Juſtices, a general Commandment or Precept made, in Writing to the Sheriff by the ſaid Juſtices, to return Juries againſt their Coming, for the Trying of all and ſingular Priſoners in their Gaol, whether they have pleaded before, or ſhall after. And for that Purpoſe it requires the Sheriff to ſummon, out of all Parts of his Country whence the Priſoners come, a great Number of Freeholders not a-kin to the Priſoners, to be at the Time and Place appointed for holding the Court. The Sheriff, by virtue of this general previous Precept, ſummoneth many for Jurors, and prepares diverſe ſeveral Pannels of their Names, either at firſt, or afterwards, as appears neceſſary, and returneth and delivereth in one or more of theſe Pannels, from Time to Time, as the Court does need, and call for any: This, we know, in Fact, is frequently done where the Seſſions of Gaol-Delivery laſts ſeveral Days, and there is occaſion. Though, in Suppoſition of Law, all theſe Pannels are returned, and the Trials thereupon had the firſt Day of the Seſſions; and, in Law, it is intended to be but that one Day only. The Return of this Precept is thus, viz. *Executio iſtius Præcepti patet in quibuſdam Panellis huic præcepto annexis*, and the Pannels are annexed, and there are often filed here divers Pannels upon the ſame general Precept, though ſometimes but One. Theſe Pannels are thus delivered into Court, and a Jury taken out of them as there is occaſion, only upon a *Parol Award*, that is, barely the Court's calling for the ſame, without Writ or Precept in Writing, or giving any Day for the Doing it. For this Proceeding is *immediate*, for the ſpeedy Delivery of Priſoners; and the Entry, after ſetting forth that the Priſoner being arraigned pleads not Guilty, is, *Ideo immediatè veniat inde Jurata*, or *fiat inde Jurata*: And this Court's being inſtituted for the

* Vol. II. P. 711.

ſpeedy

ſpeedy Delivery of Priſoners, and Warnings being given long before, of their Coming, are the Cauſes why it has been always held without doubt, that Juſtices of Gaol-Delivery might inquire and try the ſame Day.

If it fall out, that by reaſon of Defaults, Deaths, or Challenges, there cannot be a full Jury had out of a Pannel, (as here there wanted three) which is an Accident that the Court cannot know, till they have gone through the Pannel; I think in this Caſe, that Pannel goes for nothing, is utterly loſt and void, and to be caſt away or cancelled: For it does not anſwer the Award of the Court, which was to have a Jury to Try the Priſoner preſently. It is meant an effectual Pannel that ſhould afford a full Jury of Twelve unexceptionable Men; and every Pannel that comes ſhort in this, is to be laid aſide as a void Thing; and then the Court takes and makes uſe of another immediately, which may not be deficient, whereby the Award is obſerved, and the preſent Service diſpatched.

Objection. It is objected, That the old Pannel is Parcel of the Record in Court, and, upon that, Nine were Sworn, and their Names are all enter'd upon Record; and now to add a new Pannel, upon which Twelve ſhall be Sworn and Try the Priſoner; all this appearing upon Record, it will be Error.

Anſwer. This Objection ſtands upon two Miſtakes, both ariſing from not obſerving the Difference between Precepts and Pannels, in a Court of Gaol-Delivery and *Venire facias*, or Precepts and Pannels in other Courts.

1. It ſuppoſes that here will be two Pannels, which will appear to relate to the Trial of this Priſoner, Mr. *Cook*.

2. It ſuppoſes that both theſe will become Records, or Parcel of the Record in Court.

If either of theſe Suppoſitions prove to be a Miſtake, it will deſtroy the Objection. I think both are Miſtakes.

1. Here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the Trying of Mr. *Cook*, or any particular Priſoner or Priſoners. For the Precept in this Caſe is (not like a *Venire facias*, which always reſpects a particular Iſſue between Parties therein named, but) general, requiring the Sheriff to return Jurors enough to Try all the Priſoners, not naming any. And the Return, which is the Anſwer to it by a Pannel or Pannels, is as General; the Title of every Pannel being *Nomina Jurator' ad Triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad Triandum inter Dom. Regem & Priſonar. ad Barram*, without naming any of the Priſoners, and it were abſurd if it ſhould be otherwiſe: For the Precept goes to the Sheriff before the Seſſions, and his Return is ſuppoſed to be made at the Beginning of the Seſſions, when it is not known who of the Priſoners will be indicted; or, if indicted, who will plead not Guilty, or Guilty, or a Pardon, or other Plea.

When, for the Trial of a particular Priſoner (or divers Priſoners that are thought fit to be put upon Trial by the ſame Jury), a Jury is about to be taken out of any Pannel, the Clerk, as he goes along, may take a Note in Paper of the Name of every one that is ſworn; or he may (and uſually doth) write *Jur.* on the ſaid Pannel, againſt the Name of every one Sworn: But this Note or Mark is no Part of the Record; it is not *ex Inſtitutione Legis*, it is but a voluntary *Memorandum* for the Help of his Memory. If he could ſafely truſt to the Strength of his Memory, he need not write at all on this Occaſion; I mean, not till a full Jury is Sworn, who try the Priſoner. But then, indeed, the Clerk muſt (from his Notes or Memory) write the Name of all the Twelve, entering them on the Record of the Indictment, in this manner, *viz.* juſt after the *Ideo immediate veniat inde Jurata coram præfatis Juſtic.* &c. adding, *& Juratores Juratæ illius*, &c. *Scil.* A. B. &c. *Dicunt*, &c. And it is by this only, that the Names of thoſe that are Sworn, come to be of Record; and it is this Entry upon the Body of the Indictment alone, that is the Record, that ſhews who were Jurors Sworn, to try this, or that, or other Priſoner or Priſoners.

So that if the old Pannel were filed, and were a Record, as the Priſoner's Counſel would ſuppoſe, yet it would not thereby be made appear, that the ſaid Pannel was returned, or uſed for, or in order to the Trial of this Priſoner.

2. The old Pannel is not filed among the Records of the Court, nor ought to be. When ſuch a Pannel does not produce a Jury, the Clerks may and uſe to throw it by as a uſeleſs thing. But, however they uſe it, we cannot allow it to be a Record. It was received *de bene eſſe*; it is abortive and comes to nothing. And it is not every Thing that paſſeth in Court in order to a Record, that comes to be ſo. A frivolous Plea that is rejected, is not recorded. A Preſentment or Bill of Indictment, before it is found, is not a Record: And if an *Ignoramus* be returned upon a Bill of Indictment, it never can be a Record; and thereupon, the Clerks do ſometimes throw it away, though ſometimes they keep it and put it on the File, only taking care to croſs it; but if they do forget to croſs it, yet it is not a Record.

By all this it is apparent how great the Difference is between a Precept and Pannels in this Court, and a *Venire facias* and a Pannel returned thereupon, which is ever iſſued after Iſſue joined, and doth always mention the particular Parties and Matter it relates to, and is a Record, and a Ground for an *Habeas Corpora* with a *Tales*, to be returnable at a certain future Day.

But, in this Caſe, in this Court, it is quite otherwiſe.

Sir *B. Shower.* Then, my Lord, ſince there is a new Pannel, we hope we ſtand in the ſame Condition upon the Act of Parliament, to take Exceptions to the Indictment before this Jury Sworn, as we did before the other Jury Sworn, ſince all that is quite ſet aſide.

L. C. J. Treby. Yes, truly, I think that may be.

Mr. Att. Gen. But theſe Gentlemen would have done well to have given notice of their Exceptions.

Sir *B. Shower.* My Lord, I ſhall not ſtand upon an Exception which I think I might take to the Word *Turmas* in the Indictment, which, whether it be Troops of Men, or Horſes, or what it is, does not appear; but, I think, we have an Exception to the chief Overt-Act laid in the Indictment, and that, we preſume, if my Brief be right, will be ſufficient to ſet aſide this Indictment: That Mr. *Cook* did agree with other Traitors to ſend Mr. *Charnock* into *France* to the ſaid late King *James*, and King *James* is never mentioned before in all the Indictment; that is one Exception that we have, that there is no late King *James* mentioned in the Indictment before this, if my Copy be right; if it be otherwiſe, I ſuppoſe they will find it: It is laid, That Mr. *Cook* did agree to ſend *Charnock* as a Meſſenger into *France*, *eidem nuper Regi Jacobo*, and no *Rex Jacobus* is mentioned before. Then there is another Exception, and that's this: They come and ſay, That whereas there was a War with *France*, which is only in the Indictment by way of Recital or Rehearſal of an Hiſtory, *Quod cum per magnum Tempus fuit & modo ſit*, &c. Mr. *Cook*, the Premiſſes knowing, did compaſs and imagine the King's Death, and did adhere to the ſaid King's Enemies ſuch a Day. Now, my Lord, I do think that this can never be maintain'd, for that *Cum quoddam Bellum*, &c. being an hiſtorical Narrative, is not poſitive enough: For adhering to the King's Enemies, being one of the Treaſons laid in the Charge, there ought to be a War at the Time of the Adheſion, and of Neceſſity then that ought to be preſented by the Jury; for though your Lordſhips can judicially take notice of War or Peace, yet you cannot take notice of it at ſuch a particular Time, and the Reaſon is from the Notion that is in my Lord *Coke* in his third *Inſtitutes*, cap. *Treaſon*, That Adheſions to Rebels is not Adheſion to the King's Enemies, for a Rebel is not ſaid to be an Enemy; but it muſt be adhering to ſuch an Enemy, as between whom and the King there was War at that Time; and conſequently it ought to be more poſitively averred in the Indictment than it here is; but as to the Overt-Act of Mr. *Cook*'s conſulting and agreeing to ſend *Charnock* over to the ſaid late King *James*, to give him notice of what was agreed upon between them, when King *James* is not named before, that can never be got over, with Submiſſion.

Mr. *Baker.* It is a Miſtake of your Copy, Sir *Bartholomew Shower.*

Mr. Att. Gen. I have looked into the Record, and it is *Jacobo Secundo nuper Regi*, not *Dicto.*

Sir *B. Shower.* Then, with Submiſſion, my Lord, they cannot try us now, for we ought to have a true Copy of the Indictment.

Mr. *Baker.* Upon Demand. But you never demanded it.

Sir *B. Shower.* Yes, it was demanded.

Mr. *Baker.* Who demanded it?

Sir *B. Shower.* Our Sollicitor *Burleigh.*

Mr. *Baker.* No, he did not; I gave it him officiouſly.

Mr. Att. Gen. With Submiſſion, my Lord, it is no Objection at all, that their Copy is wrong. That ſhould have been before the Priſoner had pleaded; for the Words of the Act are, That he ſhall have it ſo many Days before, to enable him to plead, and he cannot be put to plead unleſs he have a Copy of the Indictment ſo long before: And at *Rookwood*'s Trial it was ſaid by the Court, it could not be alledged after Plea pleaded.

Mr. *Burleigh.* The Copy was given to me publickly in Court.

Mr. Sol. Gen. Why did not your Sollicitor compare it with the Indictment?

Mr. Att. Gen. They might have compared it by the Clerk's reading it to them; but they will not admit the Priſoner's Sollicitor to ſee the Original, becauſe the Act expreſly ſays they ſhall not have a Copy of the Witneſſes Names.

Sir *B. Shower.* The Officer is to deliver a true Copy of the Indictment.

Mr. Att. Gen. No: the Party is to demand it by himſelf or his Agent, and then he is to have it; and if he be denied, he ought to apply himſelf to the Court, who will order the Delivery of it; but we ſtand upon it, that they cannot take this Exception now after they have pleaded, for the Intent of the Copy is to enable him to plead.

L. C. J. Treby. The Copy, by the Act of Parliament, is to be delivered to the Priſoner, his Attorney, Agent, or Sollicitor, if they require the ſame; and here it ſeems there was no requiring of it, but it was voluntarily given; and now you have lapſed your Time of making the Exception of wanting a Copy, by having pleaded to the Indictment, whereby you have in effect admitted and declared, either that you had a true Copy of it, or that you did not think fit to require one; for the Uſe of the Copy is to better enable the Priſoner to plead. But when you did plead, you took upon yourſelf to be well able to plead without the Help of a Copy, which you might have had upon the asking for.

Sir *B. Shower.* Then, my Lord, there is another thing in the Indictment, That in this Overt-Act there is a new Time, and a new Place, and a new Verb, and a new Fact alledged, and no Nominative Caſe: It is alledged, That *Peter Cook*, at firſt, with others, did ſo and ſo: and then the firſt of *July* to bring the Treaſons aforeſaid to effect, there & *alibi*, &c. (which is very looſe, for I know not whence the *Venue* muſt come) did traitorouſly with *Charnock*, *Freind*, &c. conſult to procure *Diverſas Turmas & Legiones*, &c. to join with them in *England*, and then it comes & *ulterius* ſuch a Day, Year, and Place, did traitorouſly agree ſo and ſo, and not ſay who: Now this is neither by expreſs Words, nor Rule of Grammar to be referred to the Priſoner at the Bar; it does not ſay *ipſe idem Petrus Cook*; now, my Lord, that the King's Counſel thought it neceſſary in every Overt-Act is plain, becauſe thoſe Words are put in every other Clauſe of the Indictment, in thoſe Clauſes that go before, and thoſe Clauſes that come after; then if they will take it, that this Clauſe muſt refer to the next Antecedent, that will not do, for the next precedent Nominative Caſe is either *Freind* or *Charnock*: So that this is without a Nominative Caſe, and the Precedents in my Lord *Coke*'s *Entries* 361, and all the other Books have the Nominative Caſe repeated, where there is a new Time, and a new Place, and a new Fact alledged: Now it might be true, that the Priſoner at the Bar might be preſent, and this ſame Treaſon might be diſcourſed of and agitated, and there might be a Conſult about this Buſineſs; and yet it is not neceſſarily implied that he muſt conſent and agree to ſend *Charnock* into *France*, upon which the great Streſs of the Indictment lies: Therefore we ſay, theſe Words having no Nominative Caſe, the Indictment cannot hold.

Mr. Att. Gen. My Lord, as to this Objection, it will receive a very plain Answer. Our Indictment begins and sets forth, that *Peter Cook*, the Prisoner at the Bar, did imagine and compass the King's Death, and did adhere to the King's Enemies, and these are the Treasons: And then it sets forth the Overt-Act, that in Execution of the traitorous Compassings, Imaginations, and Adhesions aforesaid, *Ipse idem Petrus Cook*, together with Sir *William Parkyns*, Mr. *Charnock*, Sir *John Freind*, and others, did propose and consult to procure from the *French* King Forces to invade this Land; *& ulterius*, he and they did agree to send *Charnock* to the late King *James*.

Mr. J. *Rokeby*. There's the first naming of *James* the Second, late King of *England*, and there is no *eidem Jacobo*, I promise you.

L. C. J. Treby. Well, that Mistake is over. Pray go on, Mr. *Attorney-General*.

Mr. Att. Gen. My Lord, as to this Objection of Sir *Bartholomew Shower*, he would have *ipse idem Petrus* repeated over again; and he says, that we lay a distinct Overt-Act with a different Time and Place: Now that is a Mistake too; it is not a different Time and Place, but the same Time and Place: And it mentions that *cum R. Charnock, J. Freind, &c. & cum aliis Proditoribus conveniebat, consultabat, &c.* which he says may refer to Sir *John Freind* or *Charnock*: But if you look into the Frame of the Sentence, that can never be.

Mr. J. *Rokeby*. *Petrus Cook* is the Nominative Case that governs all the Verbs.

Mr. Att. Gen. And there is no other Nominative Case in all the Indictment, but *Petrus Cook*, except it be in a Parenthesis, and that saves the Rule of Grammar, if there were any Thing in it, that it must refer to the last Antecedent.

Sir *B. Shower*. When it comes to the Clause that he did procure Horse and Arms, there the Nominative Case is repeated.

L. C. J. Treby. It would not have made it worse, if they had made it so here; but the Question is, Whether it be necessary?

Sir *B. Shower*. Indictments ought to be precisely certain; but this we say is not so.

Mr. Att. Gen. But here is as much Certainty as to the Person, as can be, that he did consult with such and such about such Things; and further, the same Day did agree with the same Traitors to do so and so.

Mr. J. *Powell*. Indictments, it is true, ought to be plain and clear; but I do not see but here is as much Certainty as can be, that he did such a Day consult, and further, the same Day did agree with the same Persons.

Sir *B. Shower*. Who did agree, my Lord?

Mr. J. *Powell*. He that did consult with them before, and that is *Peter Cook*.

Mr. Att. Gen. You'd have had us to put it to every Verb, I believe.

Sir *B. Shower*. In Indictments no Presumption ought to be used, but the Facts ought to be directly and positively alledged.

Mr. J. *Powell*. It's true, there should be no Presumption; and there is none here, for certainly this is a plain Assertion of Fact.

L. C. J. Treby. Here are two Things that are set forth: *First*, That *Peter Cook* did meet with Sir *John Freind*, Sir *William Parkyns*, and others, and then and there did consult with them, and consent to procure an Invasion, and join an Insurrection thereto. And, *Secondly*, Further with the said Traitors did agree to send *Charnock* into *France*. Now, what is the Nominative Case to this Agreement? Is it Sir *John Freind*, and Sir *William Parkyns*? That's impossible: For they could not be said properly to meet and consult with themselves, every one of them with his own self and the rest. And then the Number, if it had referr'd to them, should have been plural; but here it is singular, [*agreavit*] and the Sense is no more than this: That then and there Mr. *Cook* did meet with such Persons, and did consult with them about such and such Matters; and further, did agree with them to do thus.

Sir *B. Shower*. The Meaning is not to be forced and strained by Inference or Presumption, but it ought to be express and plain.

L. C. J. Treby. Nay, you cannot express it better; you may make a Tautology of it, if you will.

Sir *B. Shower*. The Paragraph is long, my Lord, and therefore requires the more Care to have those Repetitions that are necessary.

L. C. J. Treby. Your Objection to this Paragraph is, that it is too long; but repeating the same Nominative Case to every Verb would make it much longer.

Sir *B. Shower*. It cannot be understood to mean *Peter Cook* without Presumption, which ought not to be in an Indictment.

Mr. Att. Gen. And as to Sir *Bartholomew Shower*'s first Objection, his Copy is right too, and he mistook the Place.

Sir *B. Shower*. You should have given me that for an Answer.

Mr. Att. Gen. Nay, you should have taken more Care, and not have made the Objection.

L. C. J. Treby. Truly, I think it is hardly possible to have made this better, if it had been otherwise than it is.

Mr. Serj. *Darnal*. My Lord, we think we have a good Fact of it, which we rely upon, and therefore do not so much insist upon these Exceptions; tho', in Duty to our Client, we mention that which we think is necessary, and we submit to your Lordship.

Cl. of Ar. Set *Peter Cook* to the Bar. (*Which was done.*) You, the Prisoner at the Bar, these good Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you would challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Cryer. Call Sir *John Sweetapple*.

Sir *John Sweetapple*. Here.

Cook. My Lord Chief Justice, if your Lordship please, I am advised----

L. C. J. Treby. Pray, Sir, speak out, that we may hear what you say: And let the Cryer make Proclamation for Silence. (*Which was done.*)

Cook My Lord, before the Jury is called, I am advised, that if any of the Jury have said already that I am Guilty, or they will find me Guilty, or I shall suffer, or be hanged, or the like, they are not fit or proper Men to be of the Jury.

L. C. J. Treby. You say right, Sir, it is a good Cause of Challenge.

Mr. J. *Rokeby*. That will be a sufficient Cause, if when they come to the Book, you object that, and be ready to prove it.

Cook. Which is Sir *John Sweetapple?* (*He was shewn to him.*)

Cl. of Ar. There he is.

Cook. I challenge him.

Cl. of Ar. *William Walker*.

Cook. Sir, have you said any such Thing, that you believe me Guilty?

Mr. *Walker*. No, Sir.

Mr. *Baker*. My Lord, he is asking of the Juryman the Question.

Mr. J. *Rokeby*. That's a Fact the Prisoner should prove upon him.

Mr. Att. Gen. My Lord, he must not ask the Jury that Question, Whether they have declared before, that they will find him Guilty; that is to make them guilty of a Misdemeanor.

Mr. Serj. *Darnel*. Is it any Misdemeanor for me to say, I think or believe such a Man is Guilty?

Mr. Att. Gen. If he be summon'd to be of a Jury, and declare his Opinion before-hand, it is a Misdemeanor.

Mr. Serj. *Darnal*. But suppose it be before he was summon'd?

Mr. Att. Gen. If you make any such Objection, you must prove it, and not out of the Juryman's own Mouth.

Mr. Serj. *Darnal*. I think any Man, my Lord, that comes to serve upon the Jury, may be ask'd any Question that does not make him guilty of any Offence or Crime, or liable to any Punishment: Now if any of these Gentlemen that are return'd upon this Pannel, before the Summons have declar'd their Opinion that the Prisoner is Guilty, or ought to suffer; with Submission, the Prisoner may ask such a Question, Whether he have said so, yea or no?

Mr. J. *Powell*. He cannot upon a *Voyer Dire* be ask'd any such Question.

Mr. J. *Rokeby*. It is not denied to be a material Objection, but it must be made out by Proof.

L. C. J. Treby. You put it too large, Brother *Darnal*; you may ask upon a *Voyer Dire*, whether he have any Interest in the Cause; nor shall we deny you Liberty to ask whether he be fitly qualified, according to Law, by having a Freehold of sufficient Value; but that you can ask a Juror or a Witness every Question that will not make him criminous, that's too large: Men have been ask'd, Whether they have been convicted and pardon'd for Felony, or whether they have been whipp'd for Petty Larceny: but they have not been obliged to answer; for, tho' their Answer in the Affirmative will not make them Criminal, or subject them to Punishment, yet they are Matters of Infamy; and if it be an infamous Thing, that's enough to preserve a Man from being bound to answer. A pardon'd Man is not guilty, his Crime is purged; but merely for the Reproach of it, it shall not be put upon him to answer a Question whereon he will be forced to forswear or disgrace himself. So Persons have been excused from answering whether they have been committed to *Bridewell* as Pilferers or Vagrants, or to *Newgate* for Clipping or Coining, *&c.* yet to be suspected or committed is only a Misfortune and Shame, no Crime. The like has been observed in other Cases of odious and infamous Matters which were not Crimes indictable. But to keep to our Case, 'tis true, a Juror may be challenged being an *Alien*, or being a *Villain*; but where the Matter apparently carries Crime or Shame, it should be proved; the Outlawry should be proved, and so should the *being a Villain*. Yet that is no Crime, tho' it be an Ignominy.

Mr. Serj. *Darnal*. But, my Lord, I take this to be no Manner of Infamy at all; there is nothing of Crime, nor nothing of Reproach, but only a declaring of a Man's Opinion.

L. C. J. Treby. Truly, I think otherwise; I take it to be at least a scandalous Misbehaviour, and deservedly ill-spoken of, for any Man to prejudge, especially in such a heinous Matter. I think it is a very shameful Discovery of a Man's Weakness and Rashness, if not Malice, to judge before he hears the Cause, and before the Party that is accused could be tried. But it seems, by what the Prisoner says, that he would ask all the Jurors, whether they have not said that he was *guilty*, or that they would *find* him guilty, or that he should be *hanged*, or the like: Which (presuming him innocent) is to ask, whether they have not defamed and slandered him in the highest Degree; and to force them to discover that they have a mortal Hatred to him, and come with a malicious Resolution to convict him: Which, admitting they are not punishable by our Law, yet are Things so detestably wicked and so scandalous, as are not fit to be required to be disclosed by and against themselves.

Mr. Serj. *Darnal*. Pray, my Lord, what is more common than for a Man to say, before he is summoned to be upon a Jury, when he hears a Fact reported concerning such a one, to say, I believe he is guilty, or, I am of Opinion he is, and I am sure he will be hanged? And yet there is no Crime in this.

L. C. J. Treby. Truly, Brother *Darnal*, I know not how you may approve of such a Man, but I'll assure you I do not. I take the Question *not* to be concerning a Man's discoursing *suppositively*; as, if upon hearing News, or a Report of clear Evidence, a Man should say, *Supposing this to be true, such a Man is guilty, and I should find him so if I were of his Jury.* This might not be sufficient to set aside a Juror: For this has been a general Discourse among the Subjects upon Occasion of this Conspiracy; and it imports, that if evidence should not be *true* and *clear*, he would acquit him. And so he is, as he should be, indifferent. But if a Man qualified for a Juror, affirm *positively* that such a Prisoner is guilty, and that he will find him so, whatever Evidence or Proof be given or made to the contrary; I think that may be a Misdemeanor punishable as an owning and encouraging of Falshood, Perjury, and Injustice, and a Contempt and Scandal to the Justice of the Kingdom: Tho' I hope and believe that no Man hath so demeaned himself.

Mr. J. *Powell*. In a Civil Case it would be a good Cause of Challenge. If a Man have given his Opinion about the Right one way or other, may you not upon a *Voire dire* ask him whether he hath given his Opinion one way or other? I believe it may be ask'd in a Civil Cause, because he may have been a Refferree; but if you make it Criminal, it cannot be ask'd, because a Man is not bound to accuse himself; now the Difference lies in the Nature of the Cause; it is not Criminal in a Civil Case for a Man to say he was an Arbitrator in such a Case, and, upon what appeared before him, he was of such an Opinion.

Mr. Att Gen. But, my Lord, it is a different Caſe to give an Opinion about the Right between Party and Party, where a Man has been an Arbitrator and ſo in the Nature of a Judge, and where a Man is to go upon a Jury in the Caſe of Life and Death, and before the Evidence given, he declares his Opinion without hearing the Cauſe.

Sir *B. Shower.* My Lord, we know ſeveral of the Trials have been printed, and the Names of ſeveral Perſons mentioned, and upon reading of the Trials, or converſing about them, Men are apt to give their Opinions one way or other.

Mr. Serj. *Darnal.* It is only an Objection in Caſe he has done it.

Mr. Juſt. *Rokeby.* But, Brother, how can you aſk him the Queſtion?

Mr. Serj. *Darnal.* If the Court are of Opinion that it is ſuch a Crime that it cannot be aſk'd, as tending to make a Man accuſe himſelf of an infamous Crime, then we ſubmit it to you, and I confeſs we muſt not aſk it; but we cannot apprehend that there is either Crime or Infamy in it, though we think it is an Objection, and a good Cauſe of Challenge.

Mr. B. *Powys.* I think, tho' it be not ſuch a Crime as infamous upon which a Man is not to be credited, for that is Infamy in the Eye of the Law, whereby a Man is prejudiced in his Credit; yet however, it is a ſhameful Thing for a Man to give his Judgment before he hath heard the Evidence; and therefore I think you ought not to aſk him it, to make him accuſe himſelf, if it be an opprobrious Matter upon him.

Mr. Serj. *Darnal.* Truly, my Lord, I always took it to be the Rule, if the Thing aſked to the Perſon returned be not criminal nor infamous, the Party that is aſk'd ought to anſwer to it.

L. C. J. Treby. I would fain know, if you ſhould aſk any of the Jurymen this Queſtion, whether he be guilty of all the Crimes that are pardoned by the laſt Act of Grace, he be bound to anſwer it?

Mr. Serj. *Darnal.* Undoubtedly we cannot aſk any ſuch Queſtion; no, not to any one of the Things therein mentioned.

L. C. J. Trely. But yet you will force him to diſcover a Crime (if it be one) that is unpardoned.

Mr. Juſt. *Powell.* Certainly you go too far, Brother, for no Man is obliged to charge himſelf with what is Criminal; but whether this be Criminal to ſay, *I believe ſuch a one will be hanged*, is of another Conſideration..

Mr. Juſt. *Rokeby.* But I think it muſt be proved upon him, if any Objection be made.

Sir *B. Shower.* My Lord, it will be no eaſy Thing to bring Witneſſes to prove this matter, and therefore we would have it from his own Mouth.

Mr. Juſt. *Rokeby.* And it is a very hard matter for a Man to be put upon proving every Diſcourſe that he has had about the publick Affairs of the Time.

Mr. Recorder. The Reaſon of your Exception is, that he has declar'd his Opinion before-hand, that the Party would be hanged or would ſuffer, that's a Reproach and a Reflection upon a Wiſe Man ſo to do; and if they can prove it upon him, let them do it: But whether you ſhould aſk him ſuch a Queſtion, Whether he be a Fool or a Knave for the giving an Opinion one way or other, that's the Queſtion before us.

Mr. Serj. *Darnal.* My Lord, we do not offer it to the Court as an Objection that he is not a wiſe Man.

Mr. Att. Gen. But what a Man does utter imprudently, may occaſion a Prejudice againſt him, and therefore ought to be proved, and not he to prove it himſelf.

L. C. J. Treby. Eſpecially being a Freeholder of *London*, and taking notice of what is done in *London*; and if he does take notice of the Fact, and does previouſly give his Opinion of a Matter which he may be called upon a Jury to try, this is an Indiſcretion and a Reproach to him, and I think a Miſdemeanour.

Mr. Serj. *Darnal.* My Lord, I acknowledge it is ill done of him, that is, indiſcreetly and not wiſely, and we would have diſcreet and wiſe Men upon our Jury.

Mr. *Cowper.* My Lord, Mr. Serj. *Darnal* will make it ſo little a Thing at laſt, that it will amount to no Cauſe of Challenge, if it were even prov'd againſt him, which we inſiſt it ought to be, it being their Objection, and the Party not being bound to prove it againſt himſelf; but truly we think there is more in it than ſo, becauſe it is an unjuſt prejudging of a Man before he is tried and heard; and if ſo, it is a Thing that he ought not to accuſe himſelf of, and therefore we oppoſe the aſking any ſuch Queſtion.

Mr. Serj. *Darnal.* Our Objection is not becauſe it is an Offence to declare a Man's Opinion upon a Fact reported, but becauſe it ſhews he has a ſettled Opinion againſt the Perſon of his Guilt, and ſo he is not ſo equal a Man to try him.

L. C. J. Treby. And is that like an honeſt Man and a Freeholder of *London*, (who ought to be indifferent) to come with a ſettled Opinion againſt a Man, when he is to be one of his Jury?

Mr. Serj. *Darnal.* Well, my Lord, we have been heard, and ſubmit it to the Judgment of the Court.

L. C. J. Treby. Truly, I think it reflects both Diſhoneſty and Diſhonour upon him, and therefore theſe Queſtions ought not to be aſk'd. The Queſtion is *not*, Whether a Man (if ever ſuch a Man there were) that hath ſo reſolved and declared ſhall be ſworn? No; he is not fit to ſerve upon a Jury. But the Queſtion is, How this ſhall be diſcovered, by his own Oath or by other Proof? I think it ought to be made appear by other Proof, if true. A Man attainted of Felony, Forgery, falſe Verdict, or Perjury, ought not to ſerve on a Jury, yet he ſhall not be examined concerning the ſame on a *Voire dire*. And if there be in Court a Copy of ſuch Judgment carefully examin'd and kept by himſelf, he ſhall not be forced to anſwer whether it be a true Copy; though his Anſwer could not ſubject him to any further Penalty.

Mr. Serj. *Darnal.* My Lord, I hope no Gentleman of the Jury has done it.

L. C. J. Treby. I hope no Freeholder of *London* is ſo indiſcreet or ſo unjuſt. But if any Man in this Pannel have any particular Diſpleaſure to the Priſoner, or be unindifferent, or have declared himſelf ſo, I do admoniſh and deſire him to diſcover ſo much in general; for it is not fit, nor for the Honour of the King's Juſtice, that ſuch a Man ſhould ſerve on the Jury.

Mr. Serj. *Darnal.* We hope ſo too. We hope that all that are returned upon the Jury are diſcreet and impartial Men.

Cl. of Ar. Well, Sir, what ſay you to this Gentleman, Mr. *Walker*.

Cook. I challenge you, Sir.

Cl. of Ar. Nathanael Long:

Sir *B. Shower.* My Lord, we think he may aſk if they have a Freehold or no; becauſe the Law requires that Qualification, and the Priſoner not being able to prove the Negative, it puts the Proof of the Affirmative upon the Perſon himſelf.

Mr. Att. Gen. What does Sir *Bartholomew* mean? Would he have the Jury-men bring their Evidences with them to prove their Freehold?

L. C. J. Treby. No, ſure, Mr. *Attorney*; but to aſk the Queſtion was allowed him the laſt Time, and we will not deny him the ſame juſt Favour now.

Cook. Are you a Freeholder, Sir, in *London* of the Value of 10*l.* a-Year?—Mr. *Long.* Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found againſt me?—Mr. *Long.* No, Sir.

Cook. I challenge you, Sir.

Cl. of Ar. William Carbonell.

Mr. *Carbonell.* My Lord, I am no Freeholder.

L. C. J. Treby. What, does he ſay he has no Freehold?

Cl. of Ar. Yes, my Lord.

L. C. J. Treby. Then he muſt be ſet aſide.

Cl. of Ar. Joſhua Foſter.

Mr. *Foſter.* My Lord, I am no Freeholder in *London* neither.

Mr. Att. Gen. My Lord, we deſire they may be ſworn, whether they have a Freehold or not.

Cl. of Ar. Hold Mr. *Carbonell* and Mr. *Foſter* the Book. [*Which was done ſeverally.*] *You ſhall true Anſwer make to all ſuch Queſtions as ſhall be aſked you by the Court. So help you God.*

Mr. Att. Gen. Aſk him if he hath not a Freehold in *London?*

Mr. *Carbonell.* No, I have not.

Cl. of Ar. Have you, or any Body in Truſt for you, a Freehold in *London* of the Value of 10*l.* a-Year?

Mr. *Carbonell.* No, Sir.

Cl. of Ar. Joſhua Foſter, have you, or any in Truſt for you, any Eſtate of Freehold in *London* of the Value of 10*l.* a-Year?

Mr. *Foſter.* No, Sir.

Cl. of Ar. Joſeph Billers.

Cook. I deſire they may be called in the Order as they are in the Pannel; you have not called *John Ewen*, who is next.

Cl. of Ar. I do call them in Order: As for Mr. *Ewen*, one hath made Oath that he is ſick, and is not able to come hither. What ſay you to Mr. *Billers?* There he ſtands.

Cook. Sir, are you a Freeholder of 10*l.* a-Year within the City of *London?*—Mr. *Billers.* Yes, Sir.

Cook. Was you of the Grand-Jury, Sir, when the Bill was found againſt me?—Mr. *Billers.* No, Sir.

Cook. I challenge you.—*Cl. of Ar. John Child.*

Cook. Sir, are you a Freeholder within the City of *London?*

Mr. *Child.* Yes, Sir.

Cook. Of 10*l.* a Year?—Mr. *Child.* Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found againſt me?—Mr. *Child.* No, Sir.

Cook. I challenge you.—*Cl. of Ar. Edward Leeds.*

Cook. Sir, are you a Freeholder within the City of *London* of 10*l.* a-Year?—Mr. *Leeds.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr. *Leeds.* No, Sir.

Cook. I challenge you.

L. C. J. Treby. What Queſtion was that he aſked him?

Cl. of Ar. Whether he were one of the Grand-Jury that found the Bill.

L. C. J. Treby. A very proper Queſtion: For an Indicter ought not to be a Trier.

Cl. of Ar. Thomas Clark.

Cook. Sir, are you a Freeholder within the City of *London* of 10*l.* a-Year?—Mr. *Clark.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr. *Clark.* No, Sir.

Cook. I challenge you.—*Cl. of Ar. Nathan Green.*

Cook. Are you a Freeholder, Sir, within the City of *London* of the Value of 10*l.* a-Year?—Mr. *Green.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr. *Green.* No, Sir.

Cook. I challenge you.—*Cl. of Ar. Henry Sherbroke.*

Cook. I have nothing to ſay againſt him.

Cl. of Ar. Then hold Mr. *Sherbroke* the Book. [*Which was done.*] Look upon the Priſoner. *You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar, (whom you ſhall have in Charge) according to your Evidence. So help you God.*

[*Then Mr.* Sherbroke *was put into the Place appointed for the Jury.*]

Cl. of Ar. Henry Dry.

Cook. Sir, are you a Freeholder in the City of *London* of the Value of 10*l.* a-Year?—Mr. *Dry.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr. *Dry.* No, Sir.

Cook. Sir, I challenge you.—*Cl. of Ar. Joſeph Morewood.*

Cook. Sir, Have you a Freehold in *London* of the Value of 10*l.* a-Year?

Mr. *Morewood.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr. *Morewood.* No, Sir.

Cook. Sir, I challenge you.—*Cl. of Ar. Richard Greenway.*

Cook. Are you a Freeholder of 10*l.* a Year in *London?*

Mr. *Greenway.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr. *Greenway.* No, Sir.

Cook. Sir, I challenge you.
Cl. of Arr. *John Sherbrook.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Sherbrook.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Sherbrook.* No, Sir.
Cook. Sir, I challenge you.
Cl. of Arr. *Thomas Emmes.*
Cook. Are you a Freeholder, Sir, within the City *London* of 10*l.* a Year?
Mr. *Emmes.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Emmes.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *Samuel Jackſon.*
Cook. Sir, Are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *Jackſon.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Jackſon.* No, Sir.
Cook. Sir, I challenge you.
Cl. of Arr. *Henry Hunter.*
Cook. Are you a Freeholder, Sir, in *London*, of the Value of 10*l.* a Year?
Mr. *Hunter.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Hunter.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *John Deacle.*
Cook. Sir, Are you a Freeholder within the City of *London* of the Value of 10*l.* a Year?—Mr. *Deacle.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Deacle.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *John Cullum.*
Cook. I accept of him. [*He was ſworn.*]
Cl. of Arr. *Thomas Shaw.*
Cook. I accept of him. [*He was ſworn.*]
Cl. of Arr. *George Juyce.*
Cook. Sir, Are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *Juyce.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Juyce.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *Richard Young.*
Cook. I have nothing to ſay againſt him. [*He was ſworn.*]
Cl. of Arr. *John Hedges.*
Cook. Sir, are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *Hedges.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Hedges.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *John James.*
Cook. Sir, Are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *James.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *James.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *Thomas Poole.*
Cook. Sir, Are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *Poole.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Poole.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *Peter Parker.*
Cook. Sir, Are you a Freeholder in the City of *London* of 10*l.* a Year?
Mr. *Parker.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Parker.* No, Sir.
Cook. I challenge you.
Cl. of Arr. *William Wilkinſon.*
Mr. *Wilkinſon.* My Lord, I am no Freeholder in *London.* [*To which he was ſworn.*]
Cl. of Arr. *Henry Mitchel.*
Cook. Hold, Sir, here *Thomas Man* in my Pannel is next.
Cl. of Arr. There is Oath made that he is ſick in Bed. What ſay you to Mr *Mitchel?*
Cook. Sir, Have you a Freehold of 10*l.* a Year in the City of *London?*
Mr. *Mitchel.* No, Sir. [*To which he was ſworn.*]
Cl. of Arr. *Richard Ryder.*
Cook. Sir, Have you a Freehold of 10*l.* a Year in the City of *London?*
Mr. *Ryder.* Yes, I have, Sir; but I live in a Pariſh that never ſerved upon any Juries, nor ever did in the Memory of any Man.
Cl. of Arr. But have you a Freehold of 10*l.* a Year?—Mr. *Ryder.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Ryder.* No, Sir.
Cook. Sir, I challenge you.
Cl. of Arr. *Richard Temple.*
Mr. *Temple.* My Lord, I am no Freeholder. [*To which he was ſworn.*]
Cl. of Arr. *Peter Walker.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Walker.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Walker.* No, Sir.—*Cook.* I challenge you.
Cl. of Arr. *Thomas Piſtol.*
Mr. *Piſtol.* I am no Freeholder. [*To which he was ſworn.*]
Cl. of Arr. *John Hunt.*
Mr. *Hunt.* My Lord, my Name is miſtaken; my Name is *William Hunt.*
L. C. J. Treby. Then you muſt go on to another.
Cl. of Arr. *John Hardret.*
Mr. *Hardret.* I am no Freeholder of 10*l.* a Year. [*To which he was ſworn.*]
Cl. of Arr. *John Hammond.*
Cook. Are you a Freeholder, Sir, of 10*l.* a Year in *London?*
Mr. *Hammond.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Hammond.* No, Sir.—*Cook.* I challenge you.
Cl. of Arr. *John Cooper.*
Cook. I accept of him. [*He was ſworn.*]
Cl. of Arr. *Joſſelin Roberts.*
Cook. Sir, Are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *Roberts.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Roberts.* No, Sir.---*Cook.* I challenge you.
Cl. of Arr. *Jonathan Micklethwait.*
Cook. I have nothing to ſay againſt him. [*He was ſworn.*]
Cl. of Arr. *Richard Chiſwell.*
Cook. Sir, Are you a Freeholder within the City of *London* of 10*l.* a Year?
Mr. *Chiſwell.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Chiſwell.* No, Sir.---*Cook.* I challenge you.
Cl. of Arr. *Joſeph Thompſon.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Thompſon.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Thompſon.* I was returned upon the Grand-Jury, but did not ſerve.
Cook. I challenge you.
Cl. of Arr. *Edward Brewſter.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Brewſter.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Brewſter.* No, Sir.---*Cook.* I challenge you.
Cl. of Arr. *George Gooday.*
Mr. *Gooday.* My Lord, I am no Freeholder. [*To which he was ſworn.*]
Cl. of Arr. *Abraham Hickman.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Hickman.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Hickman.* No, Sir.—*Cook.* I challenge you.
Cl. of Arr. *George Grove.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Grove.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Grove.* No, Sir.—*Cook.* I challenge you.
Cl. of Arr. *Nathanael Wyerſden.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Wyerſden.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Wyerſden.* No, Sir.
Cook. I challenge you. My Lord, I deſire to know how many I have excepted againſt.—*Cl. of Arr.* One-and-Thirty.
Mr. *Burleigh.* Write, write.
Cl. of Arr. *Samuel Blewitt.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Blewitt.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Blewitt.* No, Sir.—*Cook.* I challenge you.
Cl. of Arr. *John Wolfe.*—*Cook.* I accept of him. [*He was ſworn.*]
Cl. of Arr. *William Smith.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Smith.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Smith.* No, Sir.—*Cook.* I challenge you.
Cl. of Arr. *John Bickley.*
Mr. *Bickley.* My Lord, I don't look upon myſelf as a Freeholder.
L. C. J. Treby. Why ſo, Sir?
Mr. *Bickley.* I have a Leaſe for One-and-Fifty Years, my Lord, of my Houſe, and there is a very little Piece of Ground adjoining to it that was very convenient for me to lay to my Leaſe; there is no way to it but through my Houſe; it is a Thing that never was lett for any Thing, and it is not worth the Building.
L. C. J. Treby. What Eſtate have you in it? Do you pay a Ground-Rent for it?—Mr. *Bickley.* My Lord, I bought that little Piece of Ground for the Conveniency of my Leaſe.
L. C. J. Treby. But did you purchaſe it for a Term of Years, or to you, and to your Heirs?—Mr. *Bickley.* Nay, I bought it for ever, my Lord.
L. C. J. Treby. Then you have a Freehold in it. What's the Value of it?
Mr. *Bickley.* Truly very little, my Lord.
L. C. J. Treby. I don't know any Body can judge of the Value of it but yourſelf. Is it worth 10*l.* a Year?—Mr. *Bickley.* My Lord, I can't value it at 10*l.* a Year, it never coſt me 40*l.*
L. C. J. Treby. Then for Eſtate you are well enough, but for Value you are a little under.
Cl. of Arr. *Thomas Collins.*---*Cook.* I accept of him. [*He was ſworn.*]
Cl. of Arr. *John Watſon.*--*Cook.* I do not challenge him. [*He was ſworn.*]
Cl. of Arr. *Benjamin Hooper.*---*Cook.* I accept of him. [*He was ſworn.*]
Cl. of Arr. *John Wells.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Wells.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Wells.* No, Sir.---*Cook.* I challenge you.
Cl. of Arr. *John Hibbart.*
Cook. Sir, Are you a Freeholder of the City of *London* of 10*l.* a Year?
Mr. *Hibbart.* Yes, Sir.
Cook. Were you of the Grand-Jury that found the Bill againſt me?
Mr. *Hibbart.* No, Sir.---*Cook.* I challenge you.
Cl. of Arr. Mr. *Cook*, you have challenged your full Number. Call *Daniel Wray.* [*He was ſworn.*]
Cl. of Arr.

Cl. of Arr. *John Pettit.* [*He was ſworn.*] Crier, Countez.
Henry Sherbrook.
Crier. One, &c.
Cl. of Arr. *John Pettit.*
Crier. Twelve good Men and true, ſtand together, and hear your Evidence.

The Names of the Twelve ſworn are as follow:

Henry Sherbrook,	*John Cooper,*	*John Watſon,*
John Cullum,	*Jonath. Micklethwait,*	*Benjamin Hooper,*
Thomas Shaw,	*John Wolf,*	*Daniel Wray,* and
Richard Young,	*Thomas Collins,*	*John Pettit.*

Cl. of Ar. Crier, Make Proclamation.
Crier. O Yes, If any one can inform my Lord, the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now to be taken of the High-Treaſon whereof *Peter Cook*, the Priſoner at the Bar, ſtands indicted, let them come forth and they ſhall be heard, for the Priſoner now ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or they forfeit their Recognizance.
L. C. J. Treby. You muſt make room for thoſe Twelve Gentlemen that are ſworn, that they may be at Eaſe; and for thoſe that are not ſworn, their Attendance may be ſpared.
Cl. of Arr. *Peter Cook.* Hold up thy Hand. [*Which he did.*] Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted in *London*, by the Name of *Peter Cook*, late of *London*, Gentleman; For that whereas an open and notoriouſly publick and moſt ſharp and cruel War, for a great while hath been, and it is by Land and by Sea carried on and proſecuted, by *Lewis* the *French* King, againſt the moſt Serene, moſt Illuſtrious and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. All which time, the ſaid *Lewis* the *French* King, and his Subjects, were, and yet are Foes and Enemies of our ſaid Lord the King that now is, *William* the Third, and his Subjects; he the ſaid *Peter Cook*, a Subject of the ſaid Lord the King that now is, of this his Kingdom of *England*, well knowing the Premiſſes, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traitor againſt the ſaid moſt Serene, moſt Mild, and moſt Excellent Prince, our Sovereign Lord *William* the Third, now King of *England*, his Supreme, True, *Rightful*, *Lawful*, and undoubted Lord, the cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of the ſaid Lord the King that now is towards him our ſaid Lord the King ſhould bear, and of Right is bound to bear, withdrawing; and utterly to extinguiſh, Intending, and Contriving, and with all his Strength purpoſing, and deſigning the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is of Right duly, happily, and very well eſtabliſhed, altogether to ſubvert, change, and alter, and his Faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and miſerable Servitude to the aforeſaid *French* King to ſubdue and enthral; the Firſt Day of *July*, in the Seventh Year of the Reign of our ſaid Lord the King that now is, and divers Days and Times, as well before as after, at *London*, in the Pariſh of St. *Peter Cornhill*, in the Ward of *Lime-ſtreet*, Falſly, Maliciouſly, Deviliſhly, and Traitorouſly did Compaſs, Imagine and Contrive, Purpoſe and Intend, our ſaid Sovereign Lord the King that now is, then his Supreme, True, *Rightful*, and *Lawful* Lord, of and from the Regal State, Title, Honour, Power, Crown, Empire, and Government of this Kingdom of *England* to depoſe, caſt down, and utterly deprive, and the ſame our Lord the King to Death and final Deſtruction to bring, and the aforeſaid *Lewis* the *French* King, by Armies, Soldiers, Legions, and his Subjects, this Kingdom of *England* to invade, fight with, conquer and ſubdue, to move, incite, procure and aſſiſt, and a miſerable Slaughter among the Faithful Subjects of our ſaid Lord King *William*, throughout this whole Kingdom of *England*, to Make and Cauſe. And further, That the ſaid *Peter Cook*, during the War aforeſaid, to wit, the aforeſaid Firſt Day of *July*, in the ſeventh Year aboveſaid, and divers other Days and Times before and after, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, to the ſaid Foes and Enemies of the ſame our Lord the King, did adhere and was aſſiſting: And his aforeſaid moſt wicked and deviliſh Treaſons, and Traitorous Compaſſings, Contrivances, Intentions, and Purpoſes aforeſaid, to fulfil, perfect, and bring to Effect, and in Proſecution, Performance, and Execution of that traitorous adhering, he the ſaid *Peter Cook*, as ſuch a falſe Traitor, during the War aforeſaid, to wit, the ſame Firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in *London* aforeſaid, falſly, maliciouſly, adviſedly, ſecretly, and traitorouſly, and by Force and Arms, with one *Robert Charnock*, Sir *John Freind*, and Sir *William Parkyns*, Knights, (which ſaid *Robert Charnock*, Sir *John Freind*, and Sir *William Parkyns*, were lately ſeverally duly Convicted and Attainted of High-Treaſon, in Contriving and Conſpiring the Death of our ſaid Lord the King that now is) and with divers other falſe Traitors to the Jurors unknown, did meet, propoſe, treat, conſult, conſent, and agree to procure from the aforeſaid *Lewis* the *French* King, of his Subjects, Forces and Soldiers, then, and yet, Foes and Enemies of our ſaid Sovereign Lord *William*, now King of *England*, &c. great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to Levy, Procure, and Prepare great Numbers of Armed Men, and Troops, and Legions againſt our ſaid Lord the King that now is, to riſe up and be formed, and with thoſe Foes and Enemies, at and upon ſuch their Invaſion and Entry within this Kingdom of *England*, to join and unite, Rebellion and War againſt our ſaid Lord the King that now is, within this Kingdom of *England*, to make, levy, and carry on; the ſame our Lord the King ſo, as aforeſaid, to Depoſe, and him to Kill and Murder: And further, with the ſaid falſe Traitors, the ſame Firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, traitorouſly did conſult, conſent, and agree to ſend the aforeſaid *Robert Charnock* as a Meſſenger from him, the ſaid *Peter Cook*, and the ſame other Traitors, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propoſe to him, and to requeſt him to obtain from the aforeſaid *French* King, the aforeſaid Soldiers and Armed Men for the Invaſion aforeſaid to be made, and Intelligence and Notice of ſuch their traitorous Intentions and Adherings to the ſaid late King *James* the Second, and the ſaid other Foes and Enemies, and their Adherents, to give and ſhew, and them to inform of other Things, Particulars and Circumſtances thereunto referring, for the Aſſiſtance, Animating, Comforting, and Aid of the ſaid Foes and Enemies of the ſaid Lord the King that now is, in the War aforeſaid: And to ſtir up and procure thoſe Foes and Enemies the readilier, and more boldly this Kingdom of *England* to invade; the Treaſons, and traitorous Contrivances, Compaſſings, Imaginings, and Purpoſes of the ſaid *Peter Cook* aforeſaid to perfect and fulfil; alſo the ſame firſt Day of *July*, in the Seventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, He the ſaid *Peter Cook*, divers Horſes, and very many Arms, Guns, Muſkets, Piſtols, Rapiers, and Swords, and other Weapons, Ammunition, and Warlike Matters, and Military Inſtruments, falſly, maliciouſly, ſecretly, and traitorouſly, did obtain, buy, gather together, and procure; and to be bought, gathered together, obtained and procured, did cauſe, and in his Cuſtody had and detained to that Intent, to uſe the ſame in the ſaid Invaſion, War, and Rebellion againſt our ſaid Lord the King that now is, him our ſaid Lord the King, of and from the Regal State, Crown and Government of this Kingdom of *England* to depoſe, caſt down, and deprive, and him to Kill and Murder; and the Deſigns, Intentions, and all the Purpoſes of him the ſaid *Peter Cook* aforeſaid to fulfil, perfect, and fully to bring to effect, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid Sovereign Lord that now is, his Crown and Dignity, as alſo againſt the Form of the Statute in ſuch Caſe made and provided.
Upon this Indictment he has been arraigned, and thereunto has pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire whether he be guilty of the High-Treaſon whereof he ſtands Indicted, or not Guilty; if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince; if you find him not Guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels as if you had found him Guilty; if you find him not Guilty, nor that he did fly for it, you are to ſay ſo, and no more; and hear your Evidence.
Mr. *Mompeſſon.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, this is an Indictment for High-Treaſon againſt *Peter Cook*, the Priſoner at the Bar, and the Indictment ſets forth, That whereas there has been an open and cruel War for a long Time, and ſtill is between his Majeſty King *William* and the *French* King; the Priſoner at the Bar not weighing the Duty of his Allegiance, the firſt of *July* in the Seventh Year of the King's Reign, did compaſs and intend to depoſe and deprive the King of the Title, Honour, and Dignity of the Imperial Crown of this Realm, and likewiſe to put the King to Death, and did adhere to the King's Enemies; and to fulfil theſe Treaſons, he did conſult with *Charnock*, and ſeveral other Traitors who were mentioned there, and ſome of whom have been found guilty of Treaſon, and executed for it, to ſend over to the late King *James*, to perſuade the *French* King to ſend over Soldiers and Arms to invade this Kingdom, and to raiſe an Inſurrection and Rebellion in it, and to deprive and put the King to Death; and to compleat theſe Treaſons, it further ſets forth, That the Priſoner at the Bar did provide ſeveral Arms and Horſes, and this is laid to be againſt the Duty of his Allegiance, againſt the King's Peace, Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided; to this he has pleaded not Guilty, and for Trial put himſelf upon the Country; and, Gentlemen, if we prove theſe Facts laid in the Indictment, it is your Duty to find him Guilty.
Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for High-Treaſon.
Cook. My Lord Chief Juſtice, if your Lordſhip pleaſes, before the Witneſſes are examined againſt me, I intreat you that they may not be both in Court together, that one may not hear what the other ſwears, tho' I ſuppoſe it is the ſame thing; for they have been together both now and the laſt Day.
L. C. J. Treby. Mr. *Cook.* I muſt tell you, it is not neceſſary to be granted for aſking; for we are not to diſcourage, or caſt any Suſpicion upon the Witneſſes, when there is nothing made out againſt them; but it is a Favour that the Court may grant, and does grant ſometimes, and now does it to you; though it be not of Neceſſity: They ſhall be examined apart, but at preſent this is not the Time of Examination; for the King's Counſel are now to open the Evidence before they examine the Witneſſes; but when the Time comes for the Witneſſes to be call'd and examined, the Court will, in favour to you, take care that your Requeſt be complied with.
Mr. Att. Gen. May it pleaſe your Lordſhip, the Priſoner ſtands indicted for High-Treaſon, in compaſſing and imagining the Death and Deſtruction of his Majeſty, and likewiſe in adhering to his Majeſty's Enemies; theſe are the Treaſons ſpecified in the Indictment: The Overt-Acts that are laid to prove theſe Treaſons are, That he, with ſeveral other Traitors named in the Indictment, did meet and conſult and agree to ſend over *Charnock* into *France*, to invite the *French* King to make an Invaſion upon the Kingdom, and did provide Arms for that Purpoſe:
Gentlemen, the Nature of the Evidence that you will have produced to prove the Priſoner guilty of theſe Treaſons lies thus: It will appear to you, that there has been for ſome Time a Conſpiracy carried on by ſeveral Traitors, and wicked Perſons, to ſubvert the eſtabliſhed Government of this Kingdom, and deſtroy the Conſtitution of *England*, by a foreign Invaſion of the *French*. You will hear that this Conſpiracy was laid wide, and conſiſted of ſeveral Parts; one Part was that of *Aſſaſſinating* his Majeſty's Royal Perſon, and that was to be done firſt, as a Preparation

tion and Encouragement to the *French* to invade the Kingdom: The other Part was the inviting the *French* King to invade us, and the Prisoner at the Bar is accused of being concerned in that Part that relates to the Invasion of this Kingdom by a *French* Power; and though it may be the other Part, that of assassinating the King, be the blackest Part of the Conspiracy, yet if the Prisoner at the Bar has been engaged in the inviting a foreign Power to invade the Kingdom, my Lords the Judges will tell you, in Point of Law, that is as much an Overt-Act of the compassing the Destruction of the King and the People of *England*, and the Subversion of our ancient good Constitution, as if he had been concerned immediately in the other Part, the Assassination.

But now, Gentlemen, that the Prisoner was engaged in inviting the *French* to invade us, you will hear proved by several Witnesses, that there having been a Design last Year, just before his Majesty went to *Flanders*, to expose his own Person for our Protection, and the Protection of the Liberties of *Europe*, there was a Conspiracy to murder him before he went to *Flanders*, which, it seems, they were not ripe for then; but immediately after he was gone to *Flanders*, you will hear there were formal Meetings of several Gentlemen and Persons of Quality, among whom the Prisoner at the Bar was one: There was a Meeting in *May*, last Year, after the King was gone to *Flanders*; and this was at the *Old King's-Head* in *Leaden-hall-street*; and there were present my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, Mr. *Charnock*, (all which three last have suffered the Punishment of the Law for their Treason already) and there were also Mr. *Cook*, the Prisoner at the Bar, Mr. *Porter* and Mr. *Goodman*; these Men did meet together, to consider of the best Ways and Means of encouraging and inviting the *French* King with an Armed Force to invade this Kingdom; they considered that that was a proper Opportunity, and did treat of several Arguments that might persuade to it: First, That the King was gone to *Flanders*, and so was not in Person here to defend us; and that the Troops, to make good such Defence, were in a great measure drawn thither, to assist the Allies against the *French* Power; they did think likewise that at that Time there was a great Discontent and Dissatisfaction in the Nation, though I think in that they were greatly mistaken; and I believe and hope they will always find themselves so, to think that the People of *England* are so little sensible of that which is the Means of their Preservation, as to hearken to any Discontents to encourage a *French* Power to come into *England* to destroy our Religion and Liberties; that indeed they did apprehend, though they were mistaken, and I believe they always will, when they go upon that Ground.

Gentlemen, These Persons thinking this a proper Opportunity, did agree to send a Messenger into *France* upon this Message, To go to the late King *James*, and persuade him to desire and prevail with the *French* King to assist him with Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons; and to encourage him, they promised their Assistance here, as soon as he came over; and undertook, that between them they could furnish, and would raise 2000 Horse to meet him at his Landing, and join upon such an Invasion.

Gentlemen, At this Meeting this was agreed upon by all that were there, whereof the Prisoner was one; and they did agree to send Mr. *Charnock*; (who has since been executed, and a principal Encourager of the Design, and Actor in it) he was the Messenger that was appointed to go upon this Errand, and Mr. *Charnock* was resolved to go; but desired another Meeting of these Gentlemen, to know if they continued in their former Resolution, that he might have all the Assurance that was reasonable to give the *French* King Encouragement to make the Invasion: Accordingly another Meeting was had of most of the same Persons that were at the Meeting before; particularly the Prisoner at the Bar was at that Second Meeting, which was in *Covent-Garden* at one Mrs. *Mountjoy*'s, who keeps a Tavern next Door to Sir *John Fenwick*'s Lodgings; there they met upon the same Design, and upon Consultation had, and the Question ask'd, they did agree to continue in the former Resolution; and upon that immediately Mr. *Charnock* went into *France*, to solicit Forces from thence to invade us; but it happened, as it seems, that the *French* King's Forces were otherwise employed, so that he could not spare so many at that time; and this Return was brought by *Charnock* to the Gentlemen that employed him; that he had spoke with the late King, who gave him that Answer, That the *French* King cou'd not spare so many Men at that time, but he thank'd them for their Kindness.

Gentlemen, this will be the Nature of our Evidence, to shew, that the Prisoner at the Bar was concerned in that Part of the Conspiracy which relates to the *French* Invasion; and if he be guilty of that, in Point of Law, he is as much guilty of the Conspiracy to depose and murder the King, as if he had been concerned in the other Part of Assassinating his Royal Person; and I believe nobody can think, that those that were to act in the Assassination, wou'd have attempted to engage in such a desperate Design, if it had not been for the Encouragement of the *French* Invasion that was to second them afterwards, if they succeeded; so that nobody can extenuate the Crime of the Invasion, because as to the Horridness of the Attempt, it is less black than the other; they are both Crimes of a very high Nature, and equally High-Treason; and if we prove the Prisoner guilty of this Part, we hope you will find him guilty.

Mr. Sol. Gen. My Lord, we will call our Witnesses and prove the Matter, as it has been opened. Call Captain *Porter* and Mr. *Goodman*.

Mr. Serj. *Darnal.* Now, my Lord, we must desire that that may be done which our Client desired before, and which your Lordship was favourably pleased to promise, that the Witnesses may be examined apart.

L. C. J. Treby. Let it be so: Who do you begin with?

Mr. Sol. Gen. We begin with Captain *Porter*, my Lord.

L. C. J. Treby. Then let Mr. *Goodman* withdraw.

Mr. *Baker.* Let Mr. *Goodman* go up Stairs, and we will call him presently.

Mr. Sol. Gen. Swear Captain *Porter*: [*Which was done.*] Captain *Porter*, Do you know Mr. *Cook*, the Prisoner at the Bar?

Capt. *Porter.* Yes, my Lord.

Mr. Sol. Gen. Do you remember a Meeting of some Gentlemen at the *King's-Head-Tavern* in *Leaden-hall-street?*

Capt. *Port.* Yes, I do, Sir.

Mr. Sol. Gen. Then pray, give an Account of the Company that were there, the Time when, and what pass'd?

Capt. *Port.* My Lord, the last Year we had two Meetings; the First was in *May*, the other was the latter End of *May*, or the Beginning of *June*; the First was at the *King's-Head* in *Leaden-hall-street*; there were my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr. *Charnock*, Mr. *Cook*, and myself; Mr. *Goodman* came in after Dinner; at this Meeting it was consulted which was the best Way and the quickest to restore King *James*, and hasten his Return into *England*; several Discourses and Proposals there were; at last it was agreed to send Mr. *Charnock* to the late King, to borrow of the *French* King Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons, to be sent over into *England* to assist the King's Restoration. Says Mr. *Charnock* thereupon, This the King can do without your sending, and I would not go upon a foolish Errand. What will you do to assist in this Matter? The Company desired him to promise King *James*, that if he would send Word when he Landed and where, they would be sure to meet him at his Landing with a Body of 2000 Horse.

Mr. Att. Gen. Was the Prisoner at the Bar in the Company, and present at this Resolution?----Capt *Port.* Yes, he was.

Mr. Att. Gen. Did all the Company agree to it?

Capt. *Port.* Yes, they did.

Mr. Att. Gen. What Signs were there of their Agreement? Did they stand up severally and declare their Agreement, or how?

Capt. *Port.* My Lord of *Aylesbury* and Sir *John Fenwick* did rise up, and desired Captain *Charnock*, that he would go upon this Errand: And when the Question was ask'd severally of all there present by Mr. *Charnock*, whether he might assure the King of what they had told him? every one said, Yes, you may; and Mr. *Cook* kneel'd indeed, upon a Chair, and said, Yes, you may.

Mr. Att. Gen. Did he give his Consent to it?

Capt. *Port.* Yes, he answered in those very Words.

Mr. Sol. Gen. Do you remember any Meeting of any Company at Mrs. *Mountjoy*'s?

Capt. *Port.* Yes, that was a second Meeting.

Mr. Sol. Gen. Pray tell my Lord and the Jury how you came to meet there then, what Company were there, and what pass'd?

Capt. *Port.* Mr. *Charnock* desired another Meeting, to see if the Gentlemen kept to their former Resolution; and we met at Mrs. *Mountjoy*'s eight or ten Days after, and there were most of the Company that was at the first Meeting, and there all that were present did assure Mr. *Charnock* that they kept to their first Resolution, and wou'd abide to what was agreed upon at the former Meeting.

Mr. Att. Gen. Who were present at the second Meeting?

Capt. *Port.* The Prisoner at the Bar was there at that second Meeting.

Mr. Att. Gen. What was that second Meeting for, do you say?

Capt. *Port.* It was to give Mr. *Charnock* Assurance, that we were agreed to stand by the Resolution taken at the first Meeting.

Mr. Att. Gen. What did Mr. *Charnock* do afterwards?

Capt. *Port.* I went away from them; there was Sir *William Parkyns*, Sir *John Freind* and Captain *Charnock* went to the *Queen's-Head-Tavern* in *Fleet-street*, and Captain *Charnock* told me he would go in two or three Days, and I believe did so.

Mr. Att. Gen. When did you see him afterwards?

Capt. *Port.* When I was a Prisoner upon the Account of the Riot in *Drury-Lane*; about two or three Days after I came to *Newgate* he came to see me, and said he had been in *France*; and that King *James* thank'd us for our kind Offer, but the *French* King could not spare so many Men that Year; and he told me he had been with my Lord of *Aylesbury*, and the rest of the Gentlemen that had employ'd him to go over, and had delivered them the several Messages that he was ordered to from the King.

L. C. J. Treby. Captain *Porter*, who were present at the second Meeting, do you say?

Capt. *Port.* My Lord of *Aylesbury*, Sir *John Freind*, Sir *William Parkyns*, Captain *Charnock*, Mr. *Cook*, and myself; I cannot tell whether my Lord *Montgomery* or Mr. *Goodman* were at that second Meeting, or no.

Mr. Att. Gen. Captain *Porter*, I would ask you another Question: You were concerned in the Assassination with those other Persons that engaged in it; Pray, what Safety did you propose to yourselves after the Assassination was over?

Capt. *Port.* My Lord, I asked Sir *George Barcley* what we should do after the Fact was committed; Says he, You need fear nothing, I will go away that Night, I have a Ship ready, and the King will be Landed in five or six Days afterwards; if you'll but keep yourselves close for so many Days, all will do well.

Mr. Sol. Gen. If the Prisoner or the Counsel will ask him any Questions, my Lord, they may do it.

Sir *B. Shower.* Pray, Sir, can you recollect what Time of Day this was that this Debate and Resolution were had at the *Old King's-Head* in *Leaden-hall-street?*

Capt. *Port.* Truly, Sir *Bartholomew*, I can't tell.

Sir *B. Shower.* Pray, by what means do you recollect that this was in the Month of *May?*

Capt. *Port.* Because Capt. *Charnock* was absent at the *Dog-Tavern* Riot, which was the Tenth of *June*.

Sir *B. Shower.* Was it not in *April?*

Capt. *Port.* No, Sir, to the best of my Remembrance it was in *May*.

Sir *B. Shower.* What makes you think it was in *May* rather than *April?*

Capt. *Port.* I have told you, Sir, because both Meetings were before the *Dog-Tavern* Riot, the Tenth of *June*, and Mr. *Charnock* was not there at that Time; but he told me afterwards he had been in *France*, and there were eight or ten Days Difference between the two Meetings.

Mr.

Mr. Att. Gen. My Lord, if they have done with him, I would ask him one Queſtion, to ſettle this Matter in point of Time. Capt. *Porter*, Was the King gone to *Flanders* when you had theſe Meetings?

Capt. *Porter.* The King was gone, Sir, before the firſt Meeting.

Mr. Att. Gen. The King did not go till ſeveral Days in *May*; was Mr. *Goodman* there?

Capt. *Porter.* He was at the firſt Meeting, but I can't tell whether he was at the Second or no.

Mr. Serj. *Darnal.* Pray, what Time was Mr. *Goodman* there at the firſt Meeting?

Capt. *Porter.* He came up after Dinner at the firſt Meeting.

Mr. *Baker.* Then call down Mr. *Goodman.* [*Who came in and was ſworn.*]

Mr. Sol. Gen. Mr. *Goodman*, Pray, will you give my Lord and the Jury an Account what you know of an intended Invaſion upon this Kingdom; what were the Circumſtances of it, and who were concerned in it.

Mr. *Goodman.* My Lord, about the Middle of *May* laſt, or thereabouts, Captain *Porter* ſent to me, and told me there was a Meeting of ſome Gentlemen of our Acquaintance at the *King*'s-*Head* in *Leaden-hall-ſtreet*; and he deſired me that I would be there, becauſe it was about Buſineſs: I told him I did not know whether I cou'd be there at Dinner; but however, I wou'd not fail of coming thither after Dinner; and accordingly I came. When I came into the Houſe, I ſent up my Name to Capt. *Porter*, and he came down and brought me up Stairs, and there I ſaw my Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr. *Charnock*, and that Gentleman at the Bar, Mr. *Cook:* When we were there, the Diſcourſe was, that we did think King *James*'s coming was retarded, and we wou'd do any thing to facilitate his Reſtoration.

Cook. My Lord Chief Juſtice.

L. C. J. Treby. What ſay you, Mr. *Cook?*

Cook. My Lord, If your Lordſhip pleaſes, I deſire the Jury may not be talk'd to by any Body; and I underſtand there are ſome talking with the Jury.

L. C. J. Treby. Fy upon it! We will lay any Body by the Heels that do ſo; they muſt neither be diſturbed, nor inſtructed by any Body.

Cook. My Lord, I am informed there was ſomebody talking to them, and telling them this was the ſame Caſe with Sir *John Freind.*

L. C. J. Treby. Do you but ſhew us the Man, and we will find another Place for him; we will ſend him to the Gaol, I'll aſſure you.

Mr. *Burleigh.* This Gentleman, my Lord, did hear ſuch a Diſcourſe to the Jury (pointing to a Gentleman there) who ſtood up.

My Lord, I cannot poſitively ſwear to the Man, but I did hear ſome Diſcourſe that it was the ſame Evidence as in the former Trial.

L. C. J. Treby. If you can ſhew us who it was, we will take care to puniſh him: I ſuppoſe he ſtands Corrected; and if we knew who he was, he ſhould ſtand Committed.

Mr. Att. Gen. Pray, Mr. *Goodman*, begin again, and tell what paſs'd at that Meeting, becauſe the Jury were interrupted from hearing by People's buzzing about them.

Mr. *Goodman.* My Lord, When Captain *Porter* brought me up into the Room, I told you what Gentlemen I found there; after we were ſet down, there was a Conſultation, that conſidering the *French* King's Wars retarded the Affair of ſending back King *James*, and the Means of reſtoring him to the Crown, it was fit we ſhould find out ſome Way or Method to facilitate his Reſtoration, and it was thought convenient to have a Meſſenger to ſend over to King *James* with Propoſals for that Purpoſe; to this effect, as near as I remember, That if King *James* cou'd prevail with the *French* King to furniſh Ten Thouſand Men, whereof 8000 to be Foot, 1000 Horſe, and 1000 Dragoons, we wou'd endeavour to meet him at the Head of as many Horſe as we cou'd raiſe, to ſuſtain thoſe Forces at their Landing: This was debated in order to come to a Reſolution; and much Difficulty there was how many the Number ſhould be; the Man pitched upon to be ſent, was Mr. *Charnock*; and after ſome Debate, how many Thouſand Horſe could be raiſed: Says Mr. *Charnock*, don't let me go over upon a fooliſh Errand, but let me know what I have to ſay exactly: Thereupon it was concluded by all, that Two Thouſand Horſe ſhould be the Number we cou'd promiſe, and the King might depend upon them; and if we brought more, ſo much the better; and Sir *John Freind* ſaid, I believe he has ſo many Friends here, that if he came himſelf, he might be welcome; but that we did not think fit to truſt to; and nobody wou'd adviſe any ſuch Thing. When the Reſolution of the Thing and the Number was thus fixed, Mr. *Charnock* ask'd, Whether it were with all our Conſents? and that he might aſſure the King, that this was our Reſolution thereupon? We all roſe up, and ſaid to him, *Yes, you may, yes, you may*, every one particularly; and I remember one Thing particularly concerning the Priſoner Mr. *Cook*, That he kneel'd upon the Chair when he ſaid, *Yes, you may*; and his Elbows were upon the Table: This is all that I know of that Meeting. There was to be another Meeting, as Captain *Porter* told me; but I had Buſineſs in the City; but whatſoever he promiſed on my Behalf, as to the Quota of Men, I wou'd be ſure to make it good; and I was not at the ſecond Meeting.

Mr. Att. Gen. Did you ſee Mr. *Charnock* afterwards?

Mr. *Goodman.* Yes, I did, when he came back; and he told me the Thing was not accepted, for the *French* King cou'd not ſpare Men, and that he had been with the ſeveral Gentlemen to carry them the Compliments that he had in Charge from King *James*, who returned them Thanks for their good Affection; and, among the reſt, he did me the Honour to return me Thanks too.

Sir *B. Shower.* Pray, Mr. *Goodman*, let me ask you a Queſtion: When was it that you ſaw Mr. *Charnock* after this?

Mr. *Goodman.* It was in *Arundel-ſtreet*, at his Lodgings.

Sir *B. Shower.* But I ask you, Sir, when it was? Was it before or after the Tenth of *June?*

Mr. *Goodman.* It was after the Tenth of *June*, Sir.

Sir *B. Shower.* How long after, pray?

Mr. *Goodman.* I believe it was a Month after the Tenth of *June.*

Sir *B. Shower.* Did you ſee him here in *England* before Mr. *Porter* was diſcharged from the Riot, and came out of *Newgate?*

Mr. *Goodman.* I believe I did ſee him before Captain *Porter* was diſcharged, long.

Mr. Serj. *Darnal.* Who were the Perſons that were preſent at that Meeting?

Mr. *Goodman.* My Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr. *Charnock*, Captain *Porter*, and the Priſoner at the Bar, Mr. *Cook.*

Mr. Serj. *Darnal.* Were you at Dinner with them, Sir?

Mr. *Goodman.* No, I came in after Dinner.

Mr. Serj. *Darnal.* Pray, what Houſe was it, do you ſay, this Meeting was at?---Mr. *Goodman.* It was at the *King*'s-*Head* in *Leaden-hall-ſtreet.*

Sir *B. Shower.* Can you tell what Day of the Week it was?

Mr. *Goodman.* No, nor the Day of the Month.

Sir *B. Shower.* Was you ever in the Company of theſe Gentlemen at any other Time?

Mr. *Goodman.* No, this was the only Time that I heard of this Conſultation; I was not at the ſecond Meeting.

Cook. If your Lordſhip pleaſes, may I ask Mr. *Goodman* any Queſtions?

L. C. J. Treby. Yes, by all Means ask him what you will.

Cook. Mr. *Goodman*, You are upon your Oath: but did you ever hear me ſpeak ten Words in your Life? Was you ever in my Company in any Houſe, before or ſince?

Mr. *Goodman.* Yes, Sir; I was in your Company at the *Cock* in *Bow-ſtreet*, where you came in accidentally.

Cook. Did you ever hear me talk of the Government, or any Thing of that Nature?

Mr. *Goodman.* What the Diſcourſe was of, I cannot particularly ſay, but I am certain you was there: And as to the Conſultation that I now ſpeak of, I remember very well you gave your Conſent in that Manner as I have told the Court.

Mr. Att. Gen. My Lord, we have done at the preſent.

L. C. J. Treby. Then, Brother *Darnal*, what ſay you for the Priſoner?

Mr. Serj. *Darnal.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: I am of Counſel, in this Caſe, for the Priſoner at the Bar Mr. *Cook*, who ſtands indicted of a very great Offence, no leſs, Gentlemen, than High-Treaſon; and if he be Guilty, his Puniſhment will be as great; but becauſe the Puniſhment and the Offence are both very great, the Law requires exact poſitive Proof, and that by two credible Witneſſes. There have been two indeed that have been produced to you; and if you believe both of them, after what we ſhall offer to you againſt them, and if what they ſwear be true, the Priſoner is Guilty: But if we ſatisfy you that either of them is not to be credited, ſo that you do not believe both of them, he muſt be acquitted.

There is no doubt, Gentlemen, but there has been a Villainous Horrid Plot; there is no queſtion of it; and it was, as it has been opened, baſely to Aſſaſſinate one of the braveſt Men living; and to make the happieſt People in the World, if they know when they are ſo, the moſt miſerable People upon Earth, by bringing them under *French* Tyranny and Slavery. Many of the Traitors have been brought to juſt Puniſhment for this Treaſon; nay, they have own'd the Fact at their Deaths, ſo that there is no queſtion of the Truth of it; and therefore, Gentlemen, every honeſt Man will endeavour to bring ſuch as are plainly guilty of ſuch an abominable Conſpiracy, to juſt Puniſhment; but yet they will be as careful not to let an innocent Man ſuffer; that, Gentlemen, every honeſt Man will take care of, and eſpecially ſuch as are upon their Oaths: It concerns a Jury highly to be ſatisfied that he is not innocent, whom they bring in guilty; for it is better that Twenty guilty Men ſhould eſcape, than one innocent Man ſuffer.

But, Gentlemen, if my Brief be true, we ſhall give you ſuch an Account of one of theſe Witneſſes; firſt, as to the Man himſelf; that he is not a Man to be credited as a Witneſs; and then beſides that, as to the Evidence he gives in this Caſe, (I ſay, if my Brief be true) it is falſe, and we ſhall prove it ſo; and when you have heard our Evidence, if you are ſatisfied that one of theſe Witneſſes is not to be credited, or that what he ſwears is not true, you are to acquit the Priſoner.

Gentlemen, Here has been one Mr. *Goodman* produced as a Witneſs, one that never was produced before at the Trial of any of thoſe that have ſuffered, ſo that the Truth of their Guilt does not at all depend upon his Evidence, nor does it give any Credit to it. This is this Gentleman's firſt Entry upon this Stage; and yet (if my Brief be true) this is not the firſt bloody or cruel Part that he has acted; for we have a Record of Conviction againſt him, whereby it will appear to you, that he was indicted (for Endeavouring to poiſon two great Dukes) for giving forty Guineas to an *Italian* Empirick, one *Amydei*, and promiſing two Hundred Pounds more when it was effected, to poiſon the late Duke of *Grafton*, and the preſent Duke of *Northumberland*; and we ſhall ſhew you, that he was convicted of it, and fined a Thouſand Pound for the Offence; which, conſidering the Meanneſs of his Circumſtances at that Time, was as much as Twenty Thouſand Pounds; for he could as well have paid Twenty as One then; and it appears too, that Mr. *Goodman* (nay, it will not be denied by him himſelf) was in this horrid Plot; and he that wou'd be concern'd to poiſon two Dukes in a Family, to which he had ſo many Obligations——

Mr. *Good.* My Lord, I deſire leave to ſpeak to this Matter that the Serjeant mentions.

Mr. Serj. *Dar.* Pray, Sir, let me go on; you may talk anon; I have ſeen the Copy of the Record of Conviction, and have it ready to produce.

Mr. Att. Gen. Mr. *Goodman*, be quiet, and ſtay till by and bye; you will be defended, no Doubt on it; but in the mean time let them go on, and don't interrupt them.

Mr. Serj. *Dar.* I ſay, my Lord, he that would be concerned in ſo vile an Act, as a Contrivance to take away the Lives of two great Dukes, (who were, in effect, his young Maſters) that he ſhou'd go to poiſon them in a Family to which he had been ſo much obliged; and then, he that wou'd be concerned in ſo horrid a Plot as this was, to deſtroy his Country, and take away the Life of the King; ſure it will be no difficult

Thing to think that this Man will not ſtick little at the Priſoner's Life at the Bar, eſpecially when he has ſo great a Temptation to it, as to ſave his own Life by it.

But perhaps ſome of you may doubt whether it is to ſave his own Life or no: But I believe there are none of you would give any Credit to him, if you thought ſo: Therefore, to ſatisfy you of that Fact, we ſhall produce you Evidence of his own Opinion of that Matter, beſide the general known Circumſtances he lay under: As, That he was long in Priſon before he charged the Priſoner with any Thing, and the Priſoner was at Liberty, went every Day abroad for a Week after Mr. *Charnock*'s Trial, and never abſconded one Minute, but lived publickly, openly, and viſibly to all his Friends, and all Strangers: But beſides, Gentlemen, that Mr. *Goodman* knew he muſt die, and juſtly and deſervedly for this horrid Plot and Treaſon himſelf; and had no other Way left to ſave his Life, but to come in thus as an Evidence and Accuſer, which we think will ſhake his Credit with you.

I ſay, beſides all this, (if my Brief be true) we ſhall prove that he has ſaid himſelf, That either he muſt hang *Peter Cook*, or he muſt be hanged himſelf. Thus, Gentlemen, he ſwears to ſave his own Life, by taking away another's.

This, Gentlemen, is as to the Man himſelf, that he is not to be credited. But now further, as to the Evidence that he has given: He tells you that he came into the Tavern in *Leaden-hall-ſtreet*, and that there he found ſuch Company; he owns he came in after Dinner; and that the other Gentleman, Mr. *Porter*, owns too; he ſays there were preſent at this Meeting, my Lord *Montgomery*, my Lord of *Ayleſbury*, Mr. *Cook*, and ſeveral other Gentlemen; but (if my Brief be true) we ſhall prove by three Witneſſes, that he was not there till they were gone; and that will make an End of all the Pretence of his Evidence.

Mr. Att. Gen. Nay, then we ſhall never have done.

Mr. Serj. *Darnal.* I'll aſſure you, Sir, I have the Names of three Witneſſes in my Brief, to prove that my Lord of *Ayleſbury*, my Lord *Montgomery*, and Mr. *Cook*, were gone before he came in, tho' if any, or either of them were gone, it deſtroys his Teſtimony; and if we prove this to you, I would be loth to be one of the Jury that ſhould take away the Priſoner's Life upon this Evidence; no, if he were the vileſt Man alive, and much leſs the Life of the Priſoner at the Bar; for we ſhall prove (if my Brief be true) he is a Man of Morals, a Man of Virtue, one that has a great Love for his Country; and this we ſhall prove by Evidence undeniable, Perſons of Quality in their Country, ſuch as ſerve their Country in Parliament, as their Repreſentatives; we ſhall ſhew it by ſuch Evidence, that there will be no Room to doubt of it: He is a Man without any Stain or Blot upon him, 'till this Accuſation; he is the eldeſt Son of his Father, and Heir to a great Eſtate; his Father is a great Officer, and a great Getter under this Government; and can it be imagin'd, or believ'd, that ſuch a Man would be guilty of the worſt of Treaſons, to deſtroy the Religion he profeſſes, to overturn the State, to ruin his own Eſtate, himſelf and his Poſterity, which muſt be the Conſequence of it? Nay, if two good Witneſſes cou'd be produc'd to teſtify it, and if we had not had ſo much to take off the Credit of *Goodman*, I cou'd hardly believe it of any Man that was in his right Senſes; he muſt have been a Mad-man if he had done it, one that ſtood ſo well with the preſent Government, and of a Family never tainted with Diſloyalty.

Certainly, Gentlemen, when we make out this to you againſt Mr. *Goodman*, the Priſoner can be in no Danger of his Life, from Mr. *Goodman*'s Evidence, though he is an unfortunate Man to come under ſuch an Accuſation; but I cannot believe that any Jury, upon ſuch a Man's Evidence, will brand an honeſt Family with the foulеſt, vileſt, blackeſt Treaſon that ever was hatch'd; no, Gentlemen, you are Men of Ability and Underſtanding, and that is it we rely upon; we doubt not but that you will conſider the Evidence, and conſider your Oaths, and not let the Priſoner's Blood lie at your Doors; therefore we ſhall go on and call our Witneſſes to make out what I have open'd.

Sir *B. Shower.* My Lord, we deſire to call our Witneſſes, and I ſhall reſerve myſelf to make ſome Obſervations after we have given our Evidence: Mr. *Serjeant* has open'd as much as we can prove, and we will now produce our Evidence; Firſt, we will ſhew the Conviction of *Goodman*: Mr. *Burleigh*, where is the Conviction?

Mr. *Burleigh.* Here it is, Sir.

Sir *B. Shower.* Where had you it, Sir?

Mr. *Burleigh.* Out of the Treaſury at *Weſtminſter.*

Sir *B. Shower.* Is it a true Copy, did you examine it there?

Mr. *Burleigh.* Yes, it is a true Copy, I did examine it with the Record.

Sir *B. Shower.* Then read it, Mr. *Tanner.*

Cl. of Ar. [*Reads*]—*Michaelmas Term: Triceſimo ſecundo Caroli Secundi.*

L. C. J. Treby. Read the Record in *Engliſh* to the Jury.

Cl. of Ar. [*Reads.*] Be it remember'd, that Sir *Robert Sawyer*, Knight, Attorney-General of our Lord the King that now is, who for the ſame our Lord the King in this part ſueth, came here in the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Thurſday* next after three Weeks of St. *Michael*, the ſame Term; and for the ſame our Lord the King, brought here into the Court of our ſaid Lord the King, before the ſaid King, then and there, a certain Information againſt *Cardell Goodman*, late of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, Gentleman, which Information follows in theſe Words, *ſcilicet*, *Middleſex ſcilicet*, Be it remember'd that Sir *Robert Sawyer*, Knight, Attorney-General of our ſaid Lord the King that now is, who for the ſame our Lord the King, in this Behalf ſueth, in his own proper Perſon came here into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Thurſday* next after three Weeks of St. *Michael* that ſame Term, and for the ſame our Lord the King gives the Court here to underſtand and be inform'd, That *Cardell Goodman*, late of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, Gentleman, being a Perſon of a wicked Mind, and of an ungodly and deviliſh Diſpoſition and Converſation, and contriving, practiſing, and falſly, maliciouſly and deviliſhly intending Death, and Poiſoning and final Deſtruction unto the Right Noble *Henry* Duke of *Grafton*, and *George* Duke of *Northumberland*, and that the aforeſaid *Cardell Goodman*, his moſt wicked, moſt impious, and deviliſh Intentions, Contrivances and Practices aforeſaid, to fulfil, perfect, and bring to Effect, the Thirtieth Day of *September*, in the Six-and-thirtieth Year of the Reign of our Lord *Charles* the Second, now King of *England*, &c. and diverſe other Days and Times; as well before as after, at the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, with Force and Arms, &c. falſly, unlawfully, unjuſtly, wickedly, and deviliſhly, by unlawful Ways and Means, did ſolicite, perſuade, and endeavour to procure one *Alexander Amydei* to prepare and procure two Flaſks of *Florence* Wine, to be mix'd with deadly Poiſon, for the Poiſoning of the aforeſaid Right Noble *Henry* Duke of *Grafton*, and *George* Duke of *Northumberland*; and his moſt wicked, moſt impious, and deviliſh Contrivances, Practices and Intentions aforeſaid, to fulfil, perfect, and the more to bring to Effect, the aforeſaid *Cardell Goodman*, the Day and Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, falſly, unlawfully, unjuſtly, maliciouſly and deviliſhly, did promiſe and agree to give unto the aforeſaid *Alexander Amydei* forty Pieces of Guinea-Gold, of the Value of forty Pounds, of lawful Money of *England*, if he the ſaid *Alexander Amydei* wou'd prepare, procure and provide two Flaſks of *Florence* Wine, to be mix'd with deadly Poiſon, for the Poiſoning of the aforeſaid Right Noble *Henry* Duke of *Grafton*, and *George* Duke of *Northumberland*; and if the aforeſaid Poiſon with the Wine aforeſaid to be mix'd, ſhou'd effect the Death of the aforeſaid *Henry* Duke of *Grafton*, and *George* Duke of *Northumberland*; that then he the ſaid *Cardell Goodman* wou'd give unto the ſaid *Alexander Amydei* the Sum of one Hundred Pounds, and that beyond Sea he wou'd maintain the ſaid *Alexander* all the Days of him the ſaid *Alexander*, to the evil and moſt pernicious Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, &c.——Then here is Proceſs pray'd by the Attorney-General againſt Mr. *Goodman*, who comes, and by his Attorney pleads Not Guilty, and here is Iſſue join'd.

Sir *B. Shower.* Well, ſee for the Verdict.

Cl. of Ar. There was a Trial at *Niſi Prius*, and the Jury find that the ſaid *Cardell Goodman* is guilty of the Premiſſes in the Information ſpecify'd, as by the Information is ſuppoſed againſt him.

Sir *B. Shower.* Now read the Judgment.

Cl. of Ar. Thereupon it is conſider'd, that the ſaid *Cardell Goodman* do pay to the King the Sum of One Thouſand Pounds for his Fine, impos'd upon him for the Occaſion aforeſaid, and that the aforeſaid *Cardell Goodman* be committed to the *Marſhalſea* of this Court, in Execution for his Fine aforeſaid, that he be ſafely kept there, till he pay his Fine aforeſaid; and before that the ſaid *Cardell Goodman* is deliver'd out of the Priſon aforeſaid, he ſhall give Security to behave himſelf well, during his Life, and alſo ſhall give Security for the Peace to be kept towards the ſaid Lord the King, and all his People, and particularly towards the Right Noble *Henry* Duke of *Grafton*, and *George* Duke of *Northumberland.*

Mr. Serj. *Darnal.* So, you hear the Record of the Information, Conviction and Judgment, for a very horrid, abominable Crime.

Mr. Att. Gen. But I deſire they may now go on, and read the whole of the Record.

Cl. of Ar. [*Reads.*] And afterwards, to wit, on *Friday* next after eight Days of St. *Hilary*, in the thirty-ſixth and thirty-ſeventh Years of the Reign of our ſaid Lord the King that now is, before our ſaid Lord the King at *Weſtminſter* came the aforeſaid Sir *Robert Sawyer*, Knight, Attorney-General of our ſaid Lord the King that now is, and acknowledged that the ſaid *Cardell Goodman* has ſatisfy'd to our ſaid Lord the King that now is, of the Judgment aforeſaid againſt him, in Form aforeſaid given, therefore the ſaid *Cardell Goodman* is thereof acquitted; And ſo forth.

Mr. Serj. *Darnal.* Call Mr. *Charles Edwards*, *William Cook*, *Chriſtopher Crawford*, *Mary Crawford*, and Mr. *Huntley.*

[Edwards *appear'd upon a* Habeas Corpus, *directed to the Keeper of* Newgate, *where he was a Priſoner.*]

Mr. *Baker.* Where is the Warrant of his Commitment? What is he committed for?—*Tokefield.* He is committed for Suſpicion of Treaſon, and treaſonable Practices.

Mr. *Baker.* Is he not committed for High-Treaſon?

Tokefield. No, Sir, he is not.

Mr. Serj. *Darnal.* What Diſcourſe had you with Mr. *Goodman* concerning the Priſoner at the Bar? What did you hear him ſay?

Mr. *Baker.* He is not ſworn yet; it ſeems this Gentleman was *Dundee*'s Chaplain in *Scotland.*

Mr. Att. Gen. If he be not ſworn, he can give no Evidence.

Mr. Serj. *Darnal.* My Lord, we deſire he may be ſworn.

L. C. J. Treby. Swear him. [*Which was done.*]

Mr. Serj. *Darnal.* Pray, Sir, will you tell the Court and the Jury, what you know of any Diſcourſe of Mr. *Goodman*'s concerning the Priſoner at the Bar.

Edwards. My Lord, I deſire to know, being ignorant of the Law, whether I am brought here by the common Courſe of Juſtice or not?

Mr. Serj. *Darnal.* Sir, we have Subpœna'd you for the Priſoner at the Bar, to give Evidence of the Truth of your Knowledge here upon Oath.

L. C. J. Treby. Would you have us tell you how you came here? We ſuppoſe you came by due Proceſs of Law, as a Witneſs.

Edwards. Then, my Lord, I deſire to ſpeak but one Word; that 'tis a ſtrange Thing to me to conſider, how Words ſhould be carried away that were privately ſpoken; as if it were to expoſe me to the Reproaches of all my Friends; it is a Thing that I did never expect to hear of again: However, ſeeing I am called here, and obliged upon my Oath to declare what I know, I by God's Grace will, to the uttermoſt of my Power, tell what has paſs'd in this Matter.

L. C. J. Treby. Don't make any Apology for telling the Truth: You are obliged by your Oath to do it, and the Court expects it from you.

Edwards. Among other Diſcourſes that paſs'd betwixt Mr. *Goodman* and me, I aſk'd him when Mr. *Cook* was to be arraigned, and when he was

to

to be tried: Says he, He is to be arraigned upon *Monday*, and he is to be tried upon *Thurſday*. I aſked him, whether it was for the Aſſaſſination-Plot, and he told me No. For what then? ſaid I: As being concerned in ſending Mr. *Charnock* into *France*? Who are the Evidences againſt him? ſaid I. Said he, Captain *Porter* and myſelf. Said I, I believe two Witneſſes will be found Good, or by Way of Demonſtration in Law; and I pity the poor Gentleman's Caſe. Says he, He ſwore againſt me. How comes it then, ſaid I, that he is not come off, and has not a Pardon, and would divulge Nobody elſe?

L. C. J. Treby. Who had not a Pardon do you mean?

Edwards. Mr. *Cook.* I aſk'd, how he had not a Pardon? Says he, He would give an Account of Nobody elſe but me, and that was the Reaſon he had no Pardon. Said I to him, Who are the Evidences againſt him? Says he, Captain *Porter* and myſelf. And after this, ſays he, He or I muſt periſh; or, He and I muſt ſuffer; I believe the Word was Suffer. But, ſays he, 'tis a fooliſh Thing to be hang'd. All that's ſaid of a Man that is hang'd, is, That he hang'd handſomely, or he dy'd bravely. That's all the Diſcourſe that I can remember.

Mr. Serjeant *Darnal.* He ſaid it was a fooliſh Thing to be hang'd; and Mr. *Goodman*, it ſeems, had no Mind to be hang'd; and I believe ſo too: But he muſt not hang my Client, to ſave his own Life.

Edwards. Now, by the ſame Oath that I have ſworn, I knew nothing of being brought hither, till my Words were carry'd away privately from me, and has been conſulted of, and returned to me back again; and I was far from ſuborning or carrying away a Diſcourſe privately, to make any Advantage of it.

Mr. Serjeant *Darnal.* Now we will call *Crawford*, and *Huntley*, and *Cock*.

Mr. Att. Gen. I deſire that Gentleman that was laſt examined may not go away.

(Crawford, Huntley, *and* Cock *were ſworn.*)

Sir *B. Shower.* Set up Mr. *Crawford* (*Which was done*). Pray, Sir, will you recollect yourſelf? Do you remember when my Lord of *Ayleſbury* and Captain *Porter* dined at the *King*'s-*Head*?

Crawf. Yes: It was about a Twelvemonth ago.

Mr. Serjeant *Darnal.* What Company was there?

Crawf. My Lord of *Aylesbury*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, and two or three more, I did not know their Names.

Sir *B. Shower.* How many were there that din'd there?

Crawf. I think about Eight in all.

Sir *B. Shower.* Was the Room ſhut while they were there, or did the Servants and Drawers go up and down commonly?

Crawf. Yes, they did go up and down commonly.

Sir *B. Shower.* After Dinner, did any body come to them while they were there?

Crawf. No, not during my Lord of *Aylesbury*'s Stay, and my Lord *Montgomery* went away with him.

Sir *B. Shower.* About what Time did my Lord of *Aylesbury* go away?

Crawf. I think it was about Four o'Clock.

Sir *B. Shower.* How can you tell it?

Crawf. I did attend upon them the moſt Part of the Time.

Sir *B. Shower.* Did you ſee him go away?——*Crawf.* Yes, I did.

Sir *B. Shower.* Was that Gentleman, Mr. *Goodman*, there when they went away?

Crawf. I did not ſee him there, to my Remembrance: Nobody came in there before they went away, ſaving their own Servants.

Mr. Serj. *Darnal.* Do you know Mr. *Cook*, the Priſoner at the Bar? Was he one of the Gentlemen that were at your Houſe?

Crawf. Yes; I did not well remember or recollect, till I ſaw him on *Saturday* laſt.

Mr. Att. Gen. Was he one that went away?

Crawf. I do not remember, truly, Sir.

Mr. Att. Gen. Pray, how long was it after Dinner that they went away?

Crawf. I think it was not an Hour.

Mr. Att. Gen. Was you there all the Time, from the Time of the Dinner?

Crawf. No; not all the while I was not in the Room, but going to and fro.

Mr. Serj. *Darnal.* You ſay Mr. *Goodman* did not come up till after they were gone?——*Crawf.* No, I did not ſee him.

Mr. Att. Gen. Did you ſee him at all?

Crawf. No, I did not ſee him at all.

Mr. Att. Gen. Juſt now it was ſaid, he did not come till they were gone, and now it ſeems he did not ſee him at all.

Crawf. I do not know that he was there at all.

L. C. J. Treby. But, Brother *Darnal*, you open'd it, that Mr. *Goodman* came after my Lord of *Aylesbury* was gone, and now you will prove it that he came not at all.

Sir *B. Shower.* My Lord, we do not pretend to falſify his Evidence for any thing more than is material for the Priſoner: We ſay Mr. *Goodman* was not in the Room where they din'd till thoſe Perſons went away; if in any Particular we diſprove him, it is ſufficient for us: If we can ſhew that he was not there till three of thoſe that he has nam'd were gone away, that anſwers our End. We are not concern'd if he came at Four, Five, or Six o'Clock, and diſcours'd with *Charnock* till Twelve o'Clock at Night.

Mr. Att. Gen. Pray reſerve your Remarks; but only obſerve now what he ſays, that Mr. *Goodman* came not at all thither; and that is more than you pretended to open.

Mr. *Conyers.* How many were there that were there at Dinner?

Crawf. About Eight.

Mr. *Conyers.* How many do you name that you know?

Crawf. My Lord of *Aylesbury*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, and Captain *Porter*; there were ſeveral others, two or three more, but I did not know their Names.

Mr. *Conyers.* Did you ſee Mr. *Goodman* come in at any Part of the Day afterwards?

Crawf. I do not know that Mr. *Goodman*.

Mr. *Cowper.* Mr. *Crawford*, you ſay, that for an Hour after Dinner you were ſometimes in the Room, and ſometimes out; when you were out of the Room, were you always in the Paſſage up to the Room?

Crawf. No, I was not.

Mr. *Cowper.* Could any Man come in or out without your ſeeing?

Crawford. I ſhould have known him above Stairs when I came in again.

Mr. *Cowper.* Why, you ſay, there are two or three above that you did not know.

Crawf. I knew them by Sight, if not their Names.

Mr. *Cowper.* Were you always in Sight then?

Crawf. No, Sir, I tell you I was up and down.

Sir *B. Shower.* Was there any Body came in before my Lord of *Aylesbury* went out? that is, any Body beſides thoſe that dined there?

Crawf. No.

Sir *B. Shower.* My Lord, we are not contending now about a Man's coming up without his Knowledge; but whether any ſuch Man as Mr. *Goodman* came up and ſtaid there during the Conſultation; and we inſiſt upon it, there was Nobody there till my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr. *Cook* were gone, but thoſe that din'd there: Now I would aſk a Queſtion again of him, Was there any Body but who din'd there, till my Lord of *Aylesbury* went away?

Crawf. No, there was not.

Mr. Att. Gen. Why do you ſay ſo? How do you know that?

Crawf. I did not ſee any Body.

Mr. Sol. Gen. Did you attend upon other Rooms, as well as that, at the ſame Time?——*Crawf.* Yes, I did.

Mr. Sol. Gen. Then how is it poſſible that he can ſwear that Mr. *Goodman* was not there?

Sir *B. Shower.* Do you remember when my Lord of *Aylesbury* and they went away?——*Crawf.* It was about Four o'Clock.

Sir *B. Shower.* Were you there in the Room when they went away?

Crawf. I went out with my Lord to the Coach.

Sir *B. Shower.* Did you ſee him come down Stairs, or did you go up Stairs then?

Crawf. I went up Stairs when the Coach was called.

Sir *B. Shower.* Was then any Body there but ſuch as din'd there?

Crawf. I did not ſee any Body there but thoſe that din'd there.

Mr. *Cowper.* But, my Lord, he does not know all that din'd there, neither.

L. C. J. Treby. Mr. *Crawford*, you ſay my Lord of *Aylesbury* and others went away about Four o'Clock: Pray how long did the reſt of the Company ſtay there?

Crawf. I cannot remember. They ſtaid there pretty late: It is a pretty while ago.

L. C. J. Treby. About what Hour did they part?

Crawf. I cannot remember what Time the reſt went away: Our Houſe is fuller at Night than at Noon; and I waited upon other Companies. It was pretty late before they went away, that I am ſure.

L. C. J. Treby. But he cannot remember whether it were Five, or Six, or Twelve, that they went away; only he can remember the Hour of Four, that my Lord of *Aylesbury* and they went away.

Mr. J. *Rokeby.* Was it Light, or was it Dark when they went away?

Crawf. It was Dark.

L. C. J. Treby. Did you attend the Company after my Lord of *Aylesbury* was gone?

Crawf. I went up and down into that Company as I did into others.

L. C. J. Treby. Was you there ſeveral Times after my Lord of *Aylesbury* was gone?

Crawf. Yes, I was there once or twice after my Lord of *Aylesbury* was gone, I am ſure.

L. C. J. Treby. And did you never ſee Mr. *Goodman* there?

Crawf. No; I never ſaw Mr. *Goodman* in my Life before I ſaw him on *Saturday* laſt.

Sir *B. Shower.* Which is Mr. *Huntley*?----*Huntley.* Here I am, Sir.

Sir *B. Shower.* Pray recollect yourſelf, and tell my Lord and the Jury what you remember of any Company that were with Mr. *Porter*, at the *King*'s-*Head*, and who din'd there.

Huntley. My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr. *Porter* and Mr. *Charnock*.

Sir *B. Shower.* That was the Company, you ſay, that din'd there: Did Mr. *Goodman* dine there?

Huntley. No, Mr. *Goodman* did not dine there.

Sir *B. Shower.* Pray, Sir, recollect yourſelf: When did any of this Company part, or go away?

Huntley. My Lord of *Aylesbury* and my Lord *Montgomery* went away about Four o'Clock.

Sir *B. Shower.* Sir, how do you know that?

Huntley. I went down Stairs after them; I was above Stairs when they parted from the reſt of the Company.

Mr. Serj. *Darnal.* Pray mind, Sir: Was Mr. *Goodman* there at that Time before they went away?----*Huntley.* No, he was not.

Sir *B. Shower.* Are you ſure of that, upon the Oath you have taken?

Huntley. Yes, I take it upon my Oath he was not there.

Sir *B. Shower.* Did you attend them at Dinner?

Huntley. Yes, I did attend them at Dinner.

Sir *B. Shower.* Did you attend them all the while they were there?

Huntley. I was call'd frequently, and was in and out of the Room very much after Dinner.

Sir *B. Shower.* Do you think, if a freſh Man had come in after Dinner, you ſhould not have known him?

Huntley. Yes, I ſhould have known him.

Mr. Att. Gen. Pray, Friend, let me aſk you one Queſtion: Was Mr. *Goodman* there at all that Day?

Huntley. That I don't know; I did not ſee him at all.

Mr. Sol. Gen. Did you attend upon any other Rooms that Day?

Huntley. No; I attended only upon that Company.

Mr. Sol. Gen. Were you in the Room all the Time?

Huntley. No; I went up and down.

Mr.

Mr. Sol. Gen. What Time did the laſt of the Company go away?

Huntley. It was about Darkiſh; it was pretty late, to the beſt of my remembrance.

Mr. Att. Gen. Pray, did any Body come to thoſe Gentlemen after Dinner?——*Huntley.* No, Sir.

Mr. Att. Gen. Did you ever ſee *Goodman* before now?

Huntley. Never in my Life, to my Knowledge.

Mr. J. *Rokeby.* Did all the Company, but my Earl of *Ayleſbury*, and my Lord *Montgomery*, ſtay 'till it was Duſkiſh?

Huntley. That I don't know.

Mr. J. *Rokeby.* Did you know all the Company that was that Day at Dinner?----*Huntley.* I knew all but One.

Mr. J. *Rokeby.* And who was that?---*Huntley.* That was Mr. *Charnock.*

Mr. J. *Rokeby.* And yet you can't tell whether there was any body elſe that you did not know, how then can you tell that *Goodman* was not there?

Sir *B. Shower.* He did not know him at that Time, but he might remember him afterwards.

Mr. *Conyers.* Did not the ſame Company uſe to meet at other Times, at your Houſe?---*Huntley.* Not to my Remembrance.

Mr. *Conyers.* How then came you, if they never had us'd to meet there, to know all theſe People's Names?

Huntley. I have ſeen Sir *John Freind* there, and Sir *William Parkyns.*

Mr. *Conyers.* Was Sir *John Freind* there, or no? ---*Hunt.* Yes, he was.

Mr. *Conyers.* My Lord, he was the only Man that was not nam'd before: You did not name Sir *John Freind* before, as I heard: But pray, did you ever ſee Mr. *Charnock* there but at that Time?

Huntley. No, I did not.

Mr. *Conyers.* How came you to know it was Mr. *Charnock?*

Huntley. I knew very few of them before that Time; and I aſk'd their Servants the Names of all thoſe Perſons that were there?

Mr. *Conyers.* Did you know Mr. *Porter*, pray?

Huntley. Not before that Time: I did ſee Mr. *Porter*, and I knew him again when I ſaw him; his *Black* told me his Name that Day.

Sir *B. Shower.* You, *Huntley*, I would aſk you one Queſtion more: Was the Door ſhut, or no?---*Huntley.* No, it was not.

Sir *B. Shower.* Did the Servants go up and down as they us'd to do?

Huntley. Yes, Sir.

Mr. Att. Gen. Sir *Bartholomew* would make it that there was no Conſultation at all.

Sir *B. Shower.* They were mad Folks if they would conſult at that Rate with the Door open. Pray call Mr. *William Cook.* [*Who was ſworn.*]

Mr. Att. Gen. Sir *John Freind* has own'd it, that's dead.

Sir *B. Shower.* Sir *John Friend*'s Confeſſion is nothing to the Priſoner.

Mr. Att. Gen. Mr. Serjeant *Darnal* did open, that the Confeſſion of thoſe that dy'd was an undeniable Proof of the Conſpiracy: But go on with your Evidence.

Mr. Serjeant *Darnal.* Pray, Mr. *Cock*, will you recollect yourſelf, about the Time when Captain *Porter* and ſome other Gentlemen din'd at your Houſe.

W. Cock. Yes, very well.

Mr. Serj. *Darnal.* Pray, Sir, can you tell who din'd there at that Time?

W. Cock. There were my Lord of *Ayleſbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Freind*, Mr. *Charnock*, Captain *Porter*, and Mr. *Cook.*

Mr. J. *Rokeby.* Was that all the Company?----*W. Cock.* Yes, it was.

Mr. J. *Rokeby.* One of them ſaid there were Eight.

L. C. J. Treby. And he has nam'd Eight, Brother.

Mr. Serj. *Darnal.* Can you remember when any of the Company went away, and who went away firſt?

Cock. My Lord of *Ayleſbury* and my Lord *Montgomery* went away in a Hackney-Coach; and their Servants were frequently in the Room, and waited afterwards in another Room, after that they had waited at Table at Dinner; and tho' the Door was ſhut, as it uſed to be when any Company is there, yet nobody was forbid to come there at all.

Mr. Att. Gen. Do you remember when Mr. *Goodman* came there?

Cock. I never ſaw Mr. *Goodman* in my Life before To-day.

Mr. Serj. *Darnal.* Did any Body come to this Company before my Lord of *Aylesbury* went away that did not dine there?

Cock. I did not ſee any Body there at all: And my Lord of *Aylesbury* was about buying a Hogſhead of White-wine, but we could not agree about the Price: And when my Lord of *Aylesbury* went away, I went down with my Lord, and waited upon him to the Coach; and I told my Lord, I hoped he would buy the Wine ſtill. But he anſwered, he could not tell whether he ſhould or no.

Mr. Serj. *Darnal.* Who elſe went with my Lord of *Aylesbury?*

Cock. My Lord *Montgomery.* I don't remember any Body elſe.

Mr. J. *Rokeby.* Did all the reſt of the Company go away at once?

Cock. Truly, my Lord, I can't ſay they did.

Mr. J. *Rokeby.* By what time did the reſt go away?

Cock. I believe it might be Eight or Nine o'Clock.

Mr. Serj. *Darnal.* You ſaw my Lord of *Aylesbury* when he parted: Was Mr. *Goodman* there then?---*Cock.* I did not ſee him.

Mr. B. *Powis.* Did Mr. *Cook* ſtay till the laſt?

Cock. That I can't tell, truly.

Mr. B. *Powis.* I find they all Swear to Four o' Clock of my Lord *Aylesbury*'s going, and go no further.

Mr. Att. Gen. Pray, Sir, let me aſk you a Queſtion or two: Did you ever ſee Mr. *Goodman* before now?

Cock. No, I do not remember I did.

Mr. Att. Gen. When you went into the Room after Dinner, did you look about the Room to ſee whether there were any new Company?

Cock. I did look about the Room ſeveral Times, and ſo did my Servants, to ſee if there were any Thing wanting.

Mr. Att. Gen. Can you take it upon your Oath, that he was not there whilſt my Lord of *Aylesbury* ſtaid?

Cock. I do: And can take it upon my Oath, he was not.

Mr. *Att. Gen.* Then, if you can, pray diſtinguiſh the Time when he came in.

Cock. I do not remember that ever I ſaw him in my Life before To-day.

Mr. Att. Gen. Why are you not as poſitive that he was not there at all, as that he was not there before my Lord of *Aylesbury* went away?

Cock. He might come in, and I not ſee him.

Mr. Att. Gen. Might he not as well come in before they went away, as after, to come in and you not ſee him?

Cock. No, I do not think he could.

Mr. Att. Gen. Why do you think ſo?

Cock. Becauſe the Servants were all about, and they did not go to Dinner 'till Two o' Clock: And I believe thoſe Gentlemen that I named, came in a Quarter of an Hour's Time to Dinner.

Mr. Att. Gen. We do not ſay he came there before Dinner: But could he not come in after Dinner, before my Lord of *Aylesbury* and my Lord *Montgomery* went away, without your ſeeing him?

Cock. Yes, Sir.

Sir *B. Shower.* Then, heark ye, Sir, I would aſk you one Queſtion: Did you ſee him, upon your Oath, or not?

Cock. No, I did not.

Sir *B. Shower.* Might not Mr. *Goodman* come in to them without your ſeeing him?

Cock. It is poſſible; but I don't think it was ſo.

Mr. J. *Rokeby.* How then can you be poſitive that he was not there 'till my Lord of *Aylesbury* went?

Mr. Sol. Gen. You ſay you may be poſitive he was not there before my Lord of *Aylesbury* went: Can you be as poſitive now, that he was not there before Mr. *Cook* went?

Cock. I do not know when Mr. *Cook* went.

Mr. Sol. Gen. How can you be then poſitive he was not there before my Lord of *Aylesbury* went?

Cock. There were no more than what dined there when my Lord of *Aylesbury* went away.

Mr. *Conyers.* Pray, Sir, let me aſk you a Queſtion: Were you in the Room at any Time after Dinner?

Mr. *Conyers.* Pray, Sir, How many Times after Dinner, were you there?

Cock. I believe half a dozen Times.

Mr. Sol. Gen. And yet you do confeſs that Mr. *Goodman* might come in after Dinner before my Lord of *Aylesbury* went, and you not ſee him?

Sir *B. Shower.* Ay, but he could not ſtay there without his ſeeing him, if he was ſo often in the Room: You don't take Mr. *Cock*'s Evidence right.

Mr. Att. Gen. You named eight Perſons that dined at your Houſe: Did you know them all perſonally before that Day?

Cock. Yes, my Lord, the moſt of them at leaſt.

Mr. Att. Gen. Did they uſe to meet at your Houſe?

Cock. Commonly Sir *John Freind* did once a Week. Mr. *Charnock* I knew when I was Drawer, and ſo I did Sir *William Parkyns:* The Reſt I knew by hearing their Names.

Mr. Att. Gen. Did you know them before that Day, Sir, I aſk you?

Cock. I had ſeen Captain *Porter* ſeveral Times before that Day; but I cannot ſay at my own Houſe.

Sir *B. Shower.* Do you remember the Treaty about the Hogſhead of White-wine?----*Cock.* Yes, Sir, very well.

Sir *B. Shower.* Were you by when my Lord of *Aylesbury* went away, and ſpoke with him about it?

Cock. Yes, I was; and told him, I hoped he would buy the Wine ſtill.

Sir *B. Shower.* Can you be poſitive that any Body was there before my Lord of *Aylesbury* went away, that could ſtay there any Time, and did not Dine there?

Cock. I believe not, Sir; for I came in half a dozen Times after Dinner, and I believe if I had heard Mr. *Goodman*'s Name, or ſeen him there, I ſhould have remembered it; but I did not ſee any body but thoſe that dined there.

Mr. *Cowper.* Where was you, when my Lord of *Aylesbury* went away? Where did you meet him going away?

Cock. Upon the Stairs: Seeing my Lord of *Aylesbury*, and my Lord *Montgomery* coming down, I met them.

Mr. *Cowper.* Where did you meet them? At the Middle, or the Top of the Stairs?

Cock. My Lord of *Aylesbury* was at the Top of the Stairs.

Mr. *Cowper.* Did you meet him juſt coming out of the Room?

Cock. Yes, Sir, I ſaw the Coach that was called for my Lord; and ſo I went up Stairs, and met my Lord at the Top of the Stairs coming down.

Mr. Sol. Gen. Now, how can you be poſitive who was in the Room when he came out of the Room?

Cock. I went up in the Room after my Lord of *Aylesbury* went away.

Mr. Sol. Gen. How long after my Lord of *Aylesbury* went away?

Cock. It was preſently after.

Mr. Sol. Gen. How long before my Lord of *Aylesbury* went away had you been in the Room?

Cock. I had been there juſt before.

Mr. Serj. *Darnal.* Call *Thomas Peachy.* [*Who appeared, and was ſworn.*]

Sir *B. Shower.* My Lord, we ſhall prove that after the Plot broke out, and after Mr. *Porter* had made his Diſcovery, there was no Diſturbance of Mr. *Cook* till a good while after *Charnock*'s Trial; and Mr. *Cook* was ſo far from being ſenſible, or conſcious of any Guilt, that he never abſconded, but continued for three Weeks in his Father's Houſe, where he was taken by a Meſſenger. Pray, Mr. *Peachy*, will you tell my Lord and the Jury, where Mr. *Cook* was taken, and when, and by whom?

Peachy. He was taken at his Father's Houſe by a Meſſenger, about Seven o' Clock in the Morning.

Sir *B. Shower.* What Day of the Week was it he was taken?

Peachy.

Peachy. Upon a *Sunday* Morning, in his own Room, in his Father's Houſe, at Seven o'Clock in the Morning.

Sir *B. Shower.* Did People come to him as they uſed to do?

Peachy. Yes; and he went frequently abroad as he uſed to do, and did never abſcond from his Father's Houſe.

Mr. Serj. *Darnal.* Pray ſwear Mr. *Treganna.* [*Which was done.*]

Sir *B. Shower.* Mr. *Treganna*, Pray do you remember how long after the Plot broke out did you ſee Mr. *Cook?*

Treganna. After Mr. *Charnock*'s Trial, a Week, he was at my Chamber; after the Plot broke out, he was concerned in a Trial at *Winchester* Aſſizes, upon an Iſſue out of *Chancery*, Mr. *Nicholls* was the Clerk in Court, and went down to manage it at the Aſſizes; and Mr. *Cook* came to me a Day or two after *Winchester* Aſſizes was over, and aſk'd me if I had any News from the Aſſizes? This was long after the Plot broke out: And I remember particularly, that I ſaw him twice after the Plot was diſcovered, at my Chamber.

Sir *B. Shower.* Swear Mr. *Nicholls.* [*Which was done.*]

Sir, Pray will you tell my Lord and the Jury, what you know of Mr. *Cook*'s appearing abroad after the Plot was diſcovered?

Mr. *Nicholls.* I was ſent down to the Trial: I was preſent, and did attend at two Trials indeed, and I ſuppoſe Mr. B. *Powis* may remember that I attended at two Trials at *Winchester* Aſſizes.

Mr. B. *Powis.* Poſſibly you might, Sir: I can't tell all the Attendance at the Aſſizes.

Mr. *Nicholls.* And after my Return from *Winchester* Aſſizes, Mr. *Cook* was with me ſeveral Days, both at my Office and Chamber, and at his Father's Office: And I remember particularly, that he threatened me that I was in Trouble when I was at *Winchester*, and therefore I remember it very well.

Sir B. *Shower.* Mr. *Nicholls*, you know Mr. *Cook* very well; pray what are his Morals?

Mr. *Nicholls.* Upon Occaſion of the Cauſe in *Chancery* that went to Trial, I have had the Knowledge of Mr. *Cook* five or ſix Years; I always believ'd him to be as temperate a Man as ever I met with: I think in five Years Time I was not above once with him in a Tavern.

Sir *B. Shower.* Did you ever hear him Swear?

Mr. *Nicholls.* No, never; nor vent a Curſe: I believe he drank as little as any Man, and was as godly a Man. I never heard him ſpeak a foul Word.

Sir *B. Shower.* How do you know that, Sir, that he was ſo godly a Man?

Mr. *Nicholls.* Upon Occaſion of this Cauſe, I was ſeveral Times at Sir *Miles Cook*'s, and at Mr. *Cook*'s Lodgings there, and we were to go about Buſineſs, and after he was dreſs'd, he has made me ſtay while he went into his Cloſet and ſaid his Prayers. And he told me further, that he never went out of his Father's Doors without ſaying his Prayers; and I was forc'd to ſtay at the Door while he perform'd his Devotions, as he told me, and I believe he did.

Mr. Serj. *Darnal.* Now, my Lord, we will call ſome other Witneſſes to prove his good Affection to his Country; how he continually deſired Succeſs to the Fleet, and to the Army.

Sir *B. Shower.* So that really he had an Averſion to it.

Swear Mr *Hamond.* [*Which was done.*]

Mr. Serj. *Darnal.* Pray, Sir, will you give an Account what you know of the Priſoner, concerning his Judgment, and concerning his Morals?

Hamond. I have been for ſome Time acquainted with Mr. *Cook* the Priſoner at the Bar, and to the beſt of my Obſervation, I always took him to be a conſcientious Man, and I have heard him declare great Deteſtation of a *French* Force: And three or four Days before he was taken into Cuſtody, I aſk'd him what he heard of Intelligence? He ſaid he heard what was in the publick Prints, and heard no more, and knew no more; and he had a great Abhorrence of the Conſpiracy, and thought it a very monſtrous Thing. I never heard him ſpeak a diſrepectful Word of the King's Perſon or Government in my Life. And I ſay again, I have heard him ſeveral Times declare, in common Converſation, that he had an Averſion to *French* Power, and he had a dread of it.

Mr. Serj. *Darnal.* What have you heard him ſay about our Fleet, or Army?

Hamond. My Lord, I have heard him very much wiſh Proſperity and Succeſs to our Fleet.

Mr. J. *Rokeby.* What Fleet, pray, Sir?

Hamond. To our Fleet, King *William*'s Fleet againſt the *French.* Things to this Purpoſe he frequently ſaid.

Mr. Serj. *Darnal.* Then Swear Mrs. *Hunt.* [*Which was done; but ſhe was not examined.*]

Sir *B. Shower.* My Lord, we leave it here. But I muſt beg the Favour, that if they give any new Evidence, and there be Occaſion, we may have Liberty to anſwer it. And I have an Obſervation or two to make when the Evidence is over.

Mr. Att. Gen. My Lord, if they have done with their Evidence, I beg leave to obſerve, that there is ſomething ariſes upon that Evidence that will give us occaſion to call a Witneſs or two more. My Lord, the firſt Witneſs which they call'd was *Edwards*, and he is in Cuſtody upon Suſpicion of High-Treaſon in *Newgate*, and he gives an Account of ſome Diſcourſe that he had with Mr. *Goodman*; and for that, it will be neceſſary for us to call Mr. *Porter* again and Mr. *de la Rue*, to ſhew that this *Edwards*, the Witneſs, as he is committed for Suſpicion of High-Treaſon, ſo he was in the Conſpiracy for the Aſſaſſination; he was one in the Liſt that was brought back by *Cranburne* from Mr. *Charnock* to Captain *Porter*, as one of *Charnock*'s Men, and he is in Cuſtody for it. Then as to the other Matter, they have called three Witneſſes to prove, That Mr. *Goodman* was not in this Place at this Time. The Counſel indeed opened it, that he was not at the Tavern till after my Lord of *Ayleſbury* and my Lord *Montgomery* were gone away; but their Evidence goes further, That he was not there at all: And the Maſter of the Houſe ſays, he was not there to his Knowledge at any Time. So that if their Evidence prove any Thing, they prove that he was not there at all; they do not remember that they ſaw him there: So that the Quſtion will be, whether Mr. *Goodman* was there at that Time? And it will be neceſſary to call Mr. *Goodman* again, and Mr. *Porter*, to confront theſe Witneſſes, who will tell you when he came in: And particularly as to my Lord of *Ayleſbury*, that he went with him to the Stairs-head, and my Lord would not let him go further, but he went back again when my Lord of *Ayleſbury* went down Stairs. We will begin with the Witneſſes, as to this *Edwards.*

Swear Mr. *De la Rue.* [*Which was done.*]

Mr. *Conyers.* Mr. *De la Rue*, Pray do you know Mr. *Edwards* that was here?

Mr. *De la Rue.* He goes by ſeveral Names; I know him by the Name of *Douglas:* And laſt *Monday* I came into the *Preſs-Yard*, and ſaluted him by the Name of *Douglas*, and he ſaid he had taken his own Name again, by which he was known at St. *Germains*, and that was *Edwards* or *Richards*, as I remember, or ſome ſuch Name.

Mr. *Conyers.* When was he at St. *Germains?*

Mr. *De la Rue.* About three or four Years ago.

Mr. *Conyers.* Pray look upon him, ſee if you know him.

Mr. *De la Rue.* I know him very well, there he ſtands, that is the Perſon in the black Wig; he was reputed at St. *Germains* to be my late Lord *Dundee*'s Chaplain.

Mr. Att. Gen. What Name did he go by at St. *Germains?*

Mr. *De la Rue.* I can't very well tell: But he ſaid he had taken his own Name again; and I think he ſaid it was *Edwards* or *Richards.*

Mr. *Conyers.* Did he go formerly by the Name of *Douglas?*

Mr. *De la Rue.* Yes, here in *England*; Mr. *Porter* knew him to go by that Name.

Mr. Att. Gen. What elſe do you know of him?

Mr. *De la Rue.* The Liſt that Mr. *Cranburne* carried from Mr. *Porter* to Mr. *Charnock*, and which he brought back again from Mr. *Charnock* to Mr. *Porter*, had in it, among the other Names, the Name of *Douglas*, which I underſtood to be that Gentleman.

Mr. Att. Gen. Did he go by that Name at that Time?

Mr. *De la Rue.* Yes, he did.

L. C. J. Treby. Pray repeat that again, Sir, that we may underſtand it, and ſee whether it be Evidence.

Mr. *De la Rue.* Why, Sir, the Liſt that Mr. *Cranburne* brought from Mr. *Charnock* to Mr. *Porter*, at the Foot of the Liſt which Mr. *Porter* had ſent to him, there were other Names written, as I believe, in Mr. *Charnock*'s Hand; and among thoſe Names there was the Name of *Douglas*, which I underſtood to be this Mr. *Edwards*, as he calls himſelf. And moreover, when Mr. *Porter* went out of Town, going to *Doctors Commons* I called at Mr. *Charnock*'s, and he had a great deal of Company with him, four or five Troopers, and among the reſt this *Edwards* or *Douglas* was there ſitting by him. Here is a Gentleman that I ſee upon the Bench, I think he is a *Scotchman*, that knew him at St. *Germains* as well as I. I think his Name is *Macdonnel.*

Mr. *J. Rokeby.* What Countryman did you take this *Edwards* to be?

Mr. *De la Rue.* A *Scotchman*, and Chaplain to my Lord *Dundee* that was killed in *Scotland.*

Mr. Serj. *Darnal.* Did you ſee this Gentleman in *France*, Sir?

Macdonnel. I never was in *France* in my Life.

Mr. Att. Gen. You can't ask him the Queſtion: You know it tends to make him either accuſe or excuſe himſelf of a Crime. Pray, call Mr. *Porter* again. But in the mean time, till he comes, we'll examine Mr. *Goodman*, becauſe he is here. Mr. *Goodman*, you were by, and heard what theſe Drawers ſaid concerning your being at the *Old-King*'s-*Head* in *Leaden-hall-ſtreet* that Day. Pray, give an Account when you came in, whether you ſaw my Lord of *Aylesbury*, and what paſſed between you at my Lord of *Aylesbury*'s going away?

Mr. *Goodman.* Mr. *Porter* brought me up; and when I came in they were all ſitting; and after Salutation I ſat down: And when they had conſulted ſome Time, they came to a Reſolution, as I have told you already. The Fellows are ſo far in the Right of it, that my Lord of *Aylesbury* and my Lord *Montgomery* went away firſt; for I took my leave of them at the Head of the Stairs. Says my Lord of *Aylesbury* to me, Pray avoid Ceremony, we will go away privately as we came, in a Hackney-Coach. And as to the Maſter of the Houſe, who ſays, he does not know me, I have dined ſeveral Times there; four or five Times with Sir *John Freind:* And one particular Day above all the reſt, I remember I was not well, and I went down Stairs to the Bar, and ſaid, I pray, can you get me a little Brandy? He ſaid, Yes; he would help me to ſome of the beſt in *England.* And he brought me up ſome which I liked very well; and thinking he had a Quantity of it, I ask'd him what I ſhould give him a Gallon for a Parcel. But he ſaid, he had but a little: And I am ſure he has ſeen me there five or ſix Times.

Mr. Att. Gen. Then ſet up that *Maſter* of the Houſe, *Cock*, again. [*Which was done.*

Come, Sir, You hear what Mr. *Goodman* has Sworn, and mind it; you are upon your Oath. You ſaid juſt now, that you never ſaw Mr. *Goodman* before.

Cock. No, upon my Word, Sir, I don't know that ever I ſaw him before.

Mr. Att. Gen. Do you remember nothing of his being with Sir *John Freind* at your Houſe?

Cock. No, upon my Word, Sir.

Mr. Att. Gen. Nay, you are upon your Oath. Nor do you know nothing of your giving of him Brandy?

Cock. No, upon my Oath, I do not remember any ſuch Thing.

Mr. Att. Gen. That is a very ſafe Way of Swearing, I profeſs.

Mr. *Conyers.* He remembers the particular Time when he was Sick, and you offer'd to ſell him ſome Brandy.

Mr. Att. Gen. No, he ask'd him what he ſhould give him for it a Gallon. But, Mr. *Cock*, did you ever ſee *Goodman* in your Houſe ſince my Lord of *Aylesbury* and they were there?

Cock. No, upon my Word, Sir, I did not: And I never had but two Gallons of Brandy in my Life at a Time: And I never had any Cask, or any Thing of that Nature, to ſell any out of.

Mr. Att. Gen. Who uſed to be with Sir *John Freind* at your Houſe?

Cock. There uſed to be Mr. *Richardſon*, and Juſtice *Caſh*, and Col. *Caſh.*

Mr. *Goodman.* Mr. *Richardſon* was there that Day: I could almoſt have remembered the particular Day, but I cannot be poſitive; only we were

were in the ſame Room where the Conſultation was, at the further Part of the Room.

Mr. J. *Rokeby.* You Friend, the Maſter of the Houſe, you hear what Mr. *Goodman* ſays: He ſays he was with Sir *John Freind* at your Houſe, and being not well he aſk'd for ſome Brandy, and you told him, you'd give him ſome of the beſt in *England.* And he propounded to you then to ſell him ſome of it; but it ſeems there was no Bargain made. Do you remember any ſuch Thing of one that was with Sir *John Freind*, that ſpoke of buying of Brandy when he was ſick?

Cook. No, upon my Word, I do not.

Mr. Att. Gen. Then ſet up Mr. *Porter.* [*Who ſtood up.*] Pray, Mr. *Porter*, look upon that Man in the Black Peruke; what Name did he uſe to go by?

Mr. *Porter.* He uſed to go by the Name of *Edwards.*

Mr. Att. Gen. Had he any other Name?

Mr. *Porter.* Yes, *Douglas.*

Mr. Att. Gen. He has ſo many Names, that we don't know which is his true Name. Mr. *Porter*, pray what elſe do you know of him touching his being concerned in the Conſpiracy?

Mr. *Porter.* I know not any thing of my own Knowledge; but his Name was put down in the Liſt that Mr. *Charnock* ſent me of his Men, and Mr. *De la Rue* read his Name there.

Mr. Sol. Gen. Mr. *Porter*, you were a Witneſs upon the Trials of Sir *John Freind*, and Sir *William Parkyns*; did you give Evidence that Mr. *Goodman* was in the Room at the ſame Time when the Conſultation was?

Mr. *Porter.* Yes, Sir.

Mr. Att. Gen. Well, you hear that theſe People have ſworn, that Mr. *Goodman* did not come till my Lord of *Ayleſbury* went away; nay, indeed, that he was not there at all.

Mr. *Porter.* My Lord, upon my Oath he was there before my Lord *Ayleſbury* went away, and Mr. *Goodman* bowed, and took leave of my Lord as he went out of Doors.

Mr. Att. Gen. What time did my Lord of *Ayleſbury* go away?

Mr. *Porter.* It was about an Hour and a Half, or two Hours after Dinner, and he was in the Room when my Lord went away, for he took his Leave of him at the Door.

Mr. *Cowper.* Do you remember the Manner of Mr. *Goodman*'s coming in?

Mr. *Porter.* Mr. *Goodman* ſent up his Name to me, and I told the Company, and promis'd for him, that he was a very honeſt Man, and much in King *James*'s Intereſt; and then with their Conſent I went down and brought him up.

Mr. Juſt. *Powell.* How long time do you think there was between Mr. *Goodman*'s coming in, and my Lord of *Ayleſbury*'s going away?

Mr. *Porter.* I cannot tell that, I do not remember exactly how long it was.

Mr. Juſt. *Powell.* Was it a quarter of an Hour, or half an Hour?

Mr. *Porter.* A great deal longer, for we had diſcourſed of the whole Buſineſs after Mr. *Goodman* came into the Room.

Mr. *Conyers.* How long were they there after Mr. *Goodman* came in?

Mr. *Porter.* It was very near two Hours after he came in, before they went away; they did not go away till Six o'Clock, and he came in at Four, as near as I can remember.

Mr. Att. Gen. Then, my Lord, we have done.

Sir *B. Shower.* Then I beg the Favour of a Word or two, my Lord. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the Priſoner at the Bar, and I muſt beg your Lordſhip's Patience, and your Favour, Gentlemen, to make a few Obſervations upon the Evidence that has been given; for we humbly inſiſt upon it in point of Law, that here is not ſufficient Evidence before you to convict the Priſoner. You are, Gentlemen, to have reſpect and regard to your Conſciences and the Oaths which you have now taken, to give a Verdict, and make true Deliverance between the King and the Priſoner; you are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Caſes, nor according to the Confeſſions or Dying Speeches of Criminals who have been Executed, *whether made by themſelves, or by others for them*, but you are to go by the Teſtimony of Credible Witneſſes, and if you have not the Evidence of two Credible Witneſſes before you, my Lords the Judges will inform you how the Law ſtands. That by the Statute of *Edward* the Sixth, and the new Statute for Trials of Treaſons, there muſt be two Witneſſes to prove the Priſoner guilty of the Overt-Act of the Treaſon that is laid in the Indictment; and whether there have been two Credible Witneſſes produced before you, is the Queſtion that you are to conſider upon your Oath and Conſcience; that is, whether you are ſatisfied here be two ſuch as the Law requires. The Queſtion is not merely whether Mr. *Cook* be guilty, but whether in your Conſciences he be legally proved guilty; whether there be Evidence to ſatisfy your Conſciences, according to the Laws of the Land, that he is guilty; and we inſiſt there is not; and therefore I beg leave to recapitulate what has been ſworn againſt him, that we may ſee how far it reaches, and wherein it is defective.

Gentlemen, Mr. *Porter* he ſwears, that about the Beginning or Middle of *May*, he cannot tell which, there was this Meeting at the *Old-King's-Head* Tavern in *Leaden-Hall-ſtreet*; in which, I would obſerve to you, that he confines himſelf to a certain Month; the Reaſon is very plain, and therefore I aſked him whether it was not in *April*; for if he had ſaid it had been then, there had been no danger to the Priſoner, becauſe of the Act of Indemnity, therefore he was careful to fix it in *May*; and he would not lay it in *June*, for the Tenth of *June* is a famous Day; and then, or ſoon after, *Newgate* had him; he was confined there for a Riot on that Day, and ſo they have reſtrained it to a Month, and the only Month that he is capable of ſwearing to, as to any Act done the laſt Year till they came in *January* to the Aſſaſſination Plot, which the Priſoner is not accuſed to have had any Concern in; but it ſhou'd ſeem he cannot tell what Day of the Week, or of the Month, but about the Beginning or the Middle of *May* Eight Perſons dined at this Place, and then after Dinner Mr. *Goodman* came in, and they diſcourſed about this Matter.

Firſt, Gentlemen, we inſiſt upon it, that it is very improbable that *Engliſh* Proteſtants of pious Converſation and good Morals ſhould agree, as he ſays, to ſend ſuch a Meſſage to the late King, to invite over a *French Popiſh* Force; we may eaſily ſee the horrid and miſchievous Conſequences that wou'd have followed ſuch a Practice, ſuch as muſt affect every *Engliſhman* with a Concern, ſo that it is improbable a Man of Virtue and Piety cou'd engage in ſuch an Enterprize; and if it be improbable, you will never believe it, unleſs the Conviction or Proof be irreſiſtible: And if you have any other Reaſons to diſtruſt this Man's Truth, then we hope you will go upon the Side of Probability; and not let popular Prejudice, common Fame, or any Thing elſe but legal and undeniable Evidence have the Aſcendant over you. If you are not ſatisfied that Mr. *Cook* did aſſent (as from the Character of the Man it is not probable he ſhou'd) to ſend *Charnock* into *France*, to perſuade King *Lewis* and King *James* to ſend Ten Thouſand Men to invade our Country, then he is not guilty.

In the next Place, Gentlemen, he is not guilty we ſay in the Eye of the Law, if they have not two Witneſſes; and for that we ſay you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one, and conſequently my Client is not guilty; ſo the King's Counſel agree, that if there be but one Witneſs, he cannot be convicted, the Law is plain in the Caſe. Now to make it out that here is but one Witneſs at moſt, we have offered you ſeveral Objections, and made them out by Evidence, againſt the Teſtimony of Mr. *Goodman*; that he is not a Perſon fit to be believed; and if he be out of the Caſe, then does Mr. *Porter* ſtand alone, and all will amount but to one Witneſs, ſuppoſe it ſhou'd be granted that his Teſtimony were true.

Firſt, We have read a Record of Conviction againſt him, of a Crime, one of the Greateſt next unto Treaſon, that is known in our or any other Law. That he hired a Man to poiſon two Dukes, Branches of a Noble Family, to which he had ſuch great Obligations, as all Mankind do know, and he himſelf cannot but acknowledge; and if there were not that Aggravation in it, of his Obligations to that Family, yet to lie in wait to Murder and Poiſon, is ſuch an Offence as any Age can ſeldom ſhew the like. And the Objection is not ſo very eaſily anſwered as they would have it; nor can it be ſo ſoon paſſed over as they think, by ſaying He is a Witneſs of a Confederacy with which the Priſoner is accuſed, a Crime greater than the Thing objected. It is true, none can bear Teſtimony in ſuch a Buſineſs but he that is a Party: But, we ſay, if theſe Perſons who come and ſet up themſelves for Witneſſes, were not *probi Homines*, and did not appear to be Perſons of indifferent Credit between Man and Man, and did not ſtand impartial in the Eye of the World in other reſpects before, then they are not to be believed, as to what they charge themſelves and others to be guilty of. Now, if Mr. *Goodman* ſtand convicted of ſuch an Offence as this that is alledged againſt him, though he is pardoned by the Act of Parliament, or Satisfaction acknowledged upon the Record, though it be even the very next Term, yet that does not purge him from the Infamy and Diſgrace, or from the Imputation of being concerned in ſo Villainous a Deſign. It is impoſſible that he ſhould be a good Witneſs that wou'd be engaged in ſuch a Matter, eſpecially when we have thoſe various Witneſſes, and ſuch a concurring Teſtimony, that what he has Sworn is abſolutely falſe.

Gentlemen, If there were nothing but his own Teſtimony in the Caſe, there would be no Queſtion at all in it: And as to Capt. *Porter*'s Teſtimony about his being there, we have produced three Witneſſes, who, if they be of Credit, then Mr. *Goodman* is not to be believed, but is falſified throughout; for it is not the Queſtion, whether Mr. *Cook* went away before the Conſultation and the Reſolution; for if my Lord of *Ayleſbury* or my Lord *Montgomery* went away, Mr. *Goodman* is falſified in that, and conſequently you ought not to believe him in the reſt; for he actually ſwears, that my Lord of *Ayleſbury*, my Lord *Montgomery*, and thoſe other Gentlemen, were all preſent, and at the Conſult, and did conſent and agree to the Reſolution, by uſing theſe Words; *Yes, you may*; *Yes, you may*. Now, we ſay, there are three Witneſſes that ſwear, That my Lord of *Ayleſbury* was gone before he came there. I do not care whether he came there or not; thatis not material: For if there were nobody there when my Lord of *Ayleſbury* was there but thoſe that were at Dinner, then Mr. *Goodman* was not there at any ſuch Conſultation, as they would inſinuate was at that Time, in that Place, and that Company.

My Lord, we have proved to you Mr. *Cook*'s Abhorrence and Declaration, which, we think, ought to go a great Way in Satisfaction of his Innocence, at leaſt to induce you to the favourable Side; for, Gentlemen, you are not brought hither to Convict a Man only, but to Try and Examine him, and it is your Duty to Acquit, as well as Convict, according as the Evidence ſtands: It is your Duty to go according to your Conſciences, and to declare whether he be Guilty or Not Guilty, upon the Evidence you have before you: You are to examine the Truth of the Fact in all its Circumſtances, and upon your own Conſciences to declare, whether he is Guilty or Not Guilty; now we propoſe it to you, and ſubmit it to your Conſciences, that here are three Witneſſes that ſpeak upon their Oaths, againſt whom there is no Objection, that ever they were guilty of lying in wait to Poiſon any Body, nor in any Plot for an Aſſaſſination, nor any Conſpiracy for inviting an Invaſion from *France*, nor any other Objection againſt them, but they ſtand upright in the Face of the World, and they three ſwear, That he was not there at that Time. The Anſwer that we expect, is, That he might be there, and they not ſee him: And becauſe it was poſſible he might be there, and they not ſee him, therefore it is no Evidence: But, my Lord, becauſe it may be ſo, is no Evidence that it is ſo; that's no Objection; for you will take it as the Nature of the Thing will afford, and the Matter itſelf allow. Now there can be no better Evidence than this; that they went in and out continually; the Drawers, and the Maſter of the Houſe five or ſix Times himſelf, were in the Room, and they ſay, there was no ſuch Perſon there. Why then it is very improbable, if not impoſſible, that any ſuch Man ſhould be there. The one ſwears, he came down from my Lord of *Ayleſbury* juſt before he went away; and another ſays, he followed him out of the Room; and the Maſter ſays, that he met my Lord of *Ayleſbury* at the Stairs-head. All which falſifies Mr. *Goodman* in that Particular, that he was with my Lord of *Ayleſbury* at the Stairs-head, when he went away. Theſe are incompatible; and if we falſify him in any one Thing, he is not to be believed in any other.

Then,

Then, Gentlemen, we offer to your Conſideration an Anſwer to another Objection: They ſay theſe Witneſſes ſeem to ſwear, that he was not there at all. We are not concerned whether he was there afterwards, or not: If you are ſatisfied, that he was not there, as our Witneſſes ſwear, while my Lord of *Ayleſbury* was there, that's enough. But then they make an Objection, How comes the Maſter of the Houſe to remember my Lord of *Ayleſbury*'s going away, more than any Body elſe? Gentlemen, you know the Nature of the Thing ſhews, not only that it was more probable the Maſter of the Houſe ſhould make his Obſervations near the Time of Dinner, rather than afterwards at Night, when there is more Hurry: But it is more probable he ſhould take notice of it from the Quality of the Perſon, from the Diſcourſe he had with him about the White-wine, which was a good *Medium* to refreſh a *Vintner*'s Memory, it being a Matter in his own Trade, and that might make him call it to mind.

Therefore, Gentlemen, we think theſe three Witneſſes ſtand free and clear in their Credit; and being ſo, are inconſiſtent with Mr. *Goodman*'s Teſtimony; and we hope, in favour of Life, the Credit inclines on their Side, eſpecially when the Queſtion is, whether a Man ſhall be excuted for *Treaſon* who never fled for it, who was never charg'd with any *Treaſon* or *Treaſonable Practices* before; nay, not ſo much as with any particular *Crime* or *Immorality:* And whether three Witneſſes ſhall be believed againſt whom there is no Objection, rather than Two, againſt One of which there are ſuch Objections.

My Lord, we are not now debating or attacking the Evidence of the *Plot*, or arraigning the former Judgments againſt the *Conſpirators* that have ſuffer'd; but, Gentlemen, we are putting you upon a ſerious Enquiry, (as God and your own Conſciences ſhall incline you) whether our Client be guilty or not guilty upon this Evidence; that is, whether Mr. *Goodman* ſwears true, or not. We hope that we have given you ſufficient Satisfaction, that upon Mr. *Goodman*'s Part the Evidence is inſufficient; and we hope you will accordingly find our Client not guilty.

Mr. Att. Gen. If Mr. *Cook* have any thing to ſay himſelf, I deſire he may ſay it now, before we begin.

Sir *B. Shower.* No, pray go on, Sir.

L. C. J. Treby. Mr. *Cook*, wou'd you ſay any Thing yourſelf, before the King's Counſel ſum up?

Cook. The little I have to ſay, my Lord, I'll ſpeak now, or by and bye, which you pleaſe.

L. C. J. Treby. You muſt do it now, becauſe after they have ſumm'd up, there is nothing more to be ſaid by you.

Cook. My Lord, I thank God, I have lived a Life, I hope, as good as any Man, and have often received the Bleſſed Sacrament; I have done it conſtantly, and ſhall do it ſpeedily, by the Grace of God, as ſoon as I can have a Miniſter come to adminiſter it to me. I did offer it to my own Father, when he came to me, and told me, *If I would confeſs this Thing I ſhould not come to Trial:* I told my Father, I would not for Ten Thouſand Worlds take away the Blood of an innocent Man to ſave mine. I thank God, I am in a very good Way to die; I have, for at leaſt this laſt Year, frequently received the Bleſſed Sacrament; and how I have liv'd, every Body in the Court that knows me can tell my Life and Converſation has been as regular as any Man's, and I am as ready to die to-morrow, if Occaſion was for it (I thank God) as any one; I will receive the Bleſſed Sacrament upon it; and it is not for Life that I would do any Thing that is wrong or unjuſt: I do love my Nation, and I love the Quiet of the Nation; I never was for diſturbing the Government that now is; and I ever was againſt Foreign Forces or an Invaſion, for I never thought of one, or heard of it, but with Abhorrence and Deteſtation: And I do aſſure faithfully, I ſhou'd be ſorry to diſparage Mr. *Porter*'s Evidence, becauſe I would have every Body that was concerned in that Horrid and Barbarous Crime to ſuffer; in God's Name, let them all ſuffer. I thank God, I never knew any thing of it, nor of a *French* Invaſion: And I would ſay more of it, but that I would not hurt Mr. *Porter*'s Evidence, whoſe Diſcovery of that bloody Buſineſs has done ſo much Service. As for Mr. *Goodman*, as I hope to receive the Bleſſed Sacrament, and may I periſh when I do it, if I ſpeak an Untruth; I would not for any Thing, no, not for the Good of my Country, have innocent Blood ſpilt; I would lay down my Life to ſerve my Country, but I would not have my Blood be lightly loſt; and how little a Man ſoever I am, my Blood will lie as heavy upon the Nation as any the weightieſt Man's can do. I do not doubt your Lordſhip's Juſtice, nor the Jury's; but I pray, my Lord, obſerve, though it is uſual not to own Things at the Bar, yet do not make this Denial as of Courſe, but out of Truth; and I do aſſure you, in the Preſence of the whole Court, if I ſhould ſuffer for this, I muſt at my laſt Moments either confeſs or deny ſomething: And, I ſay, I do aſſure, in the Preſence of the whole Court, and I will take the Bleſſed Sacrament upon it, that I muſt, at my Death, deny this whole Matter, and that ever I did ſee Mr. *Goodman* at all there; I do not think I ſaw him: I do not remember I ſaw Mr. *Goodman* at all, except once in *Germain-ſtreet*, when the Coach broke, and that muſt be but in paſſing by neither, and he would have hurt or kill'd the Coachman, and we kept him from it; and I walk'd with him half the length of *Germain-ſtreet*, before I knew who Mr. *Goodman* was. If ever a one of thoſe Gentlemen, that are Men of Credit and Honour, can ſay I was any ways ſo inclined, or that they ever ſaw me, or knew me, that I ever bought a Piſtol or a Blunderbuſs, or the like, may God ſink and ſtrike me dead; and the Bleſſed Sacrament, which I intend to receive, be my Curſe and Damnation, if I knew of King *James*'s Coming, till after the whole Town rang of it: I had no Hand in the Invaſion; and, beſides my Abhorrence of introducing foreign Force, I deſire your Lordſhip and the Jury to conſider the Circumſtances of my Caſe, that I had but a very ſmall Allowance from my Father, and therefore it is not probable I ſhou'd take upon me to join with my Lord of *Ayleſbury*, and my Lord *Montgomery*, and thoſe other Gentlemen, to ſend Mr. *Charnock* into *France* to invite over a Foreign Force: And I call God to witneſs I had no Hand in it. I beg your Lordſhip's Pardon for all this Trouble; I would not hurt Mr. *Porter*'s Evidence, for the Reaſons that I have told you; but this ſo much value that as I do Truth and Sincerity my Life, and I don't Bleſſed Sacrament, if I die, that I never did do nd I ſhall receive the take the Oaths, nor did I ever refuſe them, bec. Indeed I never did offer'd me; but I would take the Oaths now if they w they were never offe-'d me. My Lord, I beg your Pardon for this Trouble.

L. C. J. Treby. Have you done, Sir? Have you ſaid all you would ſay?

Cook. Yes, my Lord.

L. C. J. Treby. Then, you Gentlemen of the King's Co el, will you conclude?

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King, and I could have en very glad this Gentleman's Defence that he has made had been ſtron er than in Truth it has been: And I ſhould have been very glad too, that his Counſel had been able to have made it better for him; but that he and they may be ſatisfied, as much is done as the Caſe will bear; they have had all the Liberty in the World to make his Defence they could deſire, nay, more than in Strictneſs could be allowed them.

Gentlemen, our Evidence is very poſitive againſt the Priſoner at the Bar, and for the higheſt Crime that the King's Subjects can be guilty of, by the Confeſſion of the Gentleman himſelf and of his Counſel. We have, I ſay, two poſitive Witneſſes againſt him; they ſay they are not legal ones: I muſt own, if we have not two Witneſſes, we have never an one; for whatſoever falſifies Mr. *Goodman*'s Teſtimony, falſifies whatſoever Mr. *Porter* has ſworn. Now, the Evidence that Mr. *Porter* has given againſt him is this: He ſays, There was to be a Meeting at the *King*'s-*Head-Tavern* in *Leaden-Hall-ſtreet*, and there they conſulted of the Methods to bring back King *James* hither; and it was thought the beſt Way to ſend to King *James* to invite the *French* King to ſend 1000 Horſe, 1000 Dragoons, and 8000 Foot, to Land here in this Kingdom, where they would meet him with 2000 Horſe. They pitch'd upon a very proper Meſſenger, Mr. *Charnock*, a Perſon that has been attainted, and has ſuffer'd for High-Treaſon; he was to be ſent into *France* upon this Errand; Mr. *Cook*, the Priſoner at the Bar, was one of the Perſons that were there at that Time, and he was conſenting to this Meſſage; and Mr. *Porter* gives you a particular Token relating to the Priſoner, for he remembers the Priſoner did kneel upon the Chair, and lean'd his Elbows upon the Table when he conſented.

Mr. *Porter* goes further, and tells you, That Mr. *Charnock* would have another Meeting, to know and ſee whether all the Company were of the ſame Mind they had been; and, That afterwards they met at Mrs. *Mountjoy*'s Houſe, and there the Priſoner at the Bar was preſent, and conſenting to the ſame Thing; Thereupon Mr. *Charnock* went into *France*, and came back again, and ſaid, The *French* King could not ſpare ſo much Force. Mr. *Goodman* gives the ſame Evidence that Mr. *Porter* had given: It's true, he was not at Mrs. *Mountjoy*'s Tavern, but he tells you withal, he ſpoke with Mr. *Charnock* when he came back from *France*, and *Charnock* return'd him the ſame Anſwer he did to Mr. *Porter*, That the *French* King could not ſpare ſo many Forces. This is the Evidence in ſhort, Gentlemen, that is given againſt the Priſoner; and if this Evidence be true, then he is guilty of the Crime for which he is indicted.

Againſt theſe Witneſſes they have produced, firſt, a Record of Conviction againſt Mr. *Goodman*, and that was for Hiring one *Amydei* to poiſon the Duke of *Grafton* and the Duke of *Northumberland:* They have produc'd the Record, whereby it appears, he was Convicted, and Fined 1000*l.* and was to find Security for his good Behaviour during Life; and he was to lie in Priſon till the Fine paid, and Security g ven: But it happens, in that very Record it appears there was Satisfaction acknowledg'd upon that, even the very next Term; and that gives a great deal of Suſpicion to believe, that the Evidence that was given was not much credited; for, though the Counſel for the Priſoner has ſaid, that it was the Payment of the 1000*l.* that was the Satisfaction; no, it is not ſo, it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They ſay he was not able to pay the Fine, and there is nothing appears of the other Parts of the Judgment being complied with, but the whole Judgment is ſet aſide.

But all this does not make a Man *no Legal* Witneſs; if they thought this Conviction tended to ſet aſide his Evidence, they would have produc'd it at another Part of the Trial, than where they did: That is, when Mr. *Goodman* was firſt call'd to be ſworn as a Witneſs, then they ſhould have produced this Record, and ſaid he had been no Witneſs: But they knew well enough that that was no Exception againſt the Legality of his Evidence, but tends only to his Credit, and nothing elſe. Now, though it be a black Crime to endeavour to poiſon another, yet that does not totally deſtroy any Man's Credit; if it did, then the other Gentleman, Mr. *Porter*, has confeſs'd himſelf guilty of a greater Crime than that for which Mr. *Goodman* is convicted by this Record; for he owns himſelf one that was in that Deſign of Aſſaſſinating the King. And Mr. *Goodman* owns himſelf too guilty of a greater Crime than what's objected to him, which is that of *High-Treaſon*; and, I hope, if he may be believed, when he owns himſelf guilty of *High-Treaſon*, which is a greater Crime than Poiſoning a private Subject; or guilty of ſuch a Deſign as the Aſſaſſination of the King, which Mr. *Porter* has charg'd himſelf with, and notwithſtanding which, they have not offer'd that as an Exception againſt Mr. *Porter*'s Evidence, (for they very well know his Evidence has been receiv'd, and credited:) Mr. *Goodman* may be credited, though guilty of the Crime objected to him: And the conſtant Practice in all Trials of this kind hath been, that it does not take away the Witneſs's Evidence, however it affects his Credit, which in this Caſe is ſupported by the concurrent Teſtimony of Mr. *Porter*. And ſo then, I ſay, we have two legal Witneſſes (notwithſtanding all the Exceptions) to prove Mr. *Cook* guilty of the Crime for which he is indicted.

Then they go on further, and produce other Witneſſes: Firſt, they produce one *Edwards*, a Perſon that is committed for *High-Treaſon* himſelf, and under Suſpicion of his being to be one of thoſe that was to have a Hand in the Aſſaſſination; but his Evidence goes no further, than that

Mr.

be a Witneſs againſt Mr. *Cook*, and either Mr. *Goodman* told him he would ſuffer; and, That it was a fooliſh he the Witneſs, or Mr. *Cook*, there is nothing at all in this Matter that thing to be hang'd. My Evidence: It is very plain Mr. *Goodman* had takes away Mr. *Good*ſt do ſomething to ſave it, and I think he could forfeited his Life, a to entitle himſelf to the King's Mercy, than to diſ- not do a better Se equally guilty with himſelf. 'Twas his Duty to have cover thoſe that not been in Danger; and if he hath done no more than done it, if he uty, I hope that is no Objection againſt his Teſtimony. what was hi produced likewiſe a Drawer of the *King's-Head Tavern*, one They h and he ſays he attended in this Room while this Company *Crawfor* e. But then he goes a little further than the Counſel, or the was t r would have had him; for they called him to prove that Mr. Priſ *man* was not there when my Lord of *Aylesbury*, my Lord *Montgomery*, G d Mr. *Cook* were there. But when the Drawer comes, he knows nothing of Mr. *Goodman*'s being there at all: He ſays, Mr. *Cook* was there, but not Mr. *Goodman*; and yet he does acknowledge, that Mr. *Goodman* might be there, and he not ſee him come up. He acknowledges he attended upon other Company as well as this; ſo that it is plain in the Nature of the Thing, and his own Confeſſion, that *Goodman* might be there. This cannot take off the poſitive Evidence of Mr. *Goodman*, and Mr. *Porter*, who both ſwear, That *Goodman* was there.

But then they produce another Drawer, and that is one *Huntly*; and he gives the ſame Account; only indeed he ſays, He was there all the while they were at Dinner: But that is nothing, becauſe it is acknowledg'd both by Mr. *Porter* and Mr. *Goodman*, That he was not there at Dinner-Time, but he might be there after Dinner, and yet *Huntly* could not ſee him at Dinner: He tells you likewiſe, he paſs'd up and down in the Room afterwards, and did not ſee Mr. *Goodman* there; but yet he might be there, and he not ſee him.

Then they produce the Maſter of the Houſe, and he gives much the ſame Evidence in Effect which his Servants do, That he did not ſee Mr. *Goodman* there all the while; but he ſays ſomething that is a little incredible; He can be poſitive that Mr. *Goodman* was not there while my Lord of *Aylesbury* was there, but he cannot be poſitive he was not there afterwards. He tells you, he met my Lord of *Aylesbury*, and my Lord *Montgomery* upon the Middle of the Stairs coming down, and he is ſure Mr. *Goodman* was not in the Room at that Time. Now, is that poſſible that he can be ſure of that, when he owns, (and cannot but own) That Mr. *Goodman* might go into the Room, and he not ſee him: So that he has made a ſtrain in his Evidence that it is very little to be credited, which was not deſigned ſo much for the Advantage of Mr. *Cook* as for the Advantage of ſomebody elſe: And, in itſelf, it is almoſt an impoſſible Thing that it ſhould be true, by what he offers as the Reaſon of his Evidence.

But then, Gentlemen, you are to conſider, that all theſe three Witneſſes, if they ſwear true, do falſify not only Mr. *Goodman*, who ſwears, That he was there; but they likewiſe falſify the Evidence of Mr. *Porter*; and for that Reaſon I ask'd Mr. *Porter* the Queſtion, Whether he did not give the ſame Evidence againſt Sir *John Freind?* And if what he ſwears now be not true, neither was it true when Sir *John Freind* was try'd, for he was the only Witneſs at that Time againſt Sir *John Freind*, for this Meeting; and therefore theſe Men's Teſtimony tends to overthrow both Witneſſes as well as one: And I muſt tell you, that if Mr. *Goodman* be not a legal Witneſs, becauſe he has ſworn a Thing that is not true, then Mr. *Porter* is not a good Witneſs, who has ſworn the ſame Thing, *viz.* That Mr. *Goodman* was there; and then you ought to acquit the Priſoner, becauſe there is no Witneſs againſt him at Law; for there is the ſame Evidence againſt Mr. *Porter*, that there is againſt Mr. *Goodman* as to this Matter.

Then, Gentlemen, as for the Character of Mr. *Cook*, they ſay he is a good *Engliſh Proteſtant*, I hope he is ſo; but it is plain, that Religion does not vary the Caſe: 'Tis within the reach of every Man's Memory that is here, that the ſame Things have fallen upon other Gentlemen that have had the ſame Character, particularly Sir *John Freind*, and Sir *William Parkyns*, who both ſaid the ſame Things, in the ſame Place, That they were *True Proteſtants* of the *Church* of *England*. But that is no Manner of Evidence that will be Weight againſt poſitive Oaths.

Now, Gentlemen, it is fit likewiſe you ſhould reflect upon another Thing: What is it that ſhould engage Mr. *Porter*, and Mr. *Goodman*, or invite either of thoſe two Gentlemen to give a falſe Evidence againſt the Priſoner at the Bar? It does not appear that there was any Injury done by him to them, to provoke them to it; ſo that it could be for nothing but for the ſake of Truth.

It has been further ſaid on the behalf of Mr. *Cook*, That he abhorred the *French*, and any Invaſion upon his Country, and the like: It is a Matter that is eaſily ſaid; and it has been ſaid by others that have been in the ſame Place where he now ſtands, That they hated all Plots, and they might puniſh them if ever they caught them. But theſe are only Sayings, and nothing elſe. If there can be any Conſtructions made of the Evidence given by theſe two Witneſſes, that does not directly prove the Indictment, then the Priſoner ought to be acquitted: But if there can be no other Conſtruction made, but only, That there was a plain Deſign to ſend *Charnock* into *France* to King *James*, to perſuade him to prevail with the *French* King, to come and invade us with a Foreign Force: And if our Witneſſes are legal Witneſſes, (as, I doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of *Goodman*, but only that he was in ſuch a Deſign of Poiſoning the two Dukes, which is really no Objection of Diſcredit to his Teſtimony;) then, with Submiſſion, I think there is no Room left for you, Gentlemen of the Jury, to doubt, but that the Priſoner is as guilty of this Crime laid to his Charge, as any others that have been try'd and condemn'd for the ſame: And ſo, Gentlemen, I leave it to you.

L. C. J. Treby. Mr. *Conyers*, and Mr. *Cowper*, will you ſay any Thing to this Matter?

Mr. *Conyers*, and Mr. *Cowper*. No, my Lord, we ſubmit it entirely to your Lordſhip's Direction; we have done on all Sides, we think.

L. C. J. Treby. Gentlemen of the Jury, the Priſoner at the Bar, Mr. *Cook*, ſtands indicted here for *High-Treaſon*; there are laid in the Indictment two Sorts of Treaſon; the one is Compaſſing and Imagining the Death of the King, the other is adhering to the King's Enemies. The Evidence to prove theſe Treaſons ſeems to be joint; for, as to that of Compaſſing and Imagining the King's Death, as well as to the other, the Overt-Acts are meeting and conſulting about the Treaſon, and then agreeing and reſolving to invite and procure an Invaſion from *France*, and to meet that Invaſion with an Inſurrection here. And the Evidence is apply'd *entirely* to prove theſe *Acts*.

Gentlemen, that theſe are proper *Overt-Acts* of Compaſſing the King's Death, I need not inform you, the Law is very well known; and the Priſoner's own Counſel do acknowledge, that theſe are ſufficient Overt-Acts of Compaſſing and Imagining the King's Death: So that all which they defend him by is, the Improbability of the Teſtimony given againſt him.

Now, Gentlemen, you are to conſider and weigh well the Evidence that has been given. By Law, it is true, as they obſerve, there muſt be *two* Witneſſes. Here is no Defect of Number; that's acknowledg'd too, here are two Witneſſes; but the Queſtion is, Whether here be two Witneſſes that deſerve Credit, and upon whoſe Teſtimony you can find that the Priſoner is guilty? The Witneſſes, Gentlemen, are Mr. *Porter* and Mr. *Goodman*.

Firſt, For the Matter of their Teſtimony, it is poſitive from them both; that you'll do well to obſerve. Mr. *Porter* tells you, That in *May* laſt, (which is now juſt a Twelvemonth) there was a Meeting of eight Perſons, that is, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr. *Charnock*, Mr. *Cook* the Priſoner at the Bar, and the Witneſs himſelf, Mr. *Porter*; and this was at the *King's-Head* Tavern in *Leaden-hall-ſtreet*, and there theſe Eight dined, and this was in order to conſult about an Invaſion, together with an Inſurrection intended to be made for the Reſtoring of the late King. After Dinner comes in Mr. *Goodman*, he ſays, and then they purſued this Conſultation, and came to a Reſolution to ſend Mr. *Charnock* into *France*, and the Meſſage was agreed upon which he ſhould carry; and he was to go to the late King, and ſolicite him to obtain 10,000 Soldiers from the *French* King, whereof 8000 ſhould be Foot, 1000 Horſe, and 1000 Dragoons. Theſe were to make up the 12,000 Men to invade this Kingdom. And they reſolved alſo, when this Force ſhould land, they ſhould meet and aſſiſt this Invaſion with a joint Force, that ſhould conſiſt of 2000 Horſe. And to acquaint and aſſure him of this, was the Meſſage. But, he ſays, That Mr. *Charnock* was very cautious in it, and would not preſently go upon this Errand, but he would have further Aſſurance that they were in earneſt, and would make good what they did ſend him to propoſe, therefore he would have a ſecond Meeting; and a ſecond Meeting was had, and that was at Mrs. *Mountjoy*'s Tavern, and there they did renew the ſame Reſolution; and there were preſent my Lord of *Aylesbury*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Freind*, Mr. *Charnock*, the Priſoner at the Bar, and himſelf; he does not know or remember whether my Lord *Montgomery*, or Mr. *Goodman* was there. He ſays, Mr. *Charnock* did accordingly go into *France*, and he did return and bring back King *James*'s Thanks to them, but their Deſire could not be comply'd with; and he had his Share of the Compliments.

Now comes Mr. *Goodman*, and he ſays, That about the ſame Time, *viz. Mid-May*, Mr. *Porter* acquainted him, there would be a Meeting of ſome of King *James*'s Friends, at this Tavern in *Leaden-hall-ſtreet*. He ſays, That he did tell Mr. *Porter*, he doubted he ſhould not be there at Dinner, but he would come as ſoon as he could after Dinner; and according to Appointment, he did come after Dinner, and there was this Conſultation and Reſolution that Mr. *Porter* ſpeaks of, and ſays, That Mr. *Charnock* afterwards told him, he had been in *France* with the late King, and brought back the ſame Anſwer that Mr. *Porter* ſpeaks of; and he had the Honour of Thanks from the late King too.

Gentlemen, I muſt obſerve one Thing to you, which does go very much towards the Confirming what theſe Witneſſes ſay, and that is the Agreement in their Teſtimonies, tho' they were examin'd *apart* at the Deſire of the Priſoner: You will find they agree in theſe ſeveral Circumſtances, in the Time, that it was this Time twelve-months; in the Place, that it was at this Tavern; in the Number of Perſons that were there, which was Eight before Mr. *Goodman* came in; in the Number of Horſe, Foot, and Dragoons that were to be brought from *France*, and in thoſe Horſe that were to meet them here: and beſides, in thoſe Words of Diſcourſe upon the Conſultation and the Reſolution. And there is one Circumſtance more in which they do agree, and which is very particular: That when they came to deliver their Conſent to this Meſſage that Mr. *Charnock* was to carry, the reſt ſat, and Mr. *Cook* the Priſoner did kneel upon the Chair, and lean'd upon the Table. And this both of them do agree in. And after all the many Queſtions ask'd in their ſeparate Examination, I do not find they diſagree in any Part of their Evidence. So that, Gentlemen, there can remain no Queſtion now, but whether theſe two Wineſſes are Men of Credit? or, whether there has been oppoſed to them any ſuch Evidence as will make you believe, that (if not both) at leaſt one of them has forſworn himſelf? They do produce nothing againſt Mr. *Porter*, whatſoever may have been produc'd at former Trials againſt his Credit: Perhaps what has been before has ſatisfied the Objectors, and there is nothing appears againſt his Credit; but he is not only a *competent*, but a very clear, good, credible, and undoubted Witneſs.

But againſt Mr. *Goodman* they offer ſeveral Things, which they ſay amount to a violent Preſumption that he is not to be look'd upon as a credible Witneſs: And firſt, they produce a Record of a Conviction upon an Information againſt him, for attempting to poiſon two Noble Dukes: This he was convicted of, and fin'd 1000*l.* and ordered to find Sureties for his good Behaviour during his Life. But to this it is anſwered, that it appears in the ſame Record, that Satisfaction was acknowledged of the 1000*l.* and all the reſt of the Judgment the very next Term, and he was forthwith diſcharged, and that without paying the Money, which ('twas obſerv'd) the Priſoner's Counſel ſaid Mr. *Goodman* was not able to pay at that Time,

no more than he could 20,000 *l.* and thereupon the King's Counsel say, that the Government was convinc'd that he was wrong'd by a causeless Prosecution, and the Evidence against him was found not to be credible. And besides, Mr. *Goodman* stands pardoned by several Acts of Pardons, as well as other Subjects.

Then they produce one *Edwards*, who is a Prisoner here, and committed for Suspicion of High-Treason, and for Treasonable Practices: He is, no doubt of it, a Witness for all that: For that is but an Accusation upon him, and does not take away his Credit. He tells you of a Discourse that he had with Mr. *Goodman*, and that *Goodman* ask'd him when the Prisoner was to be try'd; and he told him he wou'd be try'd such a Day; and when it was ask'd what it was for, it was answer'd, Not for the Assassination, but for sending Mr. *Charnock* into *France*. He ask'd then who were the Witnesses against him? Mr. *Goodman* said, Mr. *Porter* and himself. And further said, That he understood that Mr. *Cook* had sworn against him (though he would give an Account of nobody else) and had no Pardon, and either he must hang, or himself. And then he talk'd lightly of the Business of Hanging, and said it was a foolish Thing to be hang'd, for all that People would say, was, that such an one hang'd *handsomely*, or dy'd *bravely*. This indeed is a Sort of Discourse as if Mr. *Goodman* did apprehend himself in Danger from Mr. *Cook*'s Evidence; and yet I cannot see that it does at all falsify the Evidence of Mr. *Goodman*: He may be a true Witness, and yet he might say he was to give Evidence against Mr. *Cook*, and it was in Mr. *Cook*'s Power to give Evidence against him, and that truly; and if both were in the Guilt, they were in Danger of one another. But for a further Answer, the King's Counsel have produc'd Mr. *De la Rue*, who says, That he knew Mr. *Edwards*, and that he was a *Scotchman*, and reputed Chaplain to the Viscount of *Dundee*; that he went formerly by the Name of *Douglas*, and by that Name he was set down and described in the List that Mr. *Charnock* sent to Captain *Porter*; and to that Name he answer'd in the *Press-Yard* lately. Now it is certain, that Mr. *Charnock*'s putting of his Name in that List, is no Evidence of his being guilty in Mr. *Charnock*'s Treason. But his going by two Names doth justly lay him under some Suspicion. But the Evidence that the Prisoner seems to rely upon most, is what Evidence has been produced against Mr. *Goodman* in that Point of Fact, by the Master and the two Drawers; the first of the Drawers Name was *Crawford*, and he does tell you, that about twelve Months ago there was this Company at Dinner there: My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, Mr. *Charnock*, and the Prisoner, though he did not then know his Name, or the Name of one or two more of them. I observe, by the Way, that his Testimony so far does verify theirs, that there were eight of them there, but he says he did not see Mr. *Goodman* there, nor any but those that dined there. And my Lord of *Aylesbury* went away, as he thinks, about Four o'clock. He cannot say that the Prisoner was there, or was gone at that Time before Mr. *Goodman* came in; for he did not see Mr. *Goodman* there at all, he was not in the Room all the Time, but he was to and fro attending till my Lord of *Aylesbury* and my Lord *Montgomery* went away in a Coach that was called, and when they were gone, the rest of the Company staid there a good while; being urged to tell how long, at last he said it was dark; and that agrees with Mr. *Porter*, who says, it was about nine o'clock when they went away. He says he was there once or twice after my Lord of *Aylesbury* went away, but he never saw Mr. *Goodman* that he remembers at all, till last *Saturday*, in all his Life. As to this, the King's Counsel say, that it is only a *negative* Evidence, and in which a Man cannot be absolutely *positive*, but can only speak according to his Observation and Memory, which might not be perfect, and Mr. *Goodman* might be there in the mean time of his going in and out: That is possible; and so it must be left to you to consider of it.

Then there is *Huntley* the other Drawer, and he says my Lord of *Aylesbury* went away about that Time, and that he did not see Mr. *Goodman* there at all, nor ever in his Life till now; neither does he remember that any Body came to them after Dinner, and if any fresh Man had then come in, he thinks he should (going often in to them) have known him; and says, that he attended this Company only: And he had seen Sir *John Freind* and Sir *William Parkyns* there before.

Then Mr. *Cock*, the Master of the House, was produced, and he names all the eight Persons that did dine there; and so far he confirms the King's Evidence: He thinks that my Lord of *Aylesbury* and my Lord *Montgomery* went away privately (as it seems they had come) in a Hackney-Coach, and that it was about Four o'clock; and he says, he did not see Mr. *Goodman* there, and he does not know that he ever saw him till now: But when he was cross-examined by the King's Counsel, he does acknowledge that he might possibly come in after Dinner, and before my Lord of *Aylesbury* went away, and he not see him, because he was not there all the Time; he says, Sir *John Freind* used to dine at his House, and came to his House once a-Week; and he had seen some of the rest, but they did not frequent his House as Sir *John Freind* did: He says, the Company din'd about Two o'clock, and the last of them staid till about Eight or Nine, and that the Door was shut as is usual when Company is in a Room, but nobody was forbid to come there.

But to establish the Credit of the Evidence on the King's Part, they did produce Mr. *Goodman* and Mr. *Porter* again: Mr. *Goodman* does acknowledge so far to be true, that my Lord of *Aylesbury* went away first; but says, that himself was not wholly a Stranger to this House, for he had dined there four or five Times with Sir *John Freind*; and particularly one Time, he being sick, and asking for some Brandy, the Master of the House said he would help him to some of the best in *England*, and Mr. *Goodman* would have bought some of him. But the Master seems not to own that, and says, he does not remember any Thing of it.

But then comes Mr. *Porter* again, and he says positively, that Mr. *Goodman* was there, and that he did speak with the Company, and complimented my Lord of *Aylesbury* when he went away, and went Part of the Way towards the Stairs with him; and he does well remember it by this Token, that when Mr. *Porter* was told Mr. *Goodman* was below, he mentioned him in the Company as a trusty Man, that was fit for the Conversation, and then Mr. *Porter* went and fetch'd him up; and Mr. *Goodman* was there near two Hours, and they discoursed all this Matter in that Time, in the Presence of the Prisoner and the rest; and he says it was about six o'clock before my Lord of *Aylesbury* and my Lord *Montgomery* went away, and then there was Opportunity enough for this Discourse and Consult that they speak of.

The Prisoner has offered another Sort of Evidence: First, the Confidence of his own Innocence, that he was abroad three Weeks after this Conspiracy was discovered; and they have produced Mr. *Treganna*, Mr. *Peachy*, and Mr. *Nicholls*, who prove that he never absconded, but was abroad, and appeared openly (for three Weeks after) till such Time as he was taken. This the King's Counsel say is no Proof that he is not Guilty; and their Evidence untrue. They say he might have a Confidence, and the rather because he is not charged with the Assassination; for at that Time these Witnesses speak of, nothing was discovered and publick but the Assassination; for it was before Sir *John Freind*'s Trial; and then was the great Discovery of the Secret of the Invasion.

Then he shews farther as to his Conversation, that he is a Man of a very sober Life, never was known to swear, that he drinks but little, and is a *Godly* Man, and often says his Prayers. As to that, the King's Counsel on the other Side tell you, that has been pretended to by other People too; and the Question is not about *Religion*, but *this Fact* that you are now to try. Whether he be so Religious, or no, as he pretends, or whether he be sincere in his Devotion, that is not so much the Matter now; but the Question is; Whether he has offended in this Kind as he stands accused? They produce a Gentleman, one Mr. *Hamond*, and he says that he is a very Conscientious Man, and particularly is a great Lover of his Country; and he has often heard him declare a Detestation of an Invasion by a *French* Force, and wish Success to the Fleet; but *that* which he remembers chiefly, was about the Time of the Discovery of this Plot. The King's Counsel answer to this, that a Man may use such kind of Expressions, perhaps, to cover his Guilt; and in the Reply to Sir *Bartholomew Shower*'s Observations, it was taken notice of by Mr. *Solicitor*, (what we all cannot but remember) that the like Evidence was given as to Sir *John Freind*, that he did detest an Invasion, and was present at the Common-Prayer when King *William* was pray'd for, and declar'd against Plots; and that if they catch'd him in the Corn they might put him in the Pound. These Things a Man might say, and it is the lightest Evidence that can be given, being Discourses out of Men's own Mouths, who will never proclaim their own Guilt; and therefore it is the weakest Defence that can be offered. But, Gentlemen, you are to consider the other Evidence that has been produced by the Prisoner, given by several Witnesses, and who are upon their Oaths now as well as the King's Witnesses. And his Counsel say their Witnesses, but particularly the three upon whom they chiefly rely, have no Objection made out against them; and no Man's Testimony ought to be *presumed* to be false. And it must be taken notice of, that they can speak only according to their Belief, grounded on their Observation and Memory, that they did not, so far as they observed, or remember, see Mr. *Goodman* there, as 'twas most probable they should if he had been. But 'tis possible they might overlook, or forget; the rather for that they were not of the Company, but in and out, up and down; and Mr. *Goodman* was not there at Dinner, when their Attendance was fix'd and constant.

It ought to be considered also, that here are several Circumstances, some of which seem very pregnant. It is agreed on all Hands, that the Prisoner dined there with those other seven Persons, concerning Four of whom we must conclude nothing; but concerning Three of them we in this Court may take notice, they are Attainted of High-Treason, and so it is evident that the Prisoner was for a long Time a Companion of three Traitors, and had a Conversation with them. I do not find that he had any Occasion to be there; nor any of the rest of the Company. Concerning my Lord of *Aylesbury*, indeed, it is said he proposed to treat about a Hogshead of White Wine. But that seems to be casual, and not the End of his Coming, and Dining with this Company there. But be that how it will, that relates to his Lordship alone. But for the others, I do not find they do pretend any Occasion of Meeting there; and therefore it leaves it the more suspicious: And 'tis the more so, because it was managed so privately and cautiously. They were not attended according to their Qualities. The Lords went away together in a Hackney-Coach that was called, as they had come thither in another. The rest thought fit to stay there till it was dark; and as soon as it was so, went away. There was some extraordinary Cause for all this. It did import the Prisoner to shew, that it was for some good Cause and Purpose.

And further, it is observable that this House was a Place which, as the Master says, none of this Company did use to resort to except Sir *John Freind*; which makes it probable (this being a House that Sir *John Freind* frequented, and none of the others) that *He* bespoke this Place, and brought the rest thither: And if it were so, that makes it more probable that there was such a Treason there to be hatch'd, as is evidenced by the King's Witnesses; for you may remember, and it appears by the Record in this Court, that Sir *John Freind* was indicted and attainted (not for the Assassination, but) for the Treason for which the Prisoner is now a-Trying, an Invasion that was to be supported with an Insurrection. Now if Sir *John Freind* was chiefly acquainted with this House, and brought this Company together, it is very probable it was about this Business which Sir *John Freind* was so concerned in. And that he is Attainted for it, appears upon the Record before us; which should be read; but that the Prisoner's Counsel admit it, and are so far satisfied in it, that they won't Arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no Doubt of it, there was *such a Plot*.

Now then, Gentlemen, here it is certainly proved by these two Witnesses, (and not gain-said by the Prisoner's own Witnesses) that there was such a Meeting, and that the Prisoner was there; and they both have positively sworn that this Treason was committed there. You have heard what has been objected to their Credit; they have delivered their Testimony upon their Oaths, and so, Gentlemen, you are upon your Oaths: If you are satisfied, and can take it upon your Consciences, that these two Witnesses

neſſes are, or any one of them is, (if ſuch Diſtinction can poſſibly be made in this Caſe) then you are to acquit the Priſoner; but if you are ſatisfied, and think they have ſworn true, you are to find him Guilty.

Mr. Juſt. *Rokeby*. Nay, if one be forſworn, both are; for the Evidence is intirely in all Parts the ſame; and if Mr. *Goodman* be perjured, Mr. *Porter* is ſo too.

Sir *B. Shower*. Forſworn and Perjured are hard Words; we only ſay miſtaken.

Mr. Juſt. *Rokeby*. Well, that Objection goes to one as well as t'other.

L. C. J. Treby. It muſt be ſo, ſince they ſpeak of the ſame joint Matter, *viz.* their being together in Company. If Mr. *Porter* ſays true, when he ſwears that Mr. *Goodman* was there with him and the reſt, Mr. *Goodman* muſt ſay true when he ſwears that he was there with Mr. *Porter* and the reſt. There was one Thing that I forgot: Sir *B. Shower* obſerved, that it might be an Invention of Captain *Porter*, becauſe he fixeth it in Point of Time to the Month of *May*, that he does not ſay it was in *April*; for that then it would be within the Pardon, which extends to *April* 29, laſt Year; nor would he lay it in *June*, for then he was in *Newgate*, and others of them were diſperſed by reaſon of a Riot committed in *Drury-Lane*; and this Sir *Bartholomew Shower* alledges, was a Piece of Skill and Contrivance: But, really, this is a Piece of Ingenuity in himſelf: For, beſides that the King's Witneſſes affirm poſitively that it was in *May*, and remember it by a certain Token, *viz.* That it was within a very few Days after the King went beyond Sea, one or two of the Priſoner's Witneſſes (*Crawford* I am ſure) did ſay that this Meeting was this Time Twelve-month, and you know we are now near Mid-*May*.

Mr. Serj. *Darnal*. If you believe our Drawers for part, you muſt believe them for all.

Mr. Att. Gen. No, not ſo: My Lord ſpeaks only where they concur with our Evidence. It were ſtrange to expect we ſhould diſbelieve, or doubt what the Witneſſes on both Sides affirm to be true: But I do not think it would be to the Advantage of the Priſoner, if what his Counſel propoſeth were agreed to, *viz.* That the Drawers (and their Maſter too) ſhould be believed for all they ſay, provided equally the King's Witneſſes ſhould, in like manner, be believed for what they ſay. For the main thing controverted, is, Whether Mr. *Goodman* were at this Meeting? Theſe Witneſſes for the Priſoner ſay, they did not ſee him there; at leaſt they do not remember it. Mr. *Porter*, and Mr. *Goodman* himſelf ſays, he was there. Now, theſe Things agreed, and admitted, would make a very conſiſtent clear Evidence, that Mr. *Goodman* was there, tho' the Maſter and Drawers did not obſerve, or do not remember his being there.

[*Then an Officer was ſworn to keep the Jury, who withdrew to conſider of their Verdict, and about Three Quarters of an Hour after returned into Court.*]

Cl. of Arr. Gentlemen, anſwer to your Names. *Henry Sherbrook.*

Mr. *Sherbrook*. Here. *And ſo of the reſt, &c.*

Cl. of Arr. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. Set *Peter Cook* to the Bar. (*Which was done.*) *Peter Cook*, hold up thy Hand. (*Which he did.*) Look upon the Priſoner; how ſay you, Is he Guilty of the High-Treaſon whereof he ſtands Indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treaſon committed, or at any Time ſince?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it: You ſay that *Peter Cook* is Guilty of the High-Treaſon whereof he ſtands Indicted, but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treaſon committed, or at any Time ſince to your Knowledge; and ſo you ſay all?

Jury. Yes.

Cl. of Arr. Gentlemen, the Court diſmiſſes you, and thanks you for your Service.

(Then the Court adjourned 'till Five o'clock in the Evening.)

Post Meridiem.

About Six o'clock, the Court being by Proclamation reſum'd, the Priſoner convicted was brought to the Bar in order to Judgment.

Cl. of Arr. Peter Cook, Hold up thy Hand. (*Which he did.*) Thou ſtand'ſt convicted of High-Treaſon, for compaſſing and imagining the Death of his Majeſty King *William* the Third, and for adhering to the King's Enemies: What can'ſt thou ſay for thyſelf, why the Court ſhould not give thee Judgment to die according to the Law?

Cook. My Lord Mayor, my Eyes are very bad, therefore I deſire your Lordſhip would be pleaſed to take this Paper, and that it may be read.

Cl. of Arr. Have you any Thing to ſay in Arreſt of Judgment?

Cook. I deſire my Paper may be read.

[*It was handed up to the* Court, *and then delivered down to* Mr. Attorney General, *and the* King's Counſel, *but not openly read.*]

Mr. Recorder. [Sir *Salathiel Lovell.*] Mr. *Cook*, the Court have read your Paper you ſent up, and have communicated it to the King's Counſel; if you have any Thing to move in an Arreſt of Judgment, this is your Time, and we will hear you; but as for any Repreſentation of your Caſe to any others, that muſt be conſidered of afterwards; you are now called to your Judgment.

Cook. I did not know that I might offer any thing afterwards; but if your Lordſhips think fit to communicate that to my Lord Juſtices, I ſubmit it to you.

Mr. Recorder. Mr. *Cook*, there is nothing appears upon this Paper that is Matter of Law, and ſo not ſerviceable to you now, and therefore what you deſire in it the Court will conſider of afterwards.

Cook. I do not underſtand the Law, my Lord, but I have heard the Court ought to be of Counſel for the Priſoner, and I deſire I may not ſuffer by my Ignorance.

Mr. Recorder. I declare it, for my part, I know nothing that you can have any Advantage of in Arreſt of Judgment; if I did, you ſhould not loſe the Benefit of it, and you have had your Counſel aſſigned, who have pleaded for you without reſtraint; and if there had been any Matter of Law that would have availed you in the Arreſt of Judgment, no doubt they would have laid hold of that Advantage for you.

Cook. I can't tell, my Lord, what is Matter of Law.

Mr. Att. Gen. Your Lordſhip obſerves, they took all the Objections that they could to the Indictment, but there was none that they could fix.

Cl. of Arr. Then, Crier, make Proclamation. (*Which was done on both Sides of the Court.*)

Crier. O yes. All manner of Perſons are commanded to keep Silence while Judgment is in giving, upon Pain of Impriſonment.

Cook. My Lord, may I have my Paper again?

Mr. Recorder. If you think it may be any Service to you to leave it with the Court, you may do ſo; or if you deſire it, you ſhall have it again.

Cook. I deſire your Lordſhip to keep it.

Mr. Recorder. I will receive it, and it ſhall not be buried, I aſſure you.

Cook. I don't hear what the Court ſays.

Mr. Recorder. You ſay you did not hear what was ſaid to you: If you deſire to have your Paper again, you ſhall have it; but if you deſire to have it communicated Above, the Court will conſider it, and take care of that too.

Cook. I deſire your Lordſhip would do it.

Then the Recorder *proceeded to give Judgment.*

Mr. *Cook*, I think it uſeful to the Publick, and alſo at this Time to you, to obſerve, That the Reign of the late King *James* was, throughout, one intire Deſign and Project form'd, in conjunction with the *French* King, totally to ſubvert our Religion, Laws, and Liberties; which grew ſo apparent to the Subjects of theſe Nations, in ſo many Inſtances of fatal Conſequence, manag'd in ſuch a Method, and advanc'd ſo far, that the People of theſe Kingdoms, of all Qualities, Ranks, and Degrees, did find it abſolutely neceſſary for the Preſervation of themſelves and the neighbouring Nations now in Alliance with us, to pray in Aid of the then Pr. of *Orange*, as a Perſon not only nearly allied to this Crown, but alſo intirely in the Intereſt of theſe Kingdoms, and thoſe neighbouring Princes, and Countries that lay expoſed to the Violence and ambitious Inſults of *France*. And the Love which that noble Prince did bear, not only to us but to our Neighbours alſo, diſpoſed him to embrace that Invitation; upon whoſe Arrival here, that Predeceſſor, from Motives that were inviſible, declin'd the Kingdom and the Government, and left the People to themſelves; whereupon his preſent Majeſty was neceſſarily and rightfully placed upon that Throne he ſo well deſerved: And this is now that King, for whoſe Preſervation all good People have aſſociated, and ſpare neither Lives nor Treaſure to ſupport and to continue in the Government; and this is that King whom you have traitorouſly conſpired, not only to dethrone, but alſo to deſtroy; and this is that People that you would have to ſwim in Blood, and loſe their Religion, Liberty, and Property. Theſe Matters need a Hiſtory to relate at large; I only touch them ſhortly, to move good Men to rejoice in their Deliverance, and to move you ſeriouſly to reflect upon the Heinouſneſs of your Crime.

Mr. *Cook*, you are an *Engliſh* Man, and muſt needs know, that in this Place we frequently condemn to Death Clippers, Coiners, Thieves, and Robbers, and other ſuch like Criminals, and that juſtly and neceſſarily too, for the Preſervation of the Innocent, and for the common Good. Of what Condemnation muſt you, and ſuch as you, be worthy then, who have ſo horridly endeavour'd and deſign'd the fatal Ruin and Deſtruction of your own native Country, and to render your Fellow-Subjects a miſerable Prey, and at the beſt to become Slaves and Vaſſals to a foreign Prince?

Let me alſo mind you, that nothing is more ſure, than that after this, you muſt receive a Judgment in another World; and if that paſs againſt you too, that Sentence will be moſt Terrible, and your Sufferings without End: And therefore I do adviſe you to employ the few Days you have yet to live in Preparation for your future Happineſs, which cannot be duly done without a full Confeſſion of this, as well as other Crimes you have been guilty of: I therefore charge it to you as your Duty, and leave it with you at your utmoſt Peril, that you honeſtly and faithfully diſcover all you know of this inhuman and traitorous Conſpiracy, and all the Perſons that you do know to be guilty of it: This will be the greateſt Service you can do in this World, and will be the beſt preparatory Step that you can take towards a better.

And, Sir,

There now remains no more for me to ſay, but to pronounce that Sentence on you which the Law directs: And that is this:

> *That you*, Peter Cook, *be taken hence to the Place from whence you come, and thence be drawn upon a Hurdle to the Place of Execution, where you are to be hanged by the Neck, and cut down before you be dead; that your Bowels be taken out, and your Privy-Members cut from your Body, and both burnt in your Sight; that your Head be cut off, and your Body divided into four Quarters, which Head and Quarters are to be at the King's Diſpoſal; and God Almighty have Mercy upon your Soul.*

Cook. I beg, if your Lordſhip pleaſe, that I may have my Relations and Friends come to ſee me, and ſome Divines, the better to prepare me for another World.

Mr. Recorder. Mr. *Cook*, if you'll give the Names of thoſe that you would have come to you to the Officer, Care ſhall be taken in it; and you will not be denied any reaſonable Helps that may be had for your Preparation for Eternity.

Mr. Att. Gen. It is not fit he ſhould be deny'd any reaſonable Help; but in the mean time there is Reaſon for the Government to be cautious, upon the Account of what has notoriouſly paſt in the Caſe of ſome others.

Mr. Recorder. If he give in the Names, it will be conſider'd of, and Care taken that nothing be done but what is reaſonable and ſafe.

Then the Priſoner was taken from the Bar, and the Court proceeded to what was remaining of the Buſineſs of the Seſſions.

He was afterwards pardon'd, upon Condition of tranſporting himſelf, and never returning any more to England.

CLX. *The Trial of* Alexander Knightley, *at the* King's-Bench, *for* High-Treason, May 20, 1696. Paschæ 8 Will. III.

Thursday, April 30, 1696.

THIS Day the Keeper of *Newgate* brought to the Bar of the Court of *King*'s-*Bench Alexander Knightley*, by Virtue of a Writ of *Habeas Corpus*, issuing out of that Court for that Purpose, to be arraigned upon an Indictment of High-Treason found against him at the Sessions of *Oyer* and *Terminer*, holden for the County of *Middlesex*; which Indictment by Writ of *Certiorari* was removed into the *King*'s-*Bench*. The Return of the *Habeas Corpus* was delivered, and then the Prisoner was arraigned thus.

Cl. of Ar. Alexander Knightley, hold up thy Hand. *(Which he did.)* Thou standest indicted by the Name of *Alexander Knightley*, late of the Parish of St. *Paul Covent-Garden*, in the County of *Middlesex*, Gent. For that you, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* Your supreme, true, rightful, lawful and undoubted Sovereign Lord, the cordial Love and true and due Obedience, Fidelity, and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King should bear, and of Right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your Force purposing and designing the Government of this Kingdom of *England*, under him our said Lord the King that now is, of Right, duly, happily, and very well established, altogether to subvert, change, and alter, as also the same our Lord the King to Death and final Destruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery to *Lewis* the *French* King to subdue and inthral; the Tenth Day of *February*, in the Seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Parish of St. *Paul Covent-Garden* aforesaid, in the County aforesaid, falsly, maliciously, devilishly, and traitorously you did compass, imagine, and contrive, purpose, design, and intend our said Sovereign Lord the King that now is to slay, kill, and murder, and a miserable Slaughter among the faithful Subjects of our said Lord the King, throughout this whole Kingdom of *England*, to make and cause; and your said most wicked, most impious, and devilish Treasons, and traitorous Compassings, Contrivances and Purposes aforesaid to fulfil, perfect, and bring to Effect, you the said *Alexander Knightley* afterwards, to wit, the same Tenth Day of *February*, in the Year abovesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsly, maliciously, advisedly, secretly, traitorously, and with Force and Arms, with very many other Traitors to the Jurors unknown, did meet, propose, treat, consult, consent, and agree him our said Lord the King that now is, by lying in wait and deceit, to assassinate, kill, and murder; and that execrable, horrid, and detestable Assassination and Killing the sooner to execute and perpetrate, afterwards, to wit, the same Day and Year, and divers other Days and Times, at the Parish aforesaid, in the County aforesaid, traitorously you did treat, propose, and consult with those Traitors, of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what Manner, our said Sovereign Lord the King, so by lying in wait, might be slain and killed; and that you did consent, agree, and assent with the same Traitors, that forty Men on Horseback, or thereabouts, of whom you the said *Alexander Knightley* were to be one, with Guns, Muskets, and Pistols, charg'd with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Arms armed, should lie in wait and be in ambush, the same our Lord the King in his Coach being when he should go abroad to attack; and that a certain and competent Number of those Men so arm'd, upon the Guards of our said Lord the King, him then attending, and being with him should set upon, and should fight with them and subdue them, whilst others of the same Men so armed, him our said Lord the King should assassinate, kill, slay, and murder; and you the said *Alexander Knightley*, your Treasons and all your traitorous Intentions, Designs, and Contrivances aforesaid to execute, perform, fulfil, and bring to effect, afterwards, to wit, the aforesaid Tenth Day of *February*, in the Seventh Year abovesaid, at the Parish aforesaid, in the County aforesaid, diverse Horses, and very many Arms, Guns, Muskets, Rapiers and Swords, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsly, maliciously, secretly, and traitorously you did obtain, buy, gather together, and procure, and to be bought, obtain'd, gather'd together, and procur'd, did cause, with that Intent to use, employ, and bestow them in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid; and the same Premisses the more safely and surely to execute, do, and perform, you the said *Alexander Knightley*, with one *Edward King*, late for High-Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted, by the Consent and Assent of divers of the Traitors and Conspirators aforesaid, in the said Tenth Day of *February*, in the Seventh Year abovesaid, traitorously did go and come to the Place proposed, where such intended Assassination, Killing, and Murder of our said Lord the King, by lying in wait, should be done, performed, and committed, to view, search, and observe the Conveniency and Fitness of the same Place for such lying in wait, Assassination, and Killing there to be made, performed, and committed; and that Place so being seen and observed, afterwards, to wit, the same Day and Year, your Observations thereof to some of the said Traitors and Conspirators you did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid, against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in this Case made and provided. How say'st thou, *Alexander Knightley*, art thou Guilty of the High-Treason whereof thou standest indicted, or Not Guilty?

Knightley. Not Guilty.

Cl. of Ar. Culprit, How will you be try'd?

Knightley. By God and my Country.

Cl. of Ar. God send you a good Deliverance!

Knightley. With Submission to your Lordship, I did not expect, in this weak Condition that I am in, to be brought at this Time to the Bar; That having taken me off extremely from the Application that I should have otherwise made of myself to my Defence; but seeing there is no Mercy to be had here, I will endeavour to have Patience, and undergo my Fate as well as I can.

L. C. J. Holt. Mr. *Knightley*, you have no Reason to find Fault; for when I was acquainted you were ill, and desired a Physician, I ordered one to be sent to you; and Yesterday in the Afternoon you sent Word you were so sick, that you could not be brought hither To-day; but your Doctor was with me last Night, and upon Discourse with him, I did apprehend you were not so ill, but that, especially considering the Weather, you might very safely be brought to the Bar To-day.

Knightley. The Gentleman that brought me the Copy of the Indictment found me very ill, and I have been ill ever since this Day Seven-night.

L. C. J. Holt. Well, now let us see what Time we shall appoint for the Trial.

Mr. Att. Gen. [Sir *Thomas Trevor.*] When your Lordship pleases to appoint.

L. C. J. Holt. I think you cannot try it till *Wednesday* Fortnight.

Mr. *Clark.* That Day is free, my Lord.

L. C. J. Holt. It being upon a *Certiorari*, the *Venire facias* must be returnable upon a common Day; and there must be fifteen Days between the *Teste* and the Return.

Mr. Att. Gen. May it not be *Tuesday*, then, that the Jury appear?

L. C. J. Holt. You cannot have it before *Wednesday*, for that is the Return-day.

Mr. *Clark. Tuesday* Fortnight is appointed for the Trial between *Pride* and the Earl of *Bath*.

Mr. Att. Gen. Then it must be upon *Wednesday*, for there must be fifteen Days between the *Teste* and the Return.

L. C. J. Holt. Well, take back your Prisoner, and bring him here again on *Wednesday* Fortnight; you shall have a Rule for it.

(Then the Prisoner was carried back.)

Die Mercurii Vicesimo Maii, 1696. *In Banco Regis.* Dominus Rex *versus* Knightley.

THIS Day being appointed for the Trial of the Prisoner, he was brought to *Westminster-Hall*, and the Jury were call'd over as soon as the Court appeared in the Hall, and the Defaulters recorded; and about Eleven of the Clock the Prisoner was brought to the Bar.

Clerk of the Crown. Alexander Knightley, hold up thy Hand. *(Which he did.)* Those good Men that thou shalt hear called, and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death: If therefore thou wouldst challenge them, or any of them, thy Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

L. C. J. Holt. Mr. *Knightley*, I perceive you have a Desire to speak something; let us hear what you have to say.

Knightley. I humbly beg your Lordship's Leave, that I may speak before the Jury be called. What I have to say, I beg I may have your Leave to read, because I have a bad Memory.

(Reads.) MY Lord, I hope to save the Jury and the Witnesses against me a great deal of Trouble, and design to take up very little of your Lordship's Time: But in the first Place, I think myself obliged to thank your Lordship for your great Indulgence, in granting me so much Time between my Arraignment and Trial; the greatest Part of which I have employed to appear before the great Tribunal of Heaven.

I speak in the Face of the World here, That I am convinced I cannot hope to be happy hereafter, without a just Abhorrence of, and a sincere Repentance for that Crime for which I here stand indicted.

And since Confession is an essential Part of Repentance, I do acknowledge I was to have been concern'd in some Part of the barbarous Assassination, and was unhappily surprised into a Consent to act in it, though in my Heart I did abominate the Fact as much as any Man living; but under some honourable and fair Pretences I was drawn in at first, and then of a sudden became so far engaged, that by a mistaken Notion of Honour, I thought I could not retreat without the Infamy of Cowardice.

My Lord, I humbly crave your Lordship's Permission to acquaint you, how that some Time since I was brought before some of the Lords of his Majesty's

Majeſty's moſt Honourable Privy-Council, where I do aſſure your Lordſhip, I did freely own and fully diſcover my being concerned in that horrid Deſign: and I here openly confeſs the ſame, with that Sorrow and Repentance as becomes a Man of Honour and Conſcience.

My Lord, there is one Circumſtance particular in my Caſe, I moſt humbly beg leave to inſiſt upon, and urge to your Lordſhip in my behalf; which is, that it was upon my Confeſſion (as I conceive) that Mr. *Harris*, now a principal Evidence againſt me, was firſt diſcovered; ſo that my own Confeſſion has been a great Means to take away my Life.

I expect after a few Words now in this ſolemn Court to receive from your Lordſhip the Sentence due upon the Conviction, from my own Mouth, of a Crime for which I cannot in Modeſty hope, ſo much above my Deſerts, the King's moſt Gracious Pardon; yet the Greatneſs of my Offence does not rob me of all Thoughts of Mercy, whilſt I throw myſelf abſolutely and entirely at his Majeſty's Feet for it; and I humbly beg of your Lordſhip as a Privy-Councellor, that you would repreſent my unfortunate Caſe to their Excellencies the Lords Juſtices of *England*, as an Object of his Majeſty's Favour.

And now, my Lord, I ſhall not detain your Lordſhip and the Court any longer, but my next Words convict and lay me under the juſt Sentence of Death: So to my Indictment I beg Leave to plead Guilty, and throw myſelf entirely upon the King's Mercy, and do deſire my former Plea to my Indictment may be withdrawn.

Cl. of the Crown. Thou haſt been indicted and arraigned of High-Treaſon in compaſſing and imagining the Death and Deſtruction of the King; how ſay'ſt thou, *Alexander Knightley*, art thou Guilty of the High-Treaſon whereof thou ſtandeſt indicted, or Not Guilty?

Knightley. Guilty, my Lord.

Cl. of the Crown. Art thou content to withdraw thy Plea Not Guilty?

Knightley. Yes, Sir.

Cl. of the Crown. Do you plead to the Indictment Guilty or Not Guilty?

Knightley. I am Guilty.

Mr. Att. Gen. Then, my Lord, we deſire, ſince he relinquiſhes his Plea of Not Guilty, that you will record his Confeſſion; and ſince he has confeſt the Indictment, we have nothing more to do but wait the Judgment of the Court.

L. C. J. Holt. We ſhall not give Judgment now.

Mr. Att. Gen. If the Priſoner have any Thing to ſay for himſelf, your Lordſhips, I ſuppoſe, will hear him to it.

L. C. J. Holt. But I ſay, we cannot by the Courſe of the Court give Judgment now; for after a Perſon is convicted here, whether by Confeſſion or Verdict, he ought to have four Days from the Time of ſuch Confeſſion or Verdict, to move in Arreſt of Judgment, if there be ſo many Days of the Term remaining; if not, then the longeſt Time that can be had in the Term is allow'd: In (*Trial* 74.) *Stayley*'s Caſe it was otherwiſe practiſed, Judgment was given the ſame Day; that was in the Time of the Popiſh Plot, and is a Caſe not to be imitated, becauſe not juſtified by any Precedent before that Time or ſince; but it has been always obſerv'd to have four Juridical Days for moving in Arreſt of Judgment, if ſo many remain of the Term.

Die Lunæ Viceſimo Quinto Die Maii, *An. Dom.* 1696.

Being the laſt Day of the Term, the Priſoner was brought from Newgate *to the* King's Bench *Bar.*

Mr. Att. Gen. If your Lordſhip pleaſe, I deſire the Judgment of the Court to be pronounced upon Mr. *Knightley* upon his Conviction.

Cl. of the Crown. Alexander Knightley, hold up thy Hand. (*Which he did.*) Thou haſt been indicted and arraigned for High-Treaſon in compaſſing and imagining the Death of the King, and adhering to the King's Enemies; what can'ſt thou ſay for thyſelf, why Judgment ſhould not be given againſt thee to die according to the Law?

Knightley. I have nothing more to ſay, my Lord, than what I have ſaid.

Cl. of the Crown. Crier, make Proclamation for Silence.
(*Which was done on both Sides the Court.*)

Cryer. Oyez: Our Sovereign Lord the King ſtraitly charges and commands all manner of Perſons to keep Silence while Judgment is in giving, upon Pain of Impriſonment.

L. C. J. Holt. Mr. *Knightley*, You are by your own Confeſſion convicted of High-Treaſon in deſigning the Murder of the King, and the Subverſion of the whole State of *England*, in promoting an Invaſion from the *French*, its moſt antient and inveterate Enemies.

It hath appeared before your Arraignment, not only by the Evidence that hath been given at former Trials, but even by the Signs of the Times and the Manner of ſome Men's Actings, that there hath been for ſome Years laſt paſt a Train of Plots and Conſpiracies againſt this Government; and when the various Means which the Conſpirators did project among themſelves for its Ruin proved ineffectual, it was at laſt reſolved among ſome of the Conſpirators to aſſaſſinate the King, as the moſt certain Way of accompliſhing their End.

In which Deſign you were deeply engaged, and was an active Inſtrument in the carrying it on, being ſent to view the Ground on both Sides the Water, and with others that were ſent with you reported your Opinion, which was the moſt convenient Place to attack the King and his Guards.

And though you did, the laſt Time you were at the Bar, urge by way of Extenuation of your Crime, that you being engaged in the Intereſt of the late King, and thereby ſupported, you was ſurpriſed into this barbarous Deſign, which being propoſed to you, you thought yourſelf obliged in Honour to engage in it; which is ſo far from an Extenuation, that it is an high Aggravation: For Men of honourable Principles, tho' moſt zealouſly diſpoſed to the Advancement of any particular Intereſt, yet always deteſt the Uſe of baſe and vile Means. Therefore when the Aſſaſſination of the King was propoſed, you had an Opportunity to have retreated with Honour, and might have refuſed to be further concerned; but you rather purſued this wicked Enterpriſe with great Zeal.

And tho' you are by your Profeſſion a *Roman Catholick*, and may for that Reaſon think that your Crime is mitigated, becauſe you acted in the Behalf of a Prince of your own Religion, which you hoped thereby to introduce: Notwithſtanding all which, your Offence is highly aggravated in reſpect of the Ingratitude and Folly with which it is attended. For there is no *Engliſh* Papiſt that is Maſter of any Property, but he is intereſted in the Preſervation of this Government, to which the whole Party of them hath been, and ſtill are continually obliged for its Moderation and Juſtice; for inſtead of being expoſed to the Severity of thoſe Laws to which they are obnoxious, they have had the ſame Indulgence in the Enjoyment of their Religion, and the ſame Protection, and as much Benefit in the Diſtribution of the Common Juſtice of the Realm, as any other of the King's Subjects; therefore none of them could ever expect to mend their Condition under a *French* Domination. But the contrary is foreſeen by all conſidering Men; for the *Engliſh* Papiſt, as well as Proteſtant, would have been reduced to a moſt diſmal State, if you had obtained your End.

For it is againſt all the Rules of Reaſon, and the Experience of all Ages, to imagine, that the *French* King would ſpare *Engliſh* Papiſts more than Proteſtants; for it is not Zeal to Religion, or Affection to the Intereſt of the late King, that hath excited him to invade *England*, but it's his Pride and Ambition to conquer the Three Kingdoms, and to reduce this to be a Province to *France*: Indeed the Pretence of reſtoring the late King, and introducing the *Popiſh* Religion, may ſerve to delude ſome warm and unwary Zealots to engage in his Aſſiſtance, who do not conſider, that if they ſhould be ſucceſsful, they would be as certainly deſtroyed as others, but with more Diſadvantage to themſelves. For after they ſhall have ſurvived the Liberty of their Country, have embrued their own Hands in their Countrymen's Blood, they will be at the Mercy of their Conqueror, who can never think it his Intereſt to truſt them, but will deſpiſe them for being ſuch villainous Traitors to their own Country. Nay, rather, theſe *Engliſhmen*, who by their Courage and Reſolution ſhall endeavour to defend their Country, though they ſhould be unfortunately vanquiſhed, will meet with a much better Reception, for they will have given Aſſurances that they may be confided in, when the others have by ſuch a wicked Treaſon given a Demonſtration to the contrary.

There being then nothing to be ſaid that can palliate ſuch a Crime as that of which you are convicted; but you having taken a different Courſe the laſt Time you were at the Bar from what you took at firſt, you have relinquiſhed your Plea of Not Guilty, and have confeſſed the Indictment; I wiſh out of Charity to your Perſon, it was as ſincere as (I think it) it was prudent in you; for after ſeveral Convictions of others that were your Accomplices, you could not be a Stranger to the Evidence upon which they were grounded; you muſt therefore in all Probability have expected to have undergone the ſame Fate. If your Confeſſion be a real Effect of your Repentance, you will reap the Advantage of it in the next World; but what Conſequence it will have in this, I cannot ſay; *For the Heart of the King is in the Hand of the Almighty, which, as the Rivers of Water, he turneth whitherſoever he will.* Live therefore for the Time to come in Expectation of a ſpeedy Death, and prepare yourſelf to appear before another Judgment-Seat; to the making of which important Preparation I ſhall diſmiſs you, firſt diſcharging the Court of the Duty now incumbent upon it, in giving that Judgment which the Law hath appointed. And the Court doth award,

That you be conveyed from hence to Newgate, *the Priſon from whence you came, and from thence you are to be drawn upon a Hurdle to* Tyburn; *where you are to be hanged by the Neck, and while you are alive to be cut down, your Privy-Members are to be cut off, and your Bowels to be cut out of your Body, and burnt in your View; your Head is to be cut off, and your Body is to be divided into four Parts, and your Head and your Quarters are to be diſpoſed where his Majeſty ſhall appoint. And I pray God to have Mercy upon your Soul.*

Knightley. My Lord, I am truly ſorry for what I have done, and I humbly thank your Lordſhip and the reſt of the Judges for your Favour to me.

Then the Priſoner was carried back to *Newgate*, and afterwards was graciouſly pardoned.

The END *of the* FOURTH VOLUME.

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A Complete Collection Of State-Trials And Proceedings For High-Treason And Other Crimes and Misdemeanours Commencing With The Eleventh Year of the Reign of King Richard II. And Ending With The Sixteenth Year of the Reign of King George III. ; With Two Alphabetical Tables To The Whole
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